

Exciting new service!

Proactive and practical business support

We've launched an exciting new solution for the SME market. It's the result of extensive market research and feedback from our customers on the services that they need and value as their business evolves.

Croner Simplify is a single solution designed to make it easier to manage your business in the areas of HR and health and safety as well as supporting you on commercial law and tax, VAT and payroll issues. It combines the expertise of our consultants and advisors with a feature-rich online system that enables us to offer you a truly proactive service. We won't wait for you to come to us with an issue; we'll act when you need us to but also guide you when you need to act.

What's new?

Croner Simplify incorporates your current service into a more comprehensive package to give you extra benefits.

A dedicated team. You will be assigned a dedicated Croner team of experts, including a local consultant. They will get to know you and your business so they can offer you the most appropriate advice for your particular situation.

Proactive guidance. We'll guide you through common management processes such as disciplinary action or accident reporting with online tools, step-by-step guides, template forms and letters and support from your Croner team. The online system alerts you and your consultant to key actions, deadlines and points in the process where you might need expert guidance; we'll be in touch to help you through it.

Your Croner consultant will help you identify potential issues and deal with them before they become a time consuming and costly problem. We'll also alert you to new legislation that will affect your business and help you prioritise what to do and guide you on implementation.

One number to call. You will have just one number to call to reach your Croner team. They will be able to help you with any HR, safety, tax, VAT, payroll and other commercial legal questions.

Crisis support. We are here to support you 24 hours a day, 365 days a year. Most importantly, we'll be right by your side in a crisis. For example, if there's an accident on site or a collective

consultation about redundancy, your Croner consultant will be there to help you minimise the impact on your business.

Practical online service. Croner Simplify Online replaces the current CBA Online system. It's a secure, web-based service that is really easy to use and offers much more information, guidance and time saving tools to help you manage your business. It includes:

Employee management system. With a central location for storing employee records, Croner Simplify Online provides an efficient way to manage employee details, holidays, sickness absence, documentation and health and safety assessments. Employees can access the system to make changes to their details, request holiday and view their employee handbook, while managers have a wider set of resources to help them authorise activities and manage their teams.

Management reports. Comprehensive reports in Croner Simplify Online help you build up a picture of key metrics in your business and monitor trends such as absence and staff turnover.

Essential business information. Croner Simplify makes it even easier to keep up to date with changing business regulations. Through the online service you will find news, quick facts, Q&As and detailed information on a range of business topics, including employment, health and safety, environment and business administration.

Training. You and your team can learn about new laws and best practice without leaving the office, through our training podcasts and interactive webinars.

If you currently take legal expenses insurance from Croner, you will continue to receive the same level of cover.

Evolving with you. Croner Simplify is flexible and designed to offer the right level of support as your business evolves. We are confident that you will benefit from the additional value of the new service and look forward to working with you as your business develops.



To find out more, contact your
account manager.

Keeping your eye on the ball

With the World Cup kicking off on 11 June 2010 followed by Wimbledon on 21 June, employers may face increased requests from employees for time off. How should such requests be handled fairly?

Sporting events such as the World Cup and Wimbledon can cause significant disruptions for employers either because of the increased requests for holiday or as a result of unauthorised absence. It is therefore important that employers tackle these issues proactively to minimise any adverse impact on the business during these periods.

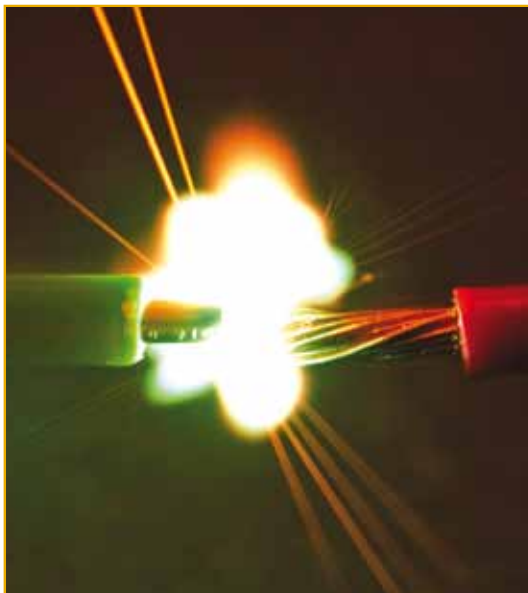
Employers should review business needs and decide in advance how many employees can be absent during these periods. Employees should be informed of the necessary staffing levels and be reminded of the balance of their annual leave. Any requests for holiday should be dealt with on a first come first served basis.

