

The LA employment alert!

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IN THIS ISSUE: Time for time off

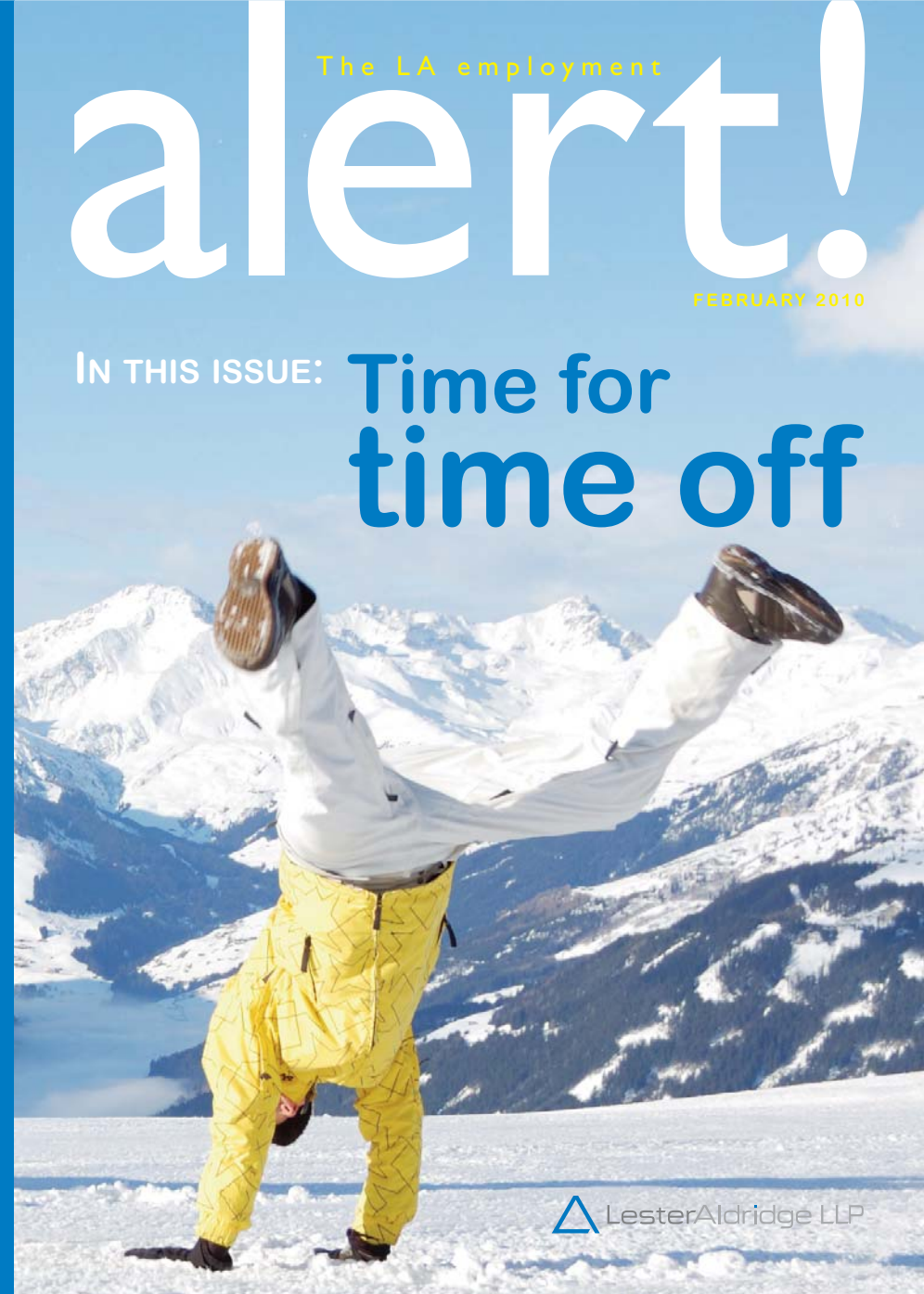
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To pay or not to pay - that is the question

We all know that employees have the right to take time off for many reasons (including, annual leave, rest breaks and family related reasons). But what other rights do employees and workers have to take time off? When does the right arise, how much time can be taken and what if you get it wrong? This Alert summarises the main rights to time off and your requirements as the employer.



PAID TIME OFF

Time off for Training – 16-18 year olds.

Employees aged 16 or 17 (and in some cases, 18 year olds) who are not in full time education and who have not got particular qualifications are able to take reasonable time off for study and training. The request for time off, the amount of time to be taken and when it is to be taken must be fair in the circumstances - and consideration can be given to the effect on the business.

Employees who are able to take such time off should be paid at the usual hourly rate.

Agency workers who are employed by an employment business are also entitled to this right. In this case, the employment business is the one to sort out the request and pay.

The employee is not required to comply with any specific formalities in order to exercise this right, but should request the time off in good time and provide appropriate information to the employer regarding the purpose of the time off.

Time off in a Redundancy Situation


There remains a lot of talk about redundancies and we are always hearing on the news about the closure of a workplace.

Employees (not workers) who are working out their notice are able to take reasonable time off when given notice of redundancy. They're also able to arrange training to help them find new work.

