

# Hampden Law Newsletter



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## Welcome to Hampden Law's summer newsletter.

A huge proportion of new law relates to employment. Although the coalition government has stated that it would like to reduce the burden of employment regulation on small companies, this is yet to be translated into action.



Similarly, the debilitating effects of health and safety regulations are, we are informed, to be reversed or at least halted. However, the first attempt (to

encourage school outings) is opposed by a teachers' union. This does lend some support to the hypothesis that activities are sometimes cancelled, or never get off the starting blocks, because those who would have to undertake the organisation and supervision can spare themselves the effort and blame it on restrictive health and safety legislation.

Future newsletters will comment on progress.

In the meantime, Hampden Law has moved from 10 Lloyd's Avenue, London EC3 to the more pastoral address of Rendcomb (near Cirencester) in Gloucestershire. It retains consulting rooms at 85 Gracechurch Street in the City.

As always, I welcome any comments you may have on our newsletter.

Best wishes

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## Redundancy: considering alternative employment

**The Employment Appeal Tribunal has held that it is fair for a business to apply subjective selection criteria when deciding which potentially redundant employee should be offered alternative employment.**

The principle that the selection of employees for redundancy should be based on objective criteria does not extend to deciding which potentially redundant employee should be appointed to an alternative vacancy. A business can undertake a competitive interview process and appoint the candidate it considers best for the job, even if this is based on its subjective view. It simply needs to act fairly and reasonably during the process.

We can let you have a check list which sets out the duty that a business has to look for alternative employment for any potentially redundant employees.



## Social media and the workplace

**Two recent employment tribunal decisions highlight the importance and usefulness of a business having a properly drafted policy on the use of social media.**

In the first, the tribunal found that a pub manager was fairly dismissed for gross misconduct after she made inappropriate comments on

Facebook about two of her customers who had verbally abused and threatened her.

The manager was found to be in breach of the employer's email and internet policy, which specifically referred to employees use of social media (including facebook.com) while at work.



In the second, the tribunal held that an employee was dismissed fairly for sending

an offensive email from his home computer to his colleague's home computer. No privacy attached to the email as it was a chain email asking recipients to pass it on. The employer was entitled to treat his actions as gross misconduct justifying the dismissal.

Businesses should adopt a social media policy and provide training to employees on the appropriate use of social media. **Contact us** for a check list to help you with this.



## Trade finance scheme for SMEs

The government has recently launched new initiatives by the Export Credits Guarantee Department (ECGD) and the Department for Business, Innovation and Skills (BIS) to support exporters, particularly small and medium sized enterprises (SMEs), including:



- The ECGD export finance guarantee scheme, which is aimed at helping UK exporters gain access to working capital finance, both before and after shipment of goods, for specific export contracts.
- The BIS export enterprise finance guarantee scheme, which is designed to help SMEs qualify for short-term export finance facilities that they would otherwise be unable to access. It is aimed at SME exporters with an annual turnover of up to £25 million.



## Incorporating a private limited company



Companies House has launched a new web incorporation service in conjunction with Business Link. The service enables individuals to set up a simple private limited company using model articles for a fee of £18. Online applications made on the Business Link website [www.businesslink.gov.uk](http://www.businesslink.gov.uk) are submitted directly to Companies House.

Contact us for a checklist setting out the factors that need to be addressed when incorporating a private limited company.

## Company fined £385,000 for corporate manslaughter

Cotswold Geotechnical (Holdings) Limited (“Cotswold”) has been found guilty of corporate manslaughter and fined £385,000 in the first case and first conviction of its kind. An unsupervised employee died while taking soil samples from the bottom of a 3.5 metre deep pit on a building site. The company ignored well recognised industry guidance requiring excavations more than 1.2 metres deep to be properly supported.

The successful prosecution demonstrates the need for businesses to have robust health and safety procedures in place. Larger businesses than Cotswold should take notice of the level of the fine as, at the time of the offence, Cotswold had only eight employees. It is likely that a larger organisation would have faced a much higher fine.

## For more information

If you have queries about any of these issues, please contact:

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