

BOSS Advises Members to Get Ready for the new Bribery Act

The new Bribery Act is expected to come into force by autumn 2010, replacing existing bribery legislation. The purpose is to provide a modern and comprehensive scheme of bribery offenses to equip prosecutors and courts to deal effectively with bribery in the UK and abroad.

Key areas:

- It replaces old and fragmented legislation with a modern and consolidated bribery law, based on recommendations of the Law Commission
- Creates offenses of offering, promising or giving of a bribe and requesting, agreeing to receive or accepting of a bribe in the UK or abroad, in the public or private sectors
- Creates a discrete offense of bribery of a foreign public official in order to obtain or retain business
- Creates a new offense in relation to commercial organisations which fail to prevent a bribe being paid by those who perform services for or on behalf of the organisation. It will however be a defence if an organisation has adequate procedures in place to prevent bribery.

Under the new Act companies will need to be careful about how they use and accept corporate hospitality. The Act does not include any specific defence for reasonable corporate hospitality so it will always be at risk of a challenge under the Act where it can be shown that the person offering the hospitality intended the recipient to be influenced to act 'improperly'.

The Act potentially affects B2B schemes where a retailer's or reseller's staff is offered incentives by a supplier, such as prizes or rewards to staff at the outlet who achieve the highest sales of a particular product. Under the old legislation if the employer had consented to this, it was not an offence.

However under the new Act, it is arguable that, even with the employers consent, this practice could amount to illegal bribery if it leads to a breach of a customers' 'relevant expectation' – that is, if customers would have a reasonable expectation that the salesmen would act impartially or in good faith in advising on competitor products.

Without further official guidance yet available, businesses may wish to review supplier incentive schemes or ensure adequate disclosures are given to customers about any incentive arrangements.

BOSS is therefore recommending that members review their procedures now in preparation for the new legal requirements. Members will be required to have adequate procedures in place to prevent bribery and corruption. These are likely to include:

- Having a clear anti-bribery policy
- Staff training on ethical business practices from Board level down
- Close scrutiny of purchasing decision
- Clear rules on corporate entertainment and gifts

A template Bribery Policy has been written and is available for download from Personnel Online which can be found in the Membership Services section of the BOSS website – www.bossfederation.co.uk

Sources:

- BPIF Press Release, BPIF Advises that UK businesses get ready for the Bribery Bill which received Second Reading in the House of Commons yesterday, March 2010
- 'Marketing or bribery' – The Marketer, June 2010