To qualify, the employee must have been employed for at least two years. The employee should give advanced notice and provide information about the reason for their request to the employer if asked.

The time off is paid, up to a maximum of 40% of a week's pay. Many employers decide to pay someone who is on notice of redundancy full pay.



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Ante-natal Care

Pregnant employees can take time off to attend appointments for ante-natal care. "Ante-natal care" is not defined by law. Tribunals are not always consistent with their decisions regarding what "ante-natal care" may include!

It seems that ante-natal care could include relaxation and parent craft classes, if these have been recommended to the individual by their medical practitioner.

The employee should tell their employer of when the appointment is, as quickly as possible. The employer can ask the employee to provide confirmation of the appointment, (apart from the first one).

Although this right does not technically apply to workers, the Sex Discrimination Act 1974 provides rights to anyone "in employment", which has a wider meaning than just employees. The right does extend to workers and some self employed contractors. Take care if you're dealing with a request for time off for ante-natal care from other types of workers (other than employees). Any refusal to allow such a worker (for example a temp or contractor) to take time off may result in a claim under the Sex Discrimination Act! Also note that the individual can't suffer any detriment as a result of taking time off without prior authorisation.

Time off to Accompany an Employee to a Disciplinary or Grievance Meeting

Both employees and workers have the right to be accompanied by a colleague or trade union representative or official at a disciplinary or grievance meeting.

The accompanying individual is entitled to take paid time off during working hours in order to attend the disciplinary meeting as the companion. It is best practice to allow the companion paid time off to discuss the hearing with their colleague before and after the meeting.

"The employer does have discretion to refuse to allow employees to provide jury service in certain circumstances"



UNPAID TIME OFF

Time off for Training

We highlighted the rights of 16 to 17 year olds to take time off for training above, but what about other employees? Can they request time off for training?

Yes – from 6 April 2010 if the employer has over 250 members of staff. There will be particular formalities that the employee will need to comply with. Employers, likewise, will have specific grounds upon which they can refuse the request.

It may be of some comfort that the individual must have worked for 26 weeks before they are able to make the request. The time off is unpaid.

Parental Leave

Employees can take up to 13 weeks' unpaid parental leave per child (or 18 weeks if the child is disabled). The time must be taken in blocks of 1 week or multiple whole weeks, up to a maximum of 4 weeks per year (unless the child is disabled).

Employers can agree a more favourable scheme, for example allowing time to be taken in days rather than whole weeks. In most cases the employee must have been employed for 12 months before a request can be made. 21 days' notice is required and usually the employer has discretion about when the leave is taken.



Time off for Dependents- Emergency time

Employees without any qualifying length of service can take a reasonable amount of unpaid time off if necessary to deal with certain situations involving their children or dependant relatives. For example, if a child or relative falls ill or if there is an unexpected disruption of child care arrangements.

To take up this right, the employee must tell the employer of the reason for their absence as soon as possible, so the employer can work out whether the employee is able to take the dependant leave. Details of the amount of time requested should be provided where possible.

Jury Service

Employees do not have a specific right to take time off for the purposes of jury service. They are however protected from being treated badly because they have been called as a juror, or attended jury service.

The employer does have discretion to refuse to allow employees to provide jury service in certain circumstances, if their absence is likely to cause substantial injury to the employer's business.

Time off for the purposes of attending jury service is unpaid, but employees can claim from the Court expenses for travel, food and lost earnings.

“Snow Days”

This isn't, strictly speaking, a “right” to time off!

However, we thought we would mention it as businesses have experienced considerable disruption recently, as a result of the severe weather that the country has suffered.

What if your employees do not make it into work because of the snow? Do you have to pay them? Can you require them to take the time off as unpaid leave or annual leave?

In the absence of an agreement to the contrary, if they don't turn up, you do not have to pay them. You can give them the choice of taking the time off as unpaid leave, or as part of their paid holiday entitlement.

Many employers do however pay their staff, provided that they are satisfied that the employee genuinely couldn't get into work!

Ensure you're consistent with how you treat your staff – either pay everybody or don't pay anybody – and also check that you have contingency plans in place.

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What if it all goes wrong?

Employees have different rights and potential claims if any request for a right to time off is handled badly, or refused unreasonably. In most cases, employees may bring claims in the Employment Tribunal and compensation can be awarded.

Sometimes, employees and workers who are dismissed or badly treated could bring a claim for unfair dismissal (constructive or otherwise).

A potential danger area is the law on discrimination, particularly in relation to “family friendly” rights.



PRACTICAL TIPS

If you are faced with a request for time off and you are unfamiliar with the process, check your obligations and the employee's rights carefully before making a decision and take advice where appropriate.

Ensure that you have clear policies in place.

Ensure that you treat all employees the same and you are consistent in your approach.

Stick to your own policies, especially if they're more generous than the minimum provided by law.

STOP THE PRESS - WHISTLEBLOWING

The Department of Business, Innovation and Skills has confirmed that Employment tribunals can pass on details of whistleblowing allegations that are made during claims to the relevant regulator. The new procedure will apply to claims received by the Tribunals service on or after 6 April 2010.

If you manage, own or work in a regulated sector, check your whistleblowing policy to ensure it's up to date with particular reference to the process for external notification.

