

## **Insurance**

### **Legislation and Legal issues:**

#### **Unfair Dismissal**

A major insurer recently warned it had seen a threefold rise in insurance claims over the last quarter from small to medium sized enterprises (SMEs) being sued for unfair dismissal.

The current economic climate has made it necessary for companies to look at their cost base. As wage costs and salaries form a significant cost, redundancy comes under the spot light.

Businesses not following statutory procedures when making employees redundant leave themselves exposed to claims from former employees. What started as a cost cutting exercise could result in burdening the business with additional costs.

The top three redundancy related claims seen by the insurer were:

1. An employer's failure to follow collective consultation procedures and obligations
2. Employers not carrying out a fair and reasonable selection process
3. Employers making staff redundant where the reason for doing so did not genuinely relate to redundancy

Many smaller employers do not have access to the required kind of HR expertise. A standard Legal Expenses Insurance policy may not provide cover for a business in defence of a claim for unfair dismissal where the correct procedures have not been followed. A more appropriate cover is Employment Protection Liability Insurance. The scope of cover is wider than afforded by the Legal Expenses policy and there is access to free advice on procedural issues in all areas of employment law. The key for the employer is in remembering to take advantage of this free advice before commencing the redundancy process.

#### **Legislation**

The Health and Safety (Offences) Act 2008 came into force on 16 January this year. The outcome is that all employees, including company directors and managers who ignore health and safety rules may be sentenced to prison whether or not an incident proved fatal.

The legislation increases the penalties for a range of health and safety offences that are prosecuted under the Health and Safety at Work Act. Previously only a few offences led to an individual being sent to prison. Now prosecutors only have to prove a breach of health and safety regulations and the court has the option of imposing a prison sentence for a number of offences.

For example, a Magistrates Court can now impose fines of up to £20,000 (raised from £5,000) and the possibility of imprisonment (with a maximum term of 12 months). If the accused is convicted in a Crown Court, he or she can face up to two years in prison and/or a fine.

As shown above the Health and Safety (Offences) Act 2008 differs from the 2007 Corporate Manslaughter and Corporate Homicide Act in as much as it targets individuals whereas the latter targets organisations.

Business should look at their fleet/company car policies to ascertain if they are robust enough to meet the challenge of this new legislation. This review should include not only company owned trucks, vans and cars used in connection with the business but also employees vehicles used in connection with the business.

The new legislation should prompt companies to consider whether Directors and Officers Insurance should form part of their portfolio. Whilst the policy will not pay any fines imposed, the defence costs of an action brought against an individual would be met.