

## The Bribery Act 2010 in force from 1 July 2011 - Do's & Don'ts



The Bribery Act 2010 came into force on 1 July 2011 and will impact on how your business does business with others.

You and your staff need to know what this means for you and be aware of the "do's" and "don't's". Some of the key points are:

- The Act specifically is concerned with bribery and it is a defence for a business to show that it had "adequate procedures" designed to prevent persons associated with it from bribing another person to obtain, or retain, business or an advantage in the conduct of its business.
- Bribery for the purposes of the Act will include: *"any provision of a financial or any other advantage to a person to perform their functions or activities improperly"*. Offences under the Act include paying bribes and receiving bribes.

- The ability to provide corporate hospitality remains permitted under the Act. It is not the intention of the Act to outlaw "reasonable and proportionate hospitality" expenditure. What is reasonable and proportionate may well be different from one business to another so the matter will require to be considered by you and an appropriate policy put in place for your organisation now.
- Any improper undertaking made from an employee associated with your businesses could be attributable to your organisation.

### What should businesses do?

It is imperative that your organisation has adequate procedures and a suitable policy in place to deal with provisions of the Act.

Training for managers and employees is also necessary to ensure that you have the best possible defence against any challenge or alleged offence under this new law.

Please feel free to contact any member of **bto's** employment team and we will provide assistance in reviewing your existing policies or preparing new policies tailored to the specific needs and requirements of your business.

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## In this edition

### The Bribery Act 2010

What does this mean for you and your business? An overview of some of the key points raised by the Act.

### On the horizon... Agency Workers' Regulations

A look at this significant piece of legislation which seeks to give agency workers the same rights as employees.

### Changes to the National Minimum Wage rates

A snapshot look at the NMW rates to be introduced from 1 October 2011.

### Reminder: Increased Compensation Limits

Since 1 February 2011, employers who dismiss employees unfairly face increased penalties.

## On the horizon... Agency Workers' Regulations

The Agency Workers' Regulations are due to come into force from 1 October 2011 and will affect all businesses using agency workers.

The first trick is, of course, to identify and recognise who or what is an "agency worker". An agency worker is defined as one who is supplied to work temporarily under the control or supervision of the hirer (that could be your organisation). This includes those working through umbrella or personal service companies, but does not include the genuinely self employed or those working on managed service contracts.

The background is that there was concern that some agency workers had long term, stable relationships with businesses (the hirer) and that it was unjust for the agency worker to be denied some of the rights enjoyed by employees.



The Agency Worker Regulations seek to rectify this and some key points to note are:

- From day one, the hirer must give agency workers access to the same facilities and amenities as employees doing the same job. This includes such things as crèches, canteen and car parking, but does not include benefits in kind such as membership to a gym.
- From day one, the hirer must also give agency workers information about job vacancies within the organisation on the same basis as employees doing the same job.

- After an agency worker has been with the hirer for 12 weeks, the agency worker is entitled, generally, to the same pay and basic working conditions as employees of the hirer who are doing the same job. This is the principle of "equal treatment".
- "Pay" in this context includes such items as basic pay and overtime but excludes, for example, occupational sick pay. "Pay" includes and excludes some very specific elements and you should take advice to ensure you are aware of the extent and cover of the Regulations.
- The agency is responsible for providing the worker with these equivalent payments, but the hirer must give the agency the correct and relevant information (about pay and conditions of its employees) to ensure compliance. If you, the hirer, do not provide this relevant information, you are liable for the breach.

- A claim for breach of the Regulations can be taken to the Employment Tribunal with the potential for compensation and penalties being awarded.

In the run up to 1 October 2011, it is essential that you look at your business and consider the impact that these Regulations could have in respect of the long terms costs of agency workers. If you are in doubt as to the status of your "staff", the impact of the Regulations on your business and your obligations under the Regulations, we would be happy to discuss this with you before the 1 October commencement date. Act now!

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## Update

### Changes to the National Minimum Wage rates

There are different levels of NMW, depending on your age and whether you are an apprentice. The NMW rates are reviewed each year by the Low Pay Commission and from 1 October 2011:

- The main rate for workers aged 21 and over will increase from £5.93 to £6.08
- The 18-20 rate will increase from £4.92 to £4.98
- The 16-17 rate for workers above school leaving age, but under 18 will increase from £3.64 to £3.68
- The apprentice rate for apprentices under 19, or 19 or over, and in the first year of their apprenticeship will increase from £2.50 to £2.60.

### Reminder: Increased Compensation Limits

The maximum compensatory award for unfair dismissal is now £68,400 and the maximum statutory redundancy payment is now £12,000.

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