Employees who are refused holiday requests or requests for unpaid leave should be clearly informed that they are not permitted to take the time off, and that they are required to be in work.

Where employers genuinely believe that an employee who was refused annual leave is not absent from work due to sickness, or for any other authorised reason, they may be able to take disciplinary action. It may also be possible to take disciplinary action if the employee's absence suggests a "convenient" pattern — eg they are always absent when their team is playing a match. However, it is imperative that, before any disciplinary action is taken, the employer conducts a full and thorough investigation in order to establish the facts of the matter. Employers must also ensure that they follow a fair disciplinary procedure.

Whilst disciplinary action may deal with the problem when the employee returns to work, it does very little to alleviate the problems caused by a lack of staff. As such, employers may wish to consider alternative, mutually-beneficial arrangements which will ensure that necessary work is completed, as well as employees being allowed time off to watch these sporting events. For example, an employer may consider allowing employees to temporarily work a little more flexibly during the World Cup, listen to radios, take breaks or watch part of any matches.

Should an employer decide to go down this route, it is important that employees are given clear guidance on what will and will not be tolerated and that if any of the temporary arrangements are abused, they will be withdrawn and disciplinary action may be taken.



Electric shock from machinery

A company was recently fined £3000 after a young man from Cannock was taken to hospital suffering burns to his legs, chest, fingers and wrist after receiving an electric shock from a piece of machinery.

On 11 August 2009, the 21-year-old worker was employed as a labourer at a Cannock-based steel fabrication company. He was helping to manually load a sawing machine before his colleague cut a length of metal handrail. He was not involved in the operation of the machine, which was not even switched on at the time, yet he still suffered an electric shock.

The HSE investigation discovered that the saw's electrical cable had been unsuitably repaired with tape, reducing the protection and strength of the wiring. An Institute of Civil Engineers report suggested that corroded earth connections may also have played a part.

The outer protective sheath was likely damaged, exposing the inner wires. There were also other electrical deficiencies with the saw that posed a danger as well as metal filings on the floor of the workshop that may have contributed to the shock.

The company pleaded guilty to breaching the Electricity at Work Regulations 1989. As well as the fine, it was also ordered to pay £1500 in court costs.

The new Equality Act

The Equality Act received Royal Assent on 8 April 2010. It harmonises existing anti-discrimination law, including the Equal Pay Act, into a single piece of legislation. The original objective of the Equality Act was to create “a clearer, more streamlined equality framework” and a number of new provisions were added during its passage through Parliament that have implications for employers and employees.

The main provisions of the Act, which apply to England, Wales and Scotland, but not Northern Ireland, will come into force in October 2010, unless otherwise stated. The key details of the legislation as they affect the workplace are summarised under the relevant headings below.

New terminology

The Act provides protection against discrimination on the following grounds:

age; disability; gender–reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

New definitions and concepts

The familiar concepts remain, with the following changes:

- The definition of direct discrimination is extended to cover associative (ie because of a connection with someone who has a “protected characteristic”) and perceived (ie mistaken) discrimination.
- The “occupational requirement” principle is extended to all strands of discrimination.
- The definition of gender reassignment will no longer be linked to medical supervision.
- A uniform and wider definition of harassment and the provisions are extended to include harassment by a third party (eg a customer) in defined circumstances: namely where the employer knows that harassment has occurred on at least two previous occasions and has failed to take reasonably practicable steps to put a stop to it (the “three strikes and you’re out” rule).
- A new concept of “dual discrimination” is introduced, allowing a claimant to argue that he or she has been discriminated against on the basis of a combination of two protected characteristics.

