NEWSLETTER 116 NOVEMBER 2015

TENDER PRICES ARE FORECAST TO RISE BY BETWEEN 4% AND 6% PER ANNUM OVER THE NEXT FIVE YEARS AGAINST A BACKGROUND OF CONTINUED STRONG GROWTH IN OUTPUT

The 1st quarter 2015 saw tender prices rise by 0.8% compared with the previous quarter, and by 4.5% compared with the same quarter in 2014, according to the latest report from BCIS*. BCIS predicts that annual tender price increases will moderate in 2015, as contractors start to cope with increasing workloads, but will continue to grow throughout the forecast period.

Materials prices fell by 0.4% in 1st quarter 2015 compared with the previous quarter, but remained unchanged compared with 1st quarter 2014. Little movement is expected in materials prices in the remainder of 2015, with domestic and Eurozone inflation very low. However, it is anticipated that prices will start to rise again in 2016, with an increase in the year to 2nd quarter 2016 of 2.3% – the increase being exaggerated by a fall in prices to the 2nd quarter of 2016. Over the following years, as both the construction and wider economies improve, upward pressure is likely to increase materials prices from 2.6% in the year to 2nd quarter 2017, to 4.1% in the year to the 2nd quarter of 2019.

With wages costs also increasing by an annual 3% to 4% over the next five years, total input costs are set to rise by a similar amount.

It is anticipated that strong growth in new work output will continue in 2015 and 2016, with increases of 5% predicted in both years. Total new work output will surpass the pre-recession peak of 2007 during 2016, and will be in the order of 15% higher than the 2007 peak by 2019. Over the five year forecast period, BCIS estimates that new work output will have grown by around 20% since 2014 – largely due to continued demand in the private housing, private industrial, and private commercial sectors. However, growth is expected to moderate in 2017, to 3%, rising faster at a rate of 4% in 2018 and 2019.

Peter Rumble, Head of Forecasting, BCIS, commented: 'The UK construction industry is showing strong signs of growth, this reflected in the BCIS forecast which shows strong increases in new work output. As a result, over the first year of the forecast period, tender prices are expected to rise by 4%, with relatively moderate increases in input costs. Moving forward, with workloads continuing to grow, and with rising pressure from input cost increases, tender prices are expected to rise between an annual 4.5% and 6% over the remainder of the forecast period.'

FAIS AND THE IMPORTANCE OF RECORD-KEEPING

The prospect of being involved in a Fatal Accident Inquiry (FAI) is among the greatest fears of all employers.

Of course, no employer wishes to contemplate circumstances when they may become the subject of an FAI. However, should that situation materialise, businesses ought to be prepared with employee personnel files and health and safety documentation safely filed and up to date, should they be required as evidence.

HR Managers may be wondering what their obligations are in respect of providing evidence to the Court and being called as a witness before a Sheriff. The purpose of an FAI is not to apportion civil or criminal blame for a workplace death. It is primarily a fact-finding exercise to determine various factors including the cause of the death, any reasonable precautions that could have avoided the incident and any defects in a system of working which contributed to the death or accident occurring.

The rules of evidence and the standard of proof are the same as for civil cases in Scotland. Therefore, any relevant witnesses such as employees, medical practitioners and HR Managers can be compelled to attend the Inquiry to give evidence before the Sheriff.

Prior to the Inquiry commencing, an inspection of the employer's workplace or the site where the incident took place will usually have been conducted by either the Health and Safety Executive or local authority inspectors. Under section 20 of the Health & Safety At Work Act 1974, inspectors have a wide range of powers to carry out inspections and require the production of copies of relevant documents, for example HR personnel files or health & safety audit reports.

Prior to or during the Inquiry, should further evidence that has not been produced be considered necessary, the Procurato Fiscal can make an application for the disclosure of documentation and the Sheriff has the power to make orders requiring the provision of such documents.

Therefore, it is important that employers maintain updated files of their personnel records, including details of absences, references and fit notes in the unfortunate event that these may one day be required as evidence.

