

In this Issue

- Equality Act 2006 - The Gender Equality Duty
- Maternity and Adoption Leave (Amendment) Regulations 2006
- Companies Act 2006 – New Company Disclosure Obligations
- Companies Act 2006 – Electronic Communications
- Implementation of VAT on Medical Services
- Department of Health Consultation: Commissioning framework for health and well-being.
- Primary Dental Care Contracts.
- Smoking Ban
- The Firm

The Gender Equality Duty

On the 6 April the Gender Equality Duty ("GED") comes into force under *the Equality Act 2006*. It has been described as the most important sex equality legislation for 30 years, and will impose a positive duty on public authorities to address the different requirements of men and women among their service users. The duty shifts the balance from an individual being required to show discrimination towards the public authority demonstrating equality. The duty applies equally to the roles of service provider and employer.

Public Authorities

Under the *Equality Act 2006*, a public authority is defined as "any person who has functions of a public nature" and will therefore cover GP and Dental surgeries.

Service Provider

Male and female service users have different requirements and will approach a service accordingly. The Equal Opportunities Commission gives the example of the provision of service by a General medical practice and states that men are less likely to visit their GP than women; a practice should examine the way their services are provided and whether there are alternatives that would increase use by male patients. This could be the provision of a clinic at football grounds or targeting male patients for specific treatments.

Employer/Employee

The relationship between an employer and an employee is another area targeted by the new legislation. Recruitment and employment policies should be reviewed as the GED imposes the duty on an employer to ensure that the workplace has a gender balance. Are there barriers that are reducing the number of suitable female applicants for posts? Examples of these may be the maternity arrangements available or the provision of flexible working.

Implications

A failure to comply with the GED can result in the imposition of a compliance notice by the Equal Opportunities Commission (which will become the Commission for Equality and Human Rights in due course)

Useful Links

- Guidance is available in the Gender Equality Duty Draft Code of Practice for England and Wales [here](#)
- Equal Opportunities Commission - [Guidance on the Gender Equality Duty](#)
- The Equal Opportunities Commission has produced a leaflet with [basic guidance](#).
- [The Commission for Equality and Human Rights](#)

For employment Law issues please contact Paul Werrell at pw@lockharts.co.uk

Maternity and Adoption Leave (Amendment) Regulations 2006

From 1 April 2007, changes to Maternity Leave entitlements will come into force extending Additional Maternity Leave ("AML") to all female staff. The legislation also introduces the opportunity for "keeping in touch" days and reasonable contact between the employer and employee. The legislation will impact on all female staff employed by general practices.

Impact on Employers

- 8 weeks notice must be given by the employee that they intend to return before the end of their AML.
- Entitled to Maintain "Reasonable Contact" during the maternity leave to discuss workplace matters. This is to reduce the chances of being accused of harassment during the maternity period although "reasonable" is not defined.
- Salaried female GPs and practice staff will be entitled to 39 weeks paid maternity leave; this has been increased from 26 weeks.
- "Keeping in Touch" days can be agreed with the employee to allow her to attend work for up to a maximum of 10 days without losing entitlement to maternity or statutory maternity pay.

Impact on Employees

- All female staff will be entitled to 52 weeks maternity leave from the 1 April 2007
- There is no longer a requirement to have been with the same employer for 26 weeks to be entitled to AML.
- Salaried female GPs and practice staff will be entitled to 39 weeks paid maternity leave; this has been increased from 26 weeks.
- "Keeping in Touch" days can be agreed with the employer to allow her to attend work for up to a maximum of 10 days without losing entitlement to maternity or statutory maternity pay.

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Primary Care Dental Contracts

The Department of Health has issued an advice document on managing the end of year issues for the Primary care dental contracts.

The document provides information on meeting the contractual requirements for the Units of Dental or Orthodontic Activity ("UDA"/"UOA") for the year from April 2006 to March 2007. Under the contract regulations a 4% "tolerance" limit has been placed on targets; this requires practices that achieve at least 96% of their target figure to make up the shortfall in an agreed timeframe in the following year.

The document "Primary care dental contracts: Advice on managing end-year issues" can be accessed through the Department of Health website under the Publications and Statistics Heading.

Should you have any questions concerning the contractual implications

please contact Mark Jarvis at mj@lockharts.co.uk.

Implementation of VAT on Medical Services

From 1st May 2007, VAT Liability may be incurred for certain medical services. The exemption will continue for all services where the principal purpose is the protection, maintenance or restoration of the health of the service user; primary healthcare provided both by the NHS and privately will remain VAT free.