Changes to disability discrimination law

Some provisions are specific to disability discrimination:

- The Act removes the requirement for a claimant to

show that his or her disability had an impact on one of the eight specified functions currently set out in the Disability Discrimination Act (mobility, manual dexterity, etc).

- It introduces the concept of indirect discrimination to disability.
- It also introduces a new concept of “discrimination arising from disability” (ie detriment that is a consequence of a person’s disability) in place of the present disability-related discrimination provision, which will remove the need for a claimant to establish that his or her treatment was less favourable than that afforded to a comparator.
- The Act makes it potentially discriminatory on grounds of disability for an employer to reject an otherwise suitable job applicant where, prior to the rejection decision, the employer has asked the applicant questions about his or her health or disability, or required him or her to complete a medical questionnaire or undergo a medical examination. The effect of this new clause is that it will not be permitted to make health-related enquiries of job applicants until after a job offer has been made, although there will be some exceptions, eg where questions relate specifically to the applicant’s ability to carry out a function that is “intrinsic” to the particular job.
- It adds to the duty to make reasonable adjustments a duty to take reasonable steps to provide an auxiliary aid where, but for the provision of such an aid, a disabled person would be at a substantial disadvantage.
- And obliges employers to ensure that any information provided to a disabled person (under the duty to make reasonable adjustments) is in an “accessible format”.

Pay transparency

- Successor and hypothetical comparators will be allowed in equal pay claims.

- The Act recasts the material factor defence, whereby the employer will have to justify objectively any difference in pay.
- Restrictions are placed on “gagging” or pay secrecy clauses that ban employees from discussing their pay.
- The Act reserves powers to require employers to disclose gender pay gap information (not before 2013).

Advancing equality

- The Act introduces a single equality duty on public sector employers covering all the strands of discrimination (at present, there are three separate duties covering only gender, race and disability).
- It extends the type of positive action that employers may take when recruiting, so as to allow preference to be given at the point of selection to candidates from under-represented groups (eg women or ethnic minority candidates), provided the candidate in question is at least as suitable for the job as other candidates who are in the running.

Remedies

- The Act gives employment tribunals dealing with successful discrimination claims the power to make recommendations that apply to the employer’s whole workforce and not just (as at present) the person who has brought the claim — this could include, for example, a recommendation that the employer should implement an equal opportunities policy or review its pay systems.

Conclusion

It remains to be seen whether some of the more contentious provisions are implemented. Nevertheless, employers do need to familiarise themselves and their managers with the new definitions and terminology that will come into force this October.

Top business issues

Every month we bring you the top issues from callers to our telephone advice lines. These were the top issues in April.

Tax & VAT	Employment	Legal	Health & Safety
1. Capital gains tax entrepreneur’s relief — share reorganisations and sales of businesses	1. Conduct.	1. General contractual issues.	1. Risk assessment.
2. Finance Bill 2010 — items omitted in wash-up (furnished holiday lettings, broadband tax and increased duty on cider).	2. Absence/sickness.	2. Company matters.	2. H&S policy implementation.
3. HMRC information powers in respect of years outside of enquiry window.	3. Disciplinary procedure.	3. Litigation.	3. Accident recording and reporting.

Event diary

Legislation



For more information or to book please contact:

**Employment on
01455 897193**

**or Health & Safety on
01455 897192**

Fax: 01455 897026

All our courses can be designed to meet your specific requirements and are available on an in-house basis.

