



Legal Updates October 2010

By Jakie Elliman, ITC's Legal Manager

Equality Act 2010:

ITC is frequently asked about the legality of asking job applicants about health issues at recruitment stage. From 1 October 2010 the Equality Act is very specific about what employers can and cannot do:

Employers will not be able to ask job applicants questions about disability or health before making a job offer, except in the following circumstances -

- to find out whether an applicant would be able to participate in an assessment to test their suitability for the work,
- to make reasonable adjustments to enable the disabled person to participate in the recruitment process,
- to find out whether an applicant would be able to undertake a function that is intrinsic to the job, with reasonable adjustments in place as required,
- to monitor diversity in applications for jobs (don't forget this should be anonymous and separate from the application form),
- to support positive action in employment for disabled people,
- to enable an employer to identify suitable candidates for a job where there is a genuine occupational requirement for the person to be disabled.

Employers will be able to ask anyone about disability or health when they make the job offer but these new rules should increase opportunities for disabled job applicants.

More information can be found in our helpsheet "[Changing Times](#)" on the ITC website and we will continue to update members as further sections of the Act are rolled out.

CRB

The proposed vetting and barring scheme is still under review, however, one new provision that has been implemented is that it is now a criminal offence for a barred individual to seek or undertake work in a "regulated activity" and for employers to knowingly take on a barred person for such work. ITC can help by checking the children's barred list for you, swiftly and at no cost!

When completing the new CRB forms don't forget that the suspension of the Vetting and Barring Scheme means that the following sections should not be completed:

Sections D 51-54

Section X 57

Additionally, Sections X 64-66 must be completed for Enhanced Disclosures and must not be completed for Standard Disclosures.

Please ensure that this information is passed to those checking CRB forms in your organisation.

When checking ID for CRB Disclosure applications, be aware that the new passport design introduced from October 2010 has moved personal details to the second page.

Radio frequencies

As already notified in Members Matters the Government and Ofcom are clearing TV bands 31-37 and 61-69 of wireless microphones and similar technologies that operate on these frequencies. We are supporting the Save Our Sound campaign which is pushing for compensation for users of those frequencies. A limited compensation offer has been made towards the cost of replacing equipment that tunes to Channel 69 only, to find out more or to register for compensation [click here](#). For the Save Our Sound campaign [click here](#).

Refugees & asylum seekers

The Home Office recently issued new guidance on working legally with refugees and asylum seekers. You can find their guidance on *Preventing illegal working, asylum seekers and refugees* by [clicking here](#).

Meanwhile leases

The "meanwhile lease" is a way of allowing non-commercial use of empty shops to benefit the area, the local community, the local authority and the landlord, while the landlord continues to look for a commercial tenant. The meanwhile lease is designed for charities and other voluntary organisations but is also suitable for artists, musicians or others who want temporary exhibition or performance space. Meanwhile spaces are rent-free, but the temporary occupier pays a flat-rate service charge and insurance, and a damage deposit may be required.

Specimen leases and guidance notes can be found [here](#). For more information about the Meanwhile Project [click here](#).

National Minimum Wage

From 1 October 2010 this will rise from £5.80 per hour to £5.93. The rate for 18–21 year olds increases from £4.83 to £4.92; for 16-17 year olds the rate rises from £3.57 to £3.64.

NI & PAYE

NI & PAYE Online: HMRC updated its Employer's CD-Rom in September 2010. The CD-Rom contains guidance and calculators to help an employer run their payroll throughout the year. Make sure that you have updated so that your 2010 CD-ROM is compatible with the new PAYE tools that will become available next year. You can file your Employer Annual Return (P35 and P14s) and your PAYE in-year forms from the 2010 Employer CD-ROM.

For more info go to [HMRC](#).

NI "holiday": From 6 September 2010 new businesses set up after 22 June 2010 and located outside Greater London, the South East and the East of England are entitled to a "holiday" on employer's National Insurance contributions ("NICs") for the first 10 employees hired during the first year of operation. The NICs holiday will last for the earlier of the employee's first 52 weeks of employment or until 5 September 2013, when the scheme ends. Information on what businesses are eligible and how to apply is on the [Businesslink website](#) and at [HMRC](#).

At a glance: ITC legal & IR basics

Advice: Don't forget that ITC membership gives you access to free advice on legal and general management issues by phone and online at www.itc-arts.org

Approved Manager Membership: Approved Manager Membership has been reviewed and improved. Now more members can issue ITC contracts and there is no extra cost. Our Approved Manager Member logo on your contracts and papers will demonstrate that you are recognised by both ITC and Equity as a reliable Manager and are offering - at least - the sector's agreed minimum terms and conditions. If you have not yet signed up to be an ITC Approved Manager Member contact Jackie at ITC for more information.

Company formation & charitable status: Wondering whether you should form a limited company or charity? Call Jackie to discuss if this is right for you and how ITC can help.

Contract vetting: ITC helps you draft contracts in several ways:

- Sign up as an Approved Manager and use contracts that we have negotiated with the unions
- Use our agreements as a template even if you are not yet an Approved Manager Member, these can be found in the Advice & Info section of the ITC website – they must not be issued as Approved Manager contracts.
- If we do not have templates for your purpose we can vet the contracts that you have drafted. There are helpsheets on our website that give general advice on drafting contracts.
- Contact Jackie at ITC for more advice about contracts.

CRB Disclosure applications: ITC is registered as an umbrella body with the CRB, this means that we can counter-sign disclosure applications for your staff who may be working with young people or vulnerable adults. ITC does not levy an administration charge for this membership service, unlike many other registered bodies, which charge £20/£30 per Disclosure. Contact Jackie for more information.

Dispute resolution: Problems with non-payment? Disagreement over ownership of copyright? Issues with an employee? Problems with a venue or another company? ITC can help you settle disputes swiftly and fairly; we have set up a special Mediation Scheme for the performing arts industry. For more information [link to Advice & Info section website] or call Jackie at ITC.

Updates: No need to wait for the next issue of Members' Matters for legal and IR updates. We are now using Twitter to alert members to changes they need to know about. Sign up to follow us now [here](#).