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## January 2016 Update

Welcome to this month's edition of Employment Law update - where we discuss the latest legislation and guidance.

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### Workplace Investigations – ACAS Guidance

ACAS has published useful (although detailed) new guidance to help employers conduct workplace investigations. Before taking disciplinary action, it is essential to assess what facts need to be established - the extent of an investigation will depend on the nature of the issues.

However, a failure to carry out a proper investigation will usually impact on the fairness of any disciplinary sanction that may be imposed and can of itself render a dismissal unfair.

The ACAS guidance sets out:

- When an investigation might be necessary;
- How the investigating officer can prepare for the investigation;
- How the investigating officer should conduct the investigation;
- Other evidence the investigation officer may need to think about gathering as part of the ongoing investigation;
- Deciding on what evidence the investigation report should include;
- The possible outcomes of the investigation and what recommendations the investigation officer should make for consideration

**Employers:** This is useful guidance for managers of all levels of experience and can be read: <http://www.acas.org.uk/media/pdf/o/5/Conducting-workplace-investigations.pdf>

**Contact us if you need any help if you have a concern with an employee**

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## Zero Hours Contracts – Exclusivity Clauses

New regulations for zero hours workers came into force on 11 January 2016 - The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 ('the Regulations').

The Regulations offer protection for zero hour contract workers against detriment and dismissal in particular circumstances as follows:

- From day one of their employment, the dismissal of an employee who works under a zero hours contract will be unfair if the principal reason for the dismissal is that they undertook work for another employer.
- A worker who works under a zero hours contract has the right not to be subjected to any detriment if they work for another employer – even if a clause in the contract prevents them from doing so.

**Employers:** make sure if you are putting together zero hours contracts that you do not prohibit the employee from working elsewhere

**Contact us if you need help with zero hours contracts**

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## Monitoring of Personal Messages

Employees sometimes use work email and computer systems to send personal messages. This can cause difficulty for employers unless their Internet, Email and Computer policy has some clear guidance.

Last week a high-profile decision of the European Court of Human Rights (ECtHR) was handed down in relation to the right to privacy. Specifically, the ECtHR was asked to consider whether an employer breached an employee's right to privacy when the employer accessed personal emails sent by the employee through a work-related messaging account.

In this case, the employee used the employer's IT systems and his work Yahoo messenger account to share personal messages with friends and family during working time. This was in breach of the employer's policy, which stated that personal use of the employer's IT systems was not permitted.

The employer became aware of the messages and undertook an investigation. As part of the investigation the employer accessed and printed the private messages. After a disciplinary process, the employee was dismissed for unauthorised personal internet use at work.

The employee argued that his employer had breached his human rights, in particular his right to respect for his private life. The Court found that the monitoring and use of the personal messages by the employer was a proportionate interference with the employee's right to privacy.

The decision does not give employers an absolute right to access employees' personal emails and care must still be taken by employers in deciding whether it is appropriate to do so in any particular set of circumstances. Still, it should encourage employees to exercise caution when sending personal emails from a work system, particularly if the employer's policy prohibits this.

**Employers:** may wish to review their own policies to ensure that these reflect current rules. If personal use is prohibited or limited and monitoring may take place, employees must be made aware of this and any specific rules should be put in writing

**Contact us for help in reviewing or setting up your IT Policies**

**For more information or assistance Email: [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)**

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