Event diary — Open Course Schedule 2010

Health & Safety			
Course title	Duration	Date	Location
Health & Safety in the workplace Level 2	2 days	22–23 June	Croner Consulting, Hinckley, Leicestershire
Manual Handling Training for the Trainer	2 days	6–7 July	Copthorne Hotel, Manchester
Health & Safety in the workplace Level 3	3 days	13–15 July	Mercure London City Bankside
COSHH	1 day	20 July	Croner Consulting, Hinckley, Leicestershire
Health & Safety in the Workplace Level 2	2 days	21–22 July	Caledonian Hotel, Tyne & Wear
Health & Safety in the Workplace Level 2	2 days	27–28 July	Mercure London City Bankside
Health & Safety in the Workplace Level 2	2 days	3–4 August	Bolton Arena

Employment			
Course title	Duration	Date	Location
Essential Employment Law	1 day	10 June	Holiday Inn, Warrington
Sensitive Workplace Issues	1 day	15 June	Holiday Inn, Leeds Garforth
Essential Employment Law	1 day	24 June	The Cothorpe Hotel, Merry Hill Dudley
Dealing with Discipline	1 day	29 June	Holiday Inn Heathrow Ariel Hotel, Heathrow
Role of the Supervisor	½ day	17 June	The Dunsilly Hotel, Antrim
Sensitive Workplace Issues	1 day	8 July	Holiday Inn Heathrow Ariel Hotel, Heathrow
Performance Appraisal	1 day	15 July	Aztec Hotel & Spa, Bristol

IOSH Managing Safely Croner Consulting also offer 4-day IOSH Managing Safely courses. 14–17 June 2010 at Croner Consulting at Hinckley. 23–26 August 2010 at Felbridge Hotel and Spa, East Grinstead. The 4-day course costs £600.00 plus VAT, and fills up quickly, so please book soon to ensure your place! **For further details on this IOSH course, please contact Emma Newman on Tel: 01455 897192.**

Legislation

Area	Legislation	Details	Date
Discrimination	Equality Act 2010	The aim of the Act is to consolidate existing discrimination law, introduce positive action on recruitment for under-represented groups; make it unlawful to prevent employees from discussing their pay; extend discrimination by association to all aspects of discrimination; prohibit employers asking questions to job applicants about their health; enable the Secretary of State to order employers with 250 or more employees to publish information on pay (subject to further consultation and not to come into force before 2013); introduce wider powers for employment tribunals to make recommendations in discrimination claims; create a single equality duty on public sector employers to include duties in relation to gender reassignment, age, sexual orientation and religion or belief, and extend age discrimination law to the provision of goods and services.	The majority of provisions are expected to come into force in October 2010
Additional Paternity Leave	The Additional Paternity Leave Regulations 2010	Additional Paternity Leave will be available for fathers at 20 weeks after the birth of the child for a maximum of 26 weeks, if the mother returns to work. The remainder of the mother's statutory maternity pay will be paid to the father.	The Regulations will benefit parents of babies due on or after 3 April 2011 or children matched for adoption on or after 3 April 2011
Agency Workers	Agency Workers Regulations 2010	Temporary agency workers will be entitled to equal treatment after 12 calendar weeks in the same job, but this will not apply to occupational pension schemes or occupational sick pay.	1 October 2011
Pensions	Pensions Act 2008	The Government is proposing to provide access to a private pension to all employees aged between 22 and state retirement age, who are earning more than £5000 a year and are not currently enrolled in a workplace pension scheme.	2012

New legislation on artificial optical radiation

New regulations to protect workers from the dangers of hazardous sources of artificial light came into force in April 2010. Here Stephen Thomas of the Health and Safety Technical Team discusses the new legislation.

The regulations

The Control of Artificial Optical Radiation at Work Regulations 2010ⁱ (AOR) meet the requirements of the European Physical Agents (Artificial Optical Radiation) Directive (2006/25/EC) and aim to ensure that standards are set and harmonised across Europe to protect workers from harm arising from exposure to hazardous sources of artificial light. These sources of light can cause a risk of ill health such as: burns or reddening (erythema) of the skin or surface of the eye (photokeratitis); burns to the retina of the eye; so-called blue-light damage to the eye (photoretinitis); and damage to the lens of the eye that may bring about the early onset of cataracts.

