



January 2011

Welcome

Welcome to the Education Focus. This newsletter aims to keep you updated on key developments in the education sector.

In this edition we look at the changing rules for Academy schools and provide guidance on converting to an Academy and we focus on a recent employment case that may mean teachers and lecturers should be allowed to take legal representation into disciplinary hearings. Over the page we consider the rules relating to energy certificates and give essential guidance on how to ensure you comply with these.

We are happy to meet with you to discuss any of the matters raised in this focus or any other legal issues if that is of interest. Please feel free to contact me to arrange this.

Finally, if you would like to unsubscribe to this newsletter please email marketing@georgedavies.co.uk with "unsubscribe to education focus" in the subject box.

Kind regards

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Displaying Energy Certificates

Since 1 October 2008 occupiers of public buildings with floor areas of more than 1000m², have been required to have a Display Energy Certificate (DEC).

What are DEC's?

DEC's were introduced to raise public awareness of energy use by displaying the actual energy use and energy efficiency of buildings. This includes records of gas, electricity and other meter readings or fuel delivery readings such as oil.

Impact on the Education Sector

A large proportion of buildings that require DEC's are schools. The regulations apply to individual buildings, so school sites with several large buildings do need more than one certificate. DEC's must be displayed in each qualifying building and clearly displayed at all times in a prominent place clearly visible to the public.

Advisory Reports

DEC's must also be accompanied by an Advisory Report containing recommendations for improving the energy performance of the building although this does not need to be displayed. DEC's are valid for one year, and therefore require updating annually. The Advisory Report is valid for seven years. Both must be produced by an accredited energy assessor.

What happens if I don't comply?

The penalty for failing to display a DEC is £500 and a further £1000 for failing to obtain a valid Advisory Report. The commissioning and display of DEC's for schools is the responsibility of the building occupier and they will be liable for any fines for failure to display certificates. The legislation is enforceable by every Local Weights and Measures Authority.

For further details and/or information on what needs to be included in a DEC; where to find an accredited energy assessor; the cost of DEC's; and what constitutes good practice for recording energy efficiency, please contact solicitor Kelvin Parry using the details overleaf.

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Can I bring a Solicitor ?

Allegations in the workplace:

An important decision in an NHS case concerning a hospital doctor has opened the door for employees to be afforded legal representation at disciplinary hearings when serious, career threatening allegations are made.

It is likely that the impact of this case will also influence the rights of teachers and lecturers in the education sector as well as employees in the private sector.

Why?

The case concerned a year one doctor who was suspended from work after a female patient raised a very serious complaint against him, concerning improper conduct which was tantamount to a sexual assault. The Trust invited him to a disciplinary hearing. His request to bring his legal representative was refused in accordance with ACAS guidelines on disciplinary situations.

He brought a claim arguing that the Trust's denial of legal representation was a breach of natural justice and a breach of *Article 6 of the European Convention of Human Rights* which is the *right to a fair trial*.

What did the Court say?

The Court of Appeal held that the Doctor should have been entitled to legal representation at the disciplinary hearing.

Implications:

The judge commented that in ordinary disciplinary proceedings, where all that is at stake is the loss of a specific job, article 6 would not apply. However, where the effect of the disciplinary proceedings could be far more serious, and could, as in this case, stop the employee from practising his or her profession, article 6 would apply and individuals would be afforded the right to a fair trial and legal representation.

How does this impact on the Education sector?

If a teacher or lecturer faced serious allegations, for example, alleging improper relations with a student, which if proved would result in their dismissal and prevent them from teaching in the future, this case would support that teacher's/lecturer's right to a fair hearing under Article 6 and the right to be accompanied by a legal representative at the hearing.

Following this case, when you are dealing with disciplinary issues and an employee requests that a Solicitor accompanies them to a hearing, the request should be carefully considered and if you are in doubt, legal advice should be sought as to whether allowing legal representation is appropriate in the circumstances.

If you have any queries about this issue, please contact Rachael Mongan using the details overleaf.

Academies Programme Extended

The Academies Act made it possible for schools to become academies. So far more than 220 schools have applied to gain academy status and 80 have already opened. Until 17 November 2010 however, only schools ranked 'outstanding' by OFSTED inspectors could apply to gain academy status.

Education Secretary, Michael Gove, has now paved the way for a significant extension of the Academies programme. Alongside 'outstanding' schools, all schools ranked 'good' with 'outstanding' features will automatically be eligible for academy status. All other

schools, primary or secondary, that wish to enjoy academy freedoms are also now eligible, providing they work in partnership with a high-performing school that will help drive improvement. In addition, special schools that cater for students who have special educational needs due to severe learning difficulties, physical disabilities or behavioural problems will also be able to apply to convert.

Academy Status

Academies are publicly funded independent schools, free from local authority and national government control. Other freedoms include:

- setting their own pay and conditions for staff;
- how to deliver the curriculum; and
- the ability to change the length of their terms and school days.

A detailed checklist setting out the steps to achieving academy status is set out on our website at http://www.georgedavies.co.uk/detail/Academies_Programme_Extended/485/154.aspx.

We have a large Education team which has experience in advising on academy conversion. For more information and advice on the above please contact Richard Hawkridge by email richardhawkridge@georgedavies.co.uk or telephone 0161 234 8718.

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The contents of this newsletter do not constitute legal advice. You should always consult a suitably qualified lawyer for professional advice about any specific legal matter of concern to you. George Davies Solicitors LLP, its partners and staff do not assume any responsibility for information contained within this document and disclaim all liability relating to such information.

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