

Are you fit for the Games? Hints and tips on preparation for London 2012

The **Olympics** and **Paralympics** run from the end of July until mid-September 2012. During that period it is expected that Central London will have to accommodate approximately 9 million Olympic Games spectators, 2 million Paralympic Games spectators and almost 300,000 athletes and their supporters, officials and media personnel.

The almost universal appeal of the **Olympic Games**, plus the inevitable travel disruption in the capital, will present some unique challenges for employers. Appropriate preparation, well in advance, will minimise the potential for adverse impact. Some issues worthy of early consideration are:

Requests for annual leave

In addition to the usual peak holiday season requests, employers will need to deal with requests from ticket holders and potentially from **Games Makers** (volunteers who have committed to work for at least 10 days during the Games). Whilst requests for holiday can be made as early as an employer's policy permits (something many



do not stipulate) **Games Makers** are unlikely to be given their rosters until April 2012.

- Consider informing staff that if they wish to take annual leave within the period of the Games, they should apply by a certain deadline. A **lottery** system could be used if all requests cannot be granted.
- Decide on a system for dealing with holiday requests and ensure that it is fair. For example, consider whether a first come first served system will disadvantage part-time employees or those absent, on maternity or sick leave.
- **Games Makers** should be asked to apply as soon as their schedule is known and asked to declare an interest beforehand so that appropriate allowances can be made.

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employment

Are you fit for the Games?

Employers have the right to decline holiday requests in accordance with regulation 15 of the **Working Time Regulations 1998**, but must remember that refusals should be fair and consistent if employee relations are to be preserved and allegations of discrimination avoided.

Travel and punctuality

Employers based in London will almost certainly be faced with a degree of "travel chaos" during the Games – minimising the impact will require forward planning and a degree of flexibility.

- The **TFL** website provides resources for employers to ascertain how employees are likely to be affected day to day, enabling appropriate concessions to be made.
- Consider whether it is possible to agree temporary changes to working patterns to enable employees to **work from home**, or commute outside the busiest travel times.
- IT access and protection of confidential data and files should be given careful consideration to ensure that remote working does not compromise **data protection** procedures normally in place and any risk assessments for home-workers should be undertaken as early as possible.
- Consider how lateness during this period will be dealt with – will employees be required to make up the time, take it as unpaid, take it as holiday? Where should the burden fall – on the employer, the employee or a combination of the two?
- Employers may wish to consider making one person per site responsible for **travel updates**, to minimise the number of people duplicating this effort and reducing productivity as a result.

Addressing unauthorised absence

Unauthorised absence should be addressed in the usual way and any questionable instances of absence dealt with appropriately, provided there are reasonable grounds to do so.

- An employee's use of **social media** such as **twitter** and **facebook** may be a good source of information – avid fans are unlikely to be able to resist status updates!
- Preventative steps may be advisable – perhaps imposing a policy that all absence during the period of the Olympic Games will require a medical certificate, rather than the more usual arrangement of such certificates only being required after 5 working days' absence.

Employee Relations

Employers may be faced with employees who wish to leave work early or take breaks in order to watch particular events. If employers make an effort to be flexible, employees are likely to respond in kind. It will have a positive effect on employee relations and discourage the use of the Olympic Games as an excuse to be unproductive.

- Consider providing facilities for employees to watch the Games in the workplace (provided duties permit and health and safety considerations are not prohibitive).
- Consider permitting some flexibility during normal working hours (on the proviso that employees still work core hours and are available as and when required).
- Flexibility on the part of employers to enable employee viewing will obviously be welcomed by employees but may in itself lead to logistical issues surrounding cover

in relation to particularly popular events - employers should consider implementing appropriate procedures to ensure requests to be able to watch particular events are granted fairly.

Prepare for the impact on IT

Many employees will inevitably follow the Games using the Internet which may impact on IT system speeds – particularly during the most popular events.

- Employers should ensure that IT policies are up-to-date.
- If employees are permitted some personal access to the Internet, remind them what will be considered reasonable.
- Consider providing viewing facilities not connected to the business network in order to minimise the impact on IT resources required for business operations.

National pride

Employers should be aware of the risk that excitement and national pride could overspill into inappropriate banter leading to **complaints, grievances** and potential **Employment Tribunal claims**.

- Brief managers on handling such incidents and coach them on diffusing situations with the potential to offend.
- Remind staff about avoiding potentially **inflammatory** or **derogatory comments** – particularly where viewing is being permitted in the workplace.

In addition to the team building, networking and entertainment opportunities that the Games present, employers do need to plan for the potential for disruption to business. A little flexibility and a lot of communication with employees is likely to go a long way.

Powerful Message Sent by First Bribery Act Conviction

Munir Patel, a court clerk at Redbridge Magistrates Court, became the first person to be convicted under the **Bribery Act 2010** in October 2011 after pleading guilty of bribery and misconduct in a public office.

On 18th November 2011, **Southwark Crown Court** imposed a three year prison sentence for bribery and six years for misconduct in a public office, to be served concurrently.

Working as an administrative clerk, Mr Patel was found guilty under section 2 of the Act, of requesting and receiving a £500 bribe in order to remove a **speeding charge**. The Court was told that between February 2009 and August 2011 Mr Patel could have assisted more than 50 people to escape prosecution in exchange for money, earning up to £20,000. Mr Patel also gave people advice on how to avoid being summoned over **traffic penalties**.