The Health and Safety Executive (HSE) has stated that workers in Great Britain are generally well protected from dangerous sources of light, and the majority of businesses know how to manage the risks effectively. So the regulations will mean few practical changes for most businesses, including those that are already managing the risks.

Some sources of artificial light can harm the eyes and skin of workers and must be properly managed. Examples of work involving hazardous sources of light quoted by the HSE are:

- Metal working — welding (both arc and oxy-fuel) and plasma cutting.
- Pharmaceutical and research — UV fluorescence and sterilisation systems.
- Hot industries — furnaces.
- Printing — UV curing of inks.
- Motor vehicle repairs — UV curing of paints and welding.
- Medical and cosmetic treatments — laser surgery,



blue light and UV therapies, Intense Pulsed Light sources.

- Industry, research and education — all use of Class 3B and Class 4 lasers, as defined in British Standard BS EN 60825-1: 2007.
- Any Risk Group 3 lamp or lamp system, including LEDs, as defined in British Standard BS EN 62471: 2008, eg search lights and professional projection systems.

The light emitted by common sources in the workplace such as office lights, photocopiers and computers is considered to be safe and is therefore outside of the scope of the new regulations.

Protecting workers

As with most health and safety legislation in the United Kingdom, the AOR are goal-setting rather than prescriptive, so a risk assessment covering hazardous sources of light is a necessary control and is reflected in the regulationsⁱⁱ themselves, along with an obligation to eliminate or reduce the risksⁱⁱⁱ.

In the guidance to the regulations, the HSE recommends that the risks from most sources of

artificial optical radiation can be adequately controlled by utilising the following simple controls:

- Use an alternative, safer light source that can achieve the same result.
- Use filters, screens, remote viewing, curtains, safety interlocks, clamping of work pieces, dedicated rooms, remote controls and time delays.
- Train workers in best practice and give them appropriate information.
- Organise the work to reduce exposure to workers and restrict access to hazardous areas.
- Issue personal protective equipment, eg clothing, goggles or face shields.
- Use relevant safety signs.

The AOR also layout requirements for employers to provide information, training and health surveillance to employees who are exposed to risks from exposure from artificial optical radiation.

To help businesses that are not already managing the risks to understand the regulations, the HSE has produced free guidance^{iv}. The European Commission has also drafted more detailed guidance^v which it aims to publish later in the year.

ⁱ http://www.opsi.gov.uk/si/si2010/ukSI_20101140_en_1 ⁱⁱ Regulation 3 of the Control of Artificial Optical Radiation at Work Regulations 2010 ⁱⁱⁱ Regulation 4 of the Control of Artificial Optical Radiation at Work Regulations 2010 ^{iv} <http://www.hse.gov.uk/radiation/nonionising/employers-aor.pdf> ^v <http://www.hse.gov.uk/radiation/nonionising/aor-guide.pdf>



Man crushed by roof beam

An engineering company in Northern Ireland was recently fined a total of £90,000 plus costs after a 55-year-old man died after being crushed between a crane and a roof beam.

The case related to an incident that occurred on 9 October 2008 at the premises of the engineering company in Larne, County Antrim.

The worker — a maintenance fitter — was involved in a maintenance operation on a crane. The crane was being controlled by a colleague at ground level. The crane was moved as part of the work and Mr Montgomery was crushed in an

11cm gap between the top of the crane and a roof beam.

A subsequent investigation by the Health and Safety Executive (Northern Ireland) revealed that his employer had not sufficiently assessed the risks involved in the activity. In addition, the company had neither developed an adequate safe system of work nor supervised the activities of its employees.

The company pleaded guilty at Antrim Crown Court to two breaches of health and safety legislation.



