

Employment news: Bribery –an action list for HR

08 MAY 2011

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After much delay, finalised guidance on the Bribery Act was published on 30th March. Under the none too snappy title 'Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing', the document aims to assist organisations to avoid the new corporate offence of 'failing to prevent bribery'.

The offence of 'failing to prevent bribery' arises when a person associated with a commercial organisation bribes someone (including a foreign public official), intending to obtain or retain business or a business advantage for that organisation. 'Associated with' is widely defined and covers employees, agents and subsidiaries of the organisation and third parties who perform services for it, or on its behalf.

The organisation will be at risk of conviction of the offence unless it can show that it had in place adequate procedures designed to prevent persons associated with it from bribing. The Government's guidance as to what might amount to 'adequate steps' has therefore been eagerly awaited.

The Government has adopted principle based guidance, which will allow a commercial organisation to tailor its policies and procedures so that they are appropriate to its size and resources. These principles are set out below.

- Procedures to prevent bribery are proportionate to the bribery risks the organisation faces and to the nature, scale and complexity of its activities. They are clear, practical, accessible, effectively implemented and enforced.
- Those at the top level of management in the organisation are committed to preventing bribery by persons associated with it and foster a culture in which bribery is not acceptable.
- The organisation assesses the nature and extent of its exposure to external and internal risks of bribery on its behalf by persons associated with it. This assessment is periodic, informed and documented.
- The organisation applies due diligence procedures, taking a proportionate and risk-based approach, in respect of persons who perform or will perform services for or on behalf of the organisation.
- Bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks the organisation faces.
- The organisation monitors and reviews procedures designed to prevent bribery and makes improvements where necessary.

Key messages for HR

Several key messages for HR professionals emerge from the two sets of guidance.

- It is essential that the HR team works alongside other decision-makers in the organisation. The Act has a potential impact on the conduct of employees, consultants, suppliers, contractors, agents and any other third parties with whom the organisation establishes legal relationships. A coherent and organisation-wide approach that addresses both internal and external risks is much more likely to demonstrate that the organisation has taken 'adequate steps' to prevent bribery.
- The HR team should endeavour to ensure that the requirements of the Act are understood and acted upon at the highest levels of the organisation.
The guidance advises a proportionate and risk-based approach. The HR team should be part of the process of identifying where the organisation is most at risk and identifying ways of reducing that risk. This may involve:
- Devising an awareness and training programme for existing employees;
- Incorporating awareness of the Act and its relevance to the organisation into induction procedures for new employees;
- Assisting in devising robust reporting procedures for circumstances in which it becomes known that an offence has or may have been committed;
- Ensuring that reward structures do not encourage conduct that could pose a risk to the organisation;
- Including references to codes of conduct and expected standards of behaviour in service agreements; contracts of employment; relevant areas of the staff handbook (including disciplinary policies, whistleblowing procedures, procedures for claiming expenses and gift and hospitality policies); appraisal documentation and promotion criteria; and documentation used to govern relationships with third parties
such as non-executive directors and consultants;

- Reviewing due diligence procedures for the selection of employees, agents, consultants and other third parties who may act on the organisation's behalf;
- Assisting in monitoring, evaluation and review of the organisation's bribery prevention procedures.

The aspect of the new law that has caused the most concern is its impact on corporate hospitality. The guidance contains useful indicators of when and in what circumstances hospitality is likely to fall on the wrong side of the line, the focus being on inducing 'improper performance' of public functions or commercial activities. HR departments will therefore need to assist in devising and promulgating gift and hospitality policies that give employees and others a clear steer as to what is and is not permissible in the context of each organisation's activities.

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