



MURRAY is the managing partner of employment and partnership law boutique CM Murray

# Blowing BlackBerry a raspberry

Managing partner Clare Murray looks at the employment implications of being available to the firm around the clock

**Associates are increasingly forced to be available 24** hours a day via BlackBerry. Rather than reducing work pressures, the BlackBerry is often the ultimate stressor. BlackBerries are now an accepted part of life for many lawyers, but in the US an employee recently sued their employer for 'BlackBerry thumb' (otherwise known as repetitive strain injury). Another asked whether being required to use a BlackBerry was a breach of their employment contract. This was a 'tongue in cheek' question, but it raises an interesting issue. Could your firm be walking blindly into its own legal claims through its use of the BlackBerry?

## TIPPING THE BALANCE

As an employer you probably see BlackBerries as a benefit that enables your employees to work long hours from home rather than in the office. However, your associates may take a different view. To them it might mean that they can never switch off from the office, even on holiday. Whether or not compulsory BlackBerry use results in a successful employment claim will depend on the expected level of use and whether it is reasonable.

The possible risks of requiring a lawyer to be constantly available are manifold. It may result in a breach of the term of mutual trust and confidence (implied in all contracts), which will enable the lawyer to resign claiming constructive dismissal. It is likely that hours

**Requiring a lawyer to be constantly available may breach the term of mutual trust and confidence, enabling them to claim constructive dismissal.**

spent on a BlackBerry (albeit out of the office) would count as work for the purposes of the Working Time Regulations if employees are not able to choose whether or not to respond to client e-mails. This may be a breach of the Regulations, as staff will not be getting proper rest breaks and days off.

Recent changes to maternity and paternity law mean that the emphasis is now on making working environments more parent friendly and flexible. Being constantly accessible may mean some parents are working full-time from home but are paid a part-time salary. Requiring a female lawyer who works part-time to use her BlackBerry on her set days off could be a discriminatory practice.

## HANDLE WITH CARE

To protect your associates and yourself, your firm needs to put in place safe working practices and provide guidelines for long working hours. Implementing a policy, nominating a designated point of contact for stressed associates, and providing details of a confidential counselling service are helpful here. Partners and HR should ensure that associates take their holidays and do not stack up large amounts of untaken leave. They should also monitor associates to ensure that they are not regularly working until midnight. If an associate has to work through the night to complete a transaction, good practice would be to allow time off in lieu.

In addition, senior management should also look out for stress warning signs, such as employees who regularly work long hours without taking a lunch hour or who are prone to excessive drinking (or suspected drug-taking) when they finally leave the office. Other indicators might include difficulty in making decisions, working long hours but with low productivity levels, and frequent sickness absences. More generally, a high turnover of associates or the secretaries who work for them can often be a sign of stress-overload in a particular department.

Lawyers themselves may complain about their working hours or stress levels to supervising partners, albeit on an informal basis. Partners need to be aware that these may need to be treated as formal grievances, and that failure to do so could have substantial liability and compensation consequences for the firm if the employee subsequently brings, for example, related constructive unfair dismissal and/or disability discrimination claims. Partners therefore should be trained in the firm's policies and procedures and in the steps they need to take if their associates exhibit signs of stress.

BlackBerry use is an indicator of the extent to which an associate is subject to excessive demands. A specific policy regarding safe working practices for BlackBerry use should go some way to reducing the firm's risks and highlighting specific problem areas.

## TAKE AWAY

Lawyers are often so busy looking after clients' interests that they forget to look after their own. Signs are, though, that over-stressed lawyers, especially those who believe their careers are effectively over anyway, are more willing to pursue very public legal proceedings against their firms. Regardless of the merits and eventual outcome of such claims, the firm – in practice – rarely wins. Active management of workplace stress is the only truly effective litigation strategy. If that means taking away their BlackBerry, so be it.

*Clare Murray and Charis Martyn (associate)*