Equal pay claims

In the case of *Gibson v Sheffield City Council* [2010] EWCA Civ 63, Mrs Gibson and others made a claim regarding equal pay under section 1 of the Equal Pay Act 1970 against their employer, Sheffield City Council. They were employed by the council as carers. Their pay had been rated equally to that of gardeners in a job evaluation process, who had a productivity bonus incorporated into their wages historically, due to previous poor productivity. The carers did not have that element incorporated as there had never been a productivity issue.

The council had accepted throughout that the female claimants performed work rated as equivalent to that of their male comparators, who were street cleaning workers and gardeners. The employment tribunal upheld the claim of those who worked as cleaners for the council but not those who were employed by the council as carers.

The employment tribunal dismissed the carer's claim on the basis that the pay differential was not "tainted by sex" — an expression used in *Armstrong v Newcastle upon Tyne Hospital NHS Trust* [2006] IRLR

124 — and used that to show the council had proved the absence of sex discrimination under section 1(3). The tribunal had not obliged the employers to objectively justify the pay disparity on that basis.

The carers appealed to the EAT, which upheld the tribunal's findings, agreeing that the usage of *Armstrong* to discover whether the difference was "sex tainted" was appropriate as a binding authority. Therefore the council did not then have to objectively justify the differential, even where there was a disparate impact which had an adverse effect on the women's group.

The Court of Appeal allowed the appeals and remitted the cases back to the employment tribunal. It found that, although there wasn't any direct discrimination, there was indirect discrimination because the productivity bonus had, over time, created a disparity in the pay between the male and female comparators. The disadvantage was indirectly causally linked to their gender (as it was established the carers were more likely to be women and gardeners were more likely to be men). On



that basis the employer was required to provide an objective justification for the disparity. The Court of Appeal agreed that *Armstrong* had not been wrongly decided but that it had limited application and presented a potential trap for employment tribunals to fall into if they concluded that, where there was a lack of direct discrimination, it was enough to show the pay practice was not "sex tainted" and therefore to remove the objective justification hurdle for employers.

Ask an expert

Each month, one of our employment experts will be answering a question in this section. If you have an employment question that you would like our experts to answer, please e-mail it to cronerinfo@croner.co.uk.

Q: What are the legal implications of taking someone on as a volunteer? Would we need to issue a contract of employment and offer them a nominal salary?

A: Volunteers provide their time and effort completely freely; the main legal implication of using the services of a volunteer is ensuring that he or she does not become an employee if that is not your intention.

Labelling them on paper as volunteers will not necessarily be enough to argue successfully that they are not employed. If you issue a contract of employment and give them an annual salary, they will most certainly not be volunteers.

The key thing with volunteers is that there is no mutuality of obligation; you shouldn't expect them to commit to any working pattern, or to a regular number of hours, and equally, they should

not expect anything in return by way of hours, pay or any other commitment. While in reality they may agree to provide their services at a certain time, they would remain free to decline work at any opportunity.

In order for them to qualify as genuine volunteers your organisation needs to be a voluntary organisation, charity, charity shop, school, hospital or similar body, and as such any volunteers should only be reimbursed for actual expenses incurred. If you are not a voluntary organisation you would be required to pay the National Minimum Wage for any hours worked and it is likely that the individual would have "worker" status.

You should not issue a contract of employment; as an alternative it would be advisable to draw up a "volunteer agreement" and avoid any reference to the term employment or employee. Within this agreement you should make reference to the fact that there is no requirement for the company to provide work, or for the volunteer to do work if offered. Also, if you intend to cover the cost of reasonable expenses incurred, details of this should be given.

Contact us

If you have any questions about the topics covered in Solutions please call **0800 634 1700**, or e-mail cronerinfo@croner.co.uk.

Alternatively, call the number on your advice line card to speak to a consultant, or if you are not currently a client, call **0800 634 1700** for further information on how Croner can help your business.

If you would prefer your monthly copy of Solutions to arrive via your inbox, e-mail us and we will send you an electronic copy every month instead.

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