Mr Patel was arrested after a member of the public, to whom Mr Patel had made an offer to remove his speeding charge, informed The Sun newspaper. The Sun subsequently filmed Mr Patel arranging a bribe to remove a traffic penalty for speeding being entered onto the court database.

His Honour Judge McCreath sentencing said, 'Your position as a court clerk had at its heart a duty to uphold and protect the integrity of the criminal justice process. What you did was to undermine it in a fundamental way.'

'By doing what you did, you created a danger not only to the integrity of



the process but also to public confidence in it. A **justice system** in which officials are prepared to take bribes in order to allow offenders to escape the proper consequences of their offending is inherently corrupt and is one which deserves no public respect and which will attract none.'

Bribery Act 2010

The **Bribery Act** came into effect on 1st July this year, marking the biggest overhaul of UK **bribery laws** in over a century. It created four criminal offences relating to bribery: **bribing** another, **being bribed**, **bribing a foreign official**, and, for commercial organisations, **failing to prevent bribery**. Never before has bribery in the UK been a corporate crime.

Section two of the Act, under which Mr Patel was found guilty, provides that it is an offence if a person requests, agrees to receive, or accepts an advantage, financial or otherwise, with the intention that they or someone else will improperly perform a "relevant function or activity".

Commercial organisations whose employees or associated persons commit offences similar to Mr Patel's will be liable for prosecution unless they can show that they had in place adequate procedures to prevent corrupt activities, even if they were unaware of such actions actually occurring.

Comment

This case should be seen as a stark warning for employers. The Court took full advantage of the **sentencing powers** in the **Bribery Act**, which allows up to 10 years' imprisonment, and handed down a stiff sentence.

The length of the sentence sends out a clear message that the **Bribery Act** is being taken very seriously and demonstrates that bribery offences will not just be used against big corporate firms. It sends a powerful message to smaller businesses and individuals about the need for adequate training for employees and to have in place suitable procedures to ensure compliance with the Act.

If you would like to know more about the provisions of the Bribery Act 2010, or wish to implement an anti-bribery policy, or need bespoke training provided to your staff, please contact **Adele Martins** (Partner) on 0207 317 6719 or at adele.martins@magrath.co.uk, or **Susan Thompson** (Partner) on 0207 317 6750 or at susan.thompson@magrath.co.uk.

Marital Discrimination

Treating someone less favorably because you dislike the person they are married to is discriminatory – according to the EAT (HHJ McMullen) in *Dunn v Insitute of Cemetry and Crematorium Management*.

Following a dispute over her employment terms Mrs Dunn resigned and claimed **constructive unfair dismissal**. However, she also alleged that she was treated less favorably than she would otherwise have been because she was married to Mr Dunn,

with whom the employer was also in dispute.

According to the EAT, reviewing previous authorities, section 3 of the **Sex Discrimination Act 1975** (see **Equality Act 2010, s. 8**) can be construed as protecting an individual not only by reason of her being married but also by reason of being married to a particular person.

Whilst many would think the situation arises infrequently, experience dictates that in a world where people often meet their partners at work, the situation is not uncommon. It may be rare to have a husband and wife litigating against an employer at the



same time, but it is not uncommon for an employee to be treated less favorably because they are married to someone more senior and the company goes further than necessary to avoid arguments of bias, or because their husband or wife is known for being particularly difficult and they are tarred with the same brush.

Practically Speaking – Anti-corruption and bribery policies

If your organisation does not already have an ethics policy or **anti-corruption/bribery policy** that deals with the issues arising from the implementation of the **Bribery Act 2010** – now, following the first prosecution, is the time to seriously consider it.

In addition to personal criminal liability on the part of the person making or accepting the bribe, corporations will be prosecuted for failing to prevent bribery.

An appropriate policy (which should be coupled with appropriate training if the risk of a successful prosecution is to be minimised) needs to be user friendly but firm, making it clear what is and what is not acceptable practice.

Consider including the following:

- An explanation of what **bribery** is. The sums involved do not need to be significant, and offences are probably more common than people think. Employees need to understand, that we are not simply talking about cash payments in used notes - but also the giving or receiving of any “other advantage”.
- Explain what “**improper performance**” is. In order for a bribe to occur there must normally be the improper performance of a function on the part of the person accepting the bribe. Give examples relevant to your industry.
- An explanation of the various offences – bribing is the most obvious but also include the offences of **being bribed** and **bribing a public official** (of any level).
- Examples of when issues of **bribery** may occur in the course of your particular business.
- In addition to making clear that which is unacceptable, include examples of what your organisation regards as acceptable corporate hospitality both in relation to hosting and accepting – and do not forget to cover appropriate **gift levels** (Moet or Vintage Krug?)
- Make sure employees understand that it is not acceptable to a) give, promise to give, or offer, a payment, gift or hospitality with the expectation or hope that a business advantage will be received, b) to reward a business advantage already given or c) to “facilitate” or expedite a routine procedure.
- Implement a procedure for raising concerns of bribery – or remind employees of an existing **whistle-blowing policy**.

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