Of course, any employee records must be safely stored in compliance with the Data Protection Act 1998. The Information Commissioner's Office has an Employment Practices Code with guidelines for employers. Employers are often unsure on how long they ought to retain certain information and employee records.

The 1998 Act does not state a specific period of time. It only states that personal data should not be kept "longer than is necessary for the purpose or purposes for which it is being processed. Employers can therefore set their own retention periods, so long as these are based on business needs and take into account any professional guidelines. However, it is best practice to keep records for six years to cover the time limit for bringing any civil legal action against

an employer in the UK, including national minimum wage claims and contractual claims.

There are also statutory minimum periods for which certain records must be retained. For example, workplace accident reports should be kept for at least three years following an incident and payroll records for three years after the end of the tax year they relate to.

Adequate record keeping is of course no substitute for prudent health and safety checks and robust recruitment policies. However, should these records be required for an FAI, an HMRC inspection, a tribunal or any other legal process, then efficient record keeping can substantially mitigate the stress that such proceedings cause for employers and their HR teams.

THE THEORY OF WORKING TIME - SHOULD EMPLOYEES BE PAID FOR TRAVELLING TO WORK?

*"Time travel used to be thought of as science fiction, but **Einstein**'s theory of general relativity allows the possibility that we could warp space time so much that you could fly off in a rocket and return before you set out" - Professor Stephen Hawking.*

The European Working Time Directive ("the Directive") and Einstein's theory of relativity share not only complexity in common, but also these two factors: time and travel.

In mid-September, the Court of Justice of the European Union ("CJEU") ruled that the time spent by mobile workers travelling to and from first and last appointments throughout their working day ought to be treated as 'working time' for the purposes of interpreting the EU's Working Time Directive.

The Directive was designed to protect workers from exploitation by employers and caps the maximum number of hours that employees are permitted to work at an average 48 per week, with employees also having the choice to 'opt out' of the Directive. The Directive was enshrined in UK Law via the Working Time Regulations 1998.

The underpinning theme of the judgment is that the CJEU is concerned about preserving the health and safety of workers by ensuring that staff benefit from sufficient breaks and are not over-worked in the course of their employment.

The CJEU's decision in the case of *Federacion de Servicios Privados del sindicato Comisiones obreras v Tyco Integrated Security SL* has sparked concerns among industries where a mobile workforce is customary and staff do not have a designated habitual place of work.

The Facts:

The case concerned the employment by Tyco Integrated Security SL of technicians to install and maintain security equipment in homes and businesses across Spain.

In 2011, Tyco closed its regional offices and transferred all employees to its central headquarters in Madrid. This ended the practice of staff attending their regional office each day to receive instructions before departing to their respective appointments. All technicians were instead provided a mobile phone to receive daily appointments for their different customers. This involved the technicians travelling for over three hours on some occasions to perform tasks and they would travel to

customers' premises directly from their home and travel back from those of a different customer at the end of the day.

The CJEU rejected Tyco's argument that the technicians' travelling time was a "rest period" as they were not carrying out any installations or maintenance during that time and the employer determined the list and order of the customers they visit. Further, the technicians were not able to use their time freely during these periods as they were ultimately at the employer's disposal. The CJEU referred to Tyco's decision to scrap its regional offices and remarked that it was not fair that the employees should 'bear the burden' in health and safety terms of that decision.

How will this affect employers?

This decision will not affect workers who habitually work both in an office and/or remotely from home. Some employees will be disappointed to learn that it does not mean they are entitled to be paid for their arduous daily battle through traffic to their usual office!

The case specifically noted the decision of Tyco to cause the change in working circumstances by deciding to close its regional offices. The specific circumstances of each employer and the provisions of their contracts will be important to consider in future cases.

Undoubtedly, those affected will be staff who have no fixed office base and who travel between their homes and the first and last customer/client of the day. Therefore, this decision could affect employers particularly in the sales industry and maintenance of energy utilities.

The distinguishing factor in Tyco was that the CJEU considered the fact that, before the abolition of their regional offices, the employer regarded the journey time to and from customers as 'working time'. Following the closure of these offices, the nature of those journeys did not change other than where the employees departed from.