VAT liability at 17.5% will be incurred where the purpose of a medical service is to enable a third party to decide on a course of action for example, Occupational Health pre-employment screening. HM Revenue and Customs has provided guidance on the services that continue to be exempt from VAT and these include health services provided under GMS, PMS, APMS, PCTMS, GDS and PDS contracts or pharmaceutical advice. The HMRC have produced a guidance note regarding the changes to the VAT liability and a table identifying the services provided by doctors and whether they will be liable for VAT following the 1st May.

If you are registered on a statutory professional register, whose taxable income exceeds £61,000 (the current VAT registration threshold); it is necessary to register for VAT. As a result of the changes a practice's taxable income may exceed the threshold and registration will be necessary.

Professional advice should be sought from a specialist medical accountant to prepare for the changes.

The BMA recommends that medical professionals act promptly to prepare for the changes and has provided

several documents to assist with the preparation.

Useful Links:

- [Liability of Services provided by Doctors - HMRC Guidance Table](#)
- [HM Revenue and Customs Guidance Note](#)
- [BMA – Implementation of VAT on Medical Services.](#)
- [BMA VAT Frequently Asked Questions](#)
- [BMA Press Release](#)

For further information please contact Rosalind Parkin at rap@lockharts.co.uk

New Company Disclosure Obligations – Is your website and stationery up to date?

On 1 January 2007 new legislation came into force, under the *Companies Act 2006*, that placed additional obligations on companies and LLPs to disclose information about the company.

Companies are required to state:

- Their name clearly on all order forms and on their website
- The place of registration, registered number and registered office details on their websites

Failure to comply with these requirements could result in a fine.

To ensure that you are complying, you should:

1. Ensure your website and order forms include the name registered and order forms include the name registered at Companies House as well as any trading name.
2. Check that your website includes the place of registration, registered number and registered office details of the company or LLP.
3. Check that any email templates, fax cover sheets and any other electronic templates include the required statutory information

currently required on your company letterhead. It is important to change templates stored on devices such as "Blackberrys" are also changed.

Penalties

A fine can be imposed on any officer of the company or person who authorised the issue of any documents that do not comply with the legislation.

For company law issues please contact Micah Jenkins at mej@lockharts.co.uk.

Electronic Communications

The *Companies Act 2006* has also implemented changes concerning the use of electronic communication; under the new legislation all documents and information can be sent electronically. There are slight differences for documents sent TO a Company and those sent BY a company.

Documents sent BY a company

The recipient must agree to accept documents electronically either in general or for a specific class of document. The recipient must provide an address to which documents can be sent electronically

Documents sent TO a company

The company must agree to receive documents electronically and provide an address for the purpose; for example an email address or fax number.

For company law issues please contact Micah Jenkins at mej@lockharts.co.uk.

Department of Health Consultation - Commissioning framework for health and well-being

On 6 March the Department of Health published a document for consultation

aimed at commissioners and service providers. The framework aims to involve the local community to ensure that the services provided are tailored to their requirements with an emphasis on tailored services.

The consultation document can be accessed on the Department of Health website under the Publications and Statistics Heading; feedback is invited at: www.commissioning.csip.org.uk before 28 May 2007.

Smoking Ban

The ban on smoking in enclosed public places is due to come into force in Wales on 2 April 2007 and Northern Ireland on 30 April 2007. The ban will come into force in England on 1 July 2007.

Wales

From 6am on 2 April all public enclosed or substantially enclosed places in Wales must display a sign at or near each entrance which must meet the following criteria:

- At least 160mm x 230mm
- Display a 'No Smoking Symbol
- Contain the bi-lingual statement
 - 'Mae ysmegu yn y fangre hon yn erbyn y gyfraith'
 - 'It is against the law to smoke in these premises.'

The failure to display the appropriate signs can result in the manager of the premises being fined £200. The prosecution and conviction could result in a fine of up to £1000

The Firm

Lockharts has welcomed two new members to the firm over the last month to ensure that our clients receive the best possible service. Ula Stozak joined as an Administrative Assistant and Richard Gilligan was

appointed to a role in Client Services Development.

Andrew Lockhart-Mirams, Senior Partner, gave a presentation on Developing New Contracts and was a member of the expert panel for a discussion entitled "How do you enable innovation within a planned environment" at the King's Fund Conference in London. He is also due to speak at a number of upcoming Pulse seminars.

Ros Parkin, Micah Jenkins and Mark Jarvis each gave a presentation at the Specialist Medical Advisory Service Annual Meeting on the 9th and 10th March

Feedback and Further Information

If you have any feedback or comments on this issue of the 'Lockharts Legal Update' please contact Richard Gilligan at rag@lockharts.co.uk.

Further information about Lockharts Solicitors, the staff and services that are offered can be found at www.lockharts.co.uk.

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