



## March 2016 Update

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

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### Modern Slavery Act Statement

The Modern Slavery Act 2015 came into force in October last year and applies to financial years ending on or after 31 March 2016.

The Act requires large organisations doing business in the UK with a minimum total turnover of £36 million per year to publicly state each year the action(s) they have taken to ensure that their supply chains are slavery free.

We would recommend that the slavery and human trafficking statement **must** include one of the statements below:

- of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business; or
- that the organisation has taken no such steps.

The statement **may** contain other information, such as the organisation's structure, its due diligence processes in relation to slavery and human trafficking and any training on the subject that is provided to its employees.

Although, there is no prescribed time limit in which to make the statement, the Home Office guidance provides that a business is encouraged to make it within six months of the end of the previous financial year.

If the organisation has a website, it must publish the statement on that website and include a link to the slavery and human trafficking statement in a prominent place on the homepage.

**Employers:** even smaller companies are being asked to publish a Modern Slavery Act Statement if they are tendering for work with certain customers.

We can provide further information on this topic and can also assist organisations in preparing a compliant statement.

**Contact us if you need help with a Modern Slavery Act Statement**

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### **Pulling a Sickie – is this grounds for dismissal?**

We are often asked about sickness and sick pay. Should a company give a set number of sick days paid a year? Will some employees perhaps treat this as extra holiday?

Some workers seem to treat 'pulling a sickie' as not particularly serious – as if this is almost part of their additional holiday entitlement. This has resulted certainly in smaller employers not giving a certain amount of paid sick leave days a year.

However, an important Employment Appeal Tribunal (EAT) decision has emphasised that such dishonesty can amount to gross misconduct and give grounds for dismissal.

A bus driver alleged that he had slipped over on spilt water in a workplace toilet and badly injured himself. He went on sick leave, claiming that he was incapable of doing his job. However, his employer suspected that the accident had been staged, or that he had exaggerated his injuries, and placed him under covert surveillance.

He was dismissed on the basis that he had tried to perpetrate a fraud. The EAT overturned a Tribunal's decision and found that anyone who dishonestly states that they are unfit for work through illness or injury is guilty of a fundamental breach of the trust and confidence which lie at the heart of any employment relationship.

The employer here had a genuine and reasonable belief, based on reasonable investigation, that the employee had deliberately misled his employer and, in upholding his claim, the ET had substituted its own view of the facts for that of the employer.

It is important to ensure periods of sickness are either covered by a self-certification note or a doctor's note depending how long an employee is off work sick for

**Employers:** here the employee had deliberately mislead the employer with his sickness. It is more likely that an employee will perhaps take a day off sick when it is not valid, although some employees have been caught posting activities when off sick on facebook.

**Contact us if you need help dealing with sickness of sick pay issues**

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### **Maternity Leave – discontinuation of childcare vouchers**

In a recent case, the Employment Appeals Tribunal (EAT) overturned a tribunal's decision that it was discriminatory for an employer to allow the scheme to have a condition of entry that vouchers could be suspended during maternity leave.

It could not have been Parliament's intention to require employers to continue providing vouchers at a time when there was no salary that could be sacrificed in respect of them (such as when on maternity leave). The key question was whether the vouchers constituted 'remuneration', which does not need to be continued through maternity leave.

Many employers provide vouchers as a benefit in addition to salary and, in such cases, Regulation 9 of the Maternity and Parental Leave Regulations 1999 requires that the benefit continue during maternity leave. The difficulty has been that employers wish to give employees the tax benefit that the childcare voucher scheme but some smaller employers have been hesitant to put the scheme in place as they know they have to continue paying into it during maternity leave, even when they are no longer making salary payments.

In most cases the vouchers are provided by way of salary sacrifice, thus the vouchers represent part of salary that has been diverted before appearing in the employee's pay packet. So, such vouchers are properly to be regarded as part of 'remuneration', which may be discontinued during maternity leave under Reg 9.

**Employers:** this is welcomed by employers, who can now provide childcare vouchers knowing that they do not have to continue paying into the scheme during maternity leave.

**Contact us if you need any help with maternity leave or childcare voucher schemes**

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



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Business Forum

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