The Court placed an emphasis on the fact that the employer still exercised a considerable degree of control over the workers during these journeys. For example, Tyco could change the order of the customer appointments or cancel/schedule other visits. Ultimately, this was categorised as 'working time' because the staff were not able to use this time freely to pursue their own interests during the necessary travelling period.

The Unions have welcomed the decision and estimate that it could potentially affect up to 1 million UK employees. Employers are understandably concerned that the financial costs of this decision could be devastating for their business.

However, it is important to note that the decision relates to Working Time and not to National Minimum Wage Regulations. As it stands, the ruling does not entitle mobile workers to additional remuneration for time spent travelling between home and customer locations.

It is possible that the ruling could eventually have implications for wages because working time must normally be taken into account when calculating the average hourly pay under the National Minimum Wage legislation and we may yet see claims brought by employees in the UK Tribunals to this effect.

Employers of mobile staff are likely to now toil with the task of complying with rules on rest breaks and the maximum working week which may lead to increased costs and a possible alteration of working patterns - particularly for those who do not opt out of the 48-hour cap.

What should employers do?

While the UK continues as a member of the EU, employers with a mobile workforce are likely to face pressure to pay workers for this additional working time in future and also to account for this when allocating shift patterns to ensure these comply with the Directive by ensuring 11 uninterrupted hours as a daily rest period for staff.

If your business has staff that remain at your disposal during habitual journeys between home and their first and last appointments each day you should consider negotiating contractual changes or revising working patterns. For example, employers may consider introducing a fixed site for staff to report to daily or revise shift patterns to ensure that the first and last appointments are as close to the employees' home as possible to avoid using up precious 'working time'.

Professor Hawking claimed that time-travel may be possible in the future. Indeed, that concept may one day provide an innovative method for commuting employees. Until that day comes and unless further case law reverses the CJEU's decision, concerned businesses should identify the volume of staff affected and consider how to mitigate any impact this may have on their organisation.

APPRENTICESHIP LEVY CONSULTATION – RESPONSE

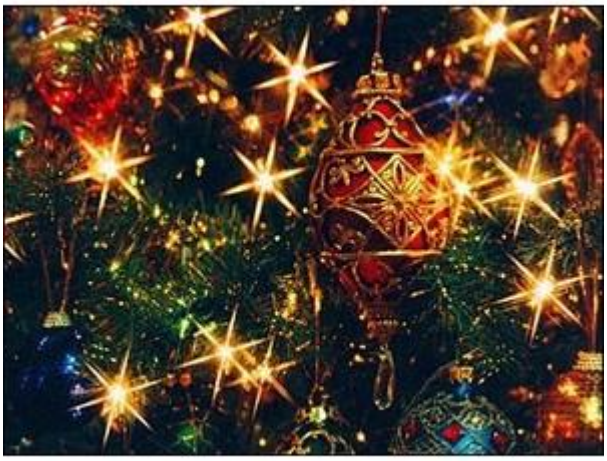
Enclosed with this newsletter is a copy of the Consultation Response to the Apprenticeship Levy.

CHRISTMAS CLOSE PERIOD

The Federation offices will close on Friday 18 December and re-open on Monday 4 January 2016.

Should these dates not suit your particular needs you may amend them by shop agreement.

WITH BEST WISHES FOR THE YEAR AHEAD FROM THE CHIEF EXECUTIVE AND STAFF AT THE SDF



YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
2005	711	713	713	713	713	714	769	769	769	768	769	770
2006	769	770	770	769	769	769	793	794	793	793	793	793
2007	793	795	795	795	795	795	824	825	825	825	826	826
2008	826	827	827	831	831	832	874	874	874	873	873	874
2009	874	875	874	874	875	875	875	875	875	876	876	876
2010	876	878	878	878	879	879	879	879	879	879	880	880
2011	880	885	885	885	888	889	898	898	909	908	908	911
2012	910	911	913	912	910	912	912	914	915	915	924	924
2013	939	940	943	942	941	938	937	937	938	937	937	937
2014	941	941	942	941	941	941	961	961	961	960	960	962
2015	961	961	961	960	969	969	993	993*	993*	993*		

*Provisional