

Checking Office Electrical Equipment

The Health and Safety Executive has published useful guidance on preventing danger from portable electrical equipment in premises where risks are generally low, such as offices or libraries. This is intended to debunk the myth that all office equipment must be tested annually by a qualified electrician.



For most office electrical equipment, visual checks for obvious signs of damage and perhaps simple tests by a competent member of staff are sufficient to comply with the law. Furthermore, the law does not require you to keep a record of these checks, although doing so can provide useful information regarding faults discovered which can be used to determine the appropriate inspection intervals.

Return to Work After Maternity Leave – What is the Same Job?

Under the Maternity and Parental Leave (etc.) Regulations 1999 an employee who takes additional maternity leave is entitled to return to the ‘job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances’.

In a claim of sex (pregnancy) discrimination (*Blundell v St Andrew’s Catholic Primary School*), the Employment Appeal Tribunal (EAT) considered for the first time the criteria to be used when determining what counts as the same job under the Regulations.

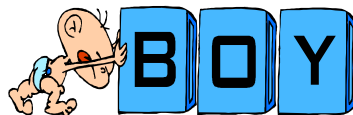
Mrs Blundell had worked at St Andrew’s since 1992 as one of 18 teachers. The head teacher, Mrs Assid, customarily allocated teachers to a particular responsibility for a period of two years and then changed their roles in order to give them a breadth of experience. During the school year 2002 to 2003, Mrs Blundell taught a reception class. In June 2003, she told Mrs Assid that she was pregnant and subsequently took maternity leave. On her return, Mrs Blundell was offered either the position of year 2 class teacher or she could undertake ‘floating duties’. She claimed that this was a breach of the Regulations, which gave her the right to return to the same job she was doing before her maternity leave.

The Employment Tribunal (ET) found that in Mrs Blundell’s situation ‘the job in which she was employed before her absence’ meant the job of teacher, not the temporary position she had held as a reception class teacher.

Mrs Blundell appealed to the EAT, which examined the definition of ‘job’ as provided for by the Regulations, which is ‘the nature of the work she is employed to do in accordance with the contract and the capacity and place in which she is so employed’. In its view, the level of specificity with which the terms ‘nature’, ‘capacity’ and ‘place’ are to be addressed is likely to be critical and should be determined as a question of fact by the ET, taking into account the purposes of the legislation and the fact that the Regulations themselves provide for exceptional cases where it is not reasonably practicable for an employer to allow a return to the exact same position. The ET held that the position Mrs Blundell occupied as reception teacher was temporary and ‘it seems plain to us that, where a precise position is variable, a Tribunal is not obliged to freeze time at the precise moment its occupant takes maternity leave, but may have regard to the normal range within which variation has previously occurred’.

In Mrs Blundell’s case, it was clear that the job she was given on her return to work was within the range of variability which she could reasonably have expected.

Says **SIMON HUGGINS** “To avoid problems of this nature, it makes sense to keep the job descriptions in employment contracts flexible whenever possible.”



Wrongful Trading Claim Dismissed

Where the executives of a company genuinely believe that it has the ability to trade its way out of financial difficulties, they will not be held to be guilty of wrongful trading. This was the decision of the court in a recent case in which a liquidator made a claim against the director and company secretary of a company which became insolvent.

The case involved a 'giveaway' magazine specialising in the golfing market. The magazine did not generate enough advertising revenue to succeed, and was eventually sold for £20,000. The whole of the purchase price was paid to the company's bank, to obtain a release of the debenture it had over the company's assets. The director and company secretary had given personal guarantees to the bank, so the practical effect of the payment was that their liabilities under their guarantees were reduced.

The court held that the practical effect of the payment to the bank was that no preference in favour of the officers of the company had been created. No matter what the title had been sold for, the bank would have received the payment and retained it.

The judge was critical of the action being brought, commenting that the company's management had concluded that they could trade their way back into the black and that picking over the bones of a dead

company in the courtroom was not always the right way to proceed in such circumstances.

For advice on any insolvency issue, please contact **MICHAEL REGISTER**.

Remedies in Contract Law – A Basic Guide

If the terms of a contract are breached by one party, the other may suffer a loss. Where this occurs, there are various remedies which the party suffering from the other's breach can use.

A breach of contract is caused by a failure to perform a duty specified by the contract. The contract's terms can be divided into conditions and warranties. These can be expressly stated or implied within the contract. A condition is something fundamental to the contract. Breaching a condition will allow the other party to the contract to terminate it by 'repudiating' it and to claim damages. Breaching a warranty will only allow a damages claim and does not bring the contract to an end.

Monetary damages for breach of contract are intended to be compensatory – i.e. to put the injured party in the position he reasonably expected to be in when the contract was created. Sometimes, the sum of damages will be written into the contract by the parties to it. This is termed liquidated damages. However, where the sum specified as liquidated damages is excessive, so that it

is a deterrent rather than a genuine pre-estimate of loss, the courts may not uphold such a clause. Unliquidated damages are those damages decided after the breach occurs, either by the parties themselves or by the courts.

To determine the level of damages payable, consideration is given to how damages might arise both out of the contract itself and from the parties' contemplation when they entered into the contract. Compensation can only be made for losses which are foreseeable at the time the contract was created.

The other remedy used in contract law is for the courts to order 'specific performance', which requires the party committing the breach to fulfil its part of the contract. This may involve an injunction to stop a breach of contract. It is not used where it is judged that damages would be an adequate remedy.

If you have suffered a loss because of a breach of contract by another party, you may be able to obtain redress. We can advise you on your available remedies.

Newsagent Fined for Breach of the Working Time Regulations

An employer who fails to abide by certain requirements of the Working Time Regulations 1998 can face sanctions under criminal law.

Employers must take all reasonable steps to ensure that workers are not required to work more than an average of 48 hours a week, unless they have signed an opt-out agreement. The average weekly working time is normally calculated over 17 weeks.

[The contents of this news letter do not constitute legal advice. If you wish to discuss any of the contents please contact us for specialist advice](#)

Local authorities are responsible for enforcing these requirements with regard to shops, restaurants and food outlets.

In only the second prosecution of its kind in the UK, newsagent Martin McColl Limited admitted breaching the requirements of the Working Time Regulations concerning maximum working hours. Council officers discovered that an employee at the newsagent in West Edinburgh, was working on average 51.5 hours a week, on one occasion working

a 68-hour week, without receiving payment for the extra hours. The company was fined £600.

The shop workers' union USDAW has welcomed the prosecution as a reminder to employers that if they ask their staff to work illegal hours they will be penalised.

The Opt-Out

In the UK, individual workers can opt out of the requirement under the Working Time Regulations that the average working week should not exceed 48 hours.

This has been the subject of much debate in the past, with the European Commission repeatedly expressing concern over the way the opt-out was being used in the UK. To date, however, proposals to restrict its use have come to nothing. The Minister for Europe has said that the new EU Treaty under negotiation will not affect the UK's opt-out.

If any of your employees work more than an average of 48 hours a week, you must have a valid opt-out agreement in place. Contact **SIMON HUGGINS** for advice.