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## April 2016 Update

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

Our **top story** is the council clerk who was accused of favouritism over the way he handed out tomato plants to colleagues - who has just won his battle for unfair dismissal..

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### Director's unsympathetic comments about employee stress

An Employment Tribunal (ET) has just found that a director (from Specsavers Opticians) comment to an employee with depression that "everyone gets depressed sometimes, you just have to pull yourself together" were offensive and discrimination.

The employee told the director she was struggling with depression and he replied by saying that he had no sympathy for "this kind of thing". She was then off work for periods of sickness and again late for work, due to oversleeping because of the effect of her medication. Despite the employee telling the director that she was on medication and had been diagnosed with depression he decided it should go straight to disciplinary action. She resigned after being told that it was likely she would be dismissed.

The ET found that the director's unsympathetic approach to the employee's condition was discriminatory under the Equality Act 2010 and they had failed to make reasonable adjustments.

### Employers - we have put together a Line Manager brief on Stress:

**Don't say:** You're letting the team down

**Do say:** One of your colleagues has told me quietly that she is worried about you.

**Don't say:** I hope you're not going to end up a nutcase.

**Do say:** Would it be helpful if you talked to your GP or we can help you find a counselling service?

**Don't say:** Pull yourself together and get on with it

**Do say:** What else do you think we can do to help you improve things?

**Don't say:** You're all over the place at the moment, what's up?

**Do say:** I'm concerned that you seem to be under pressure - do you want to discuss it?

### Contact us if you need any help with sick employees

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### Incorporation of terms – Company Handbook

Check if your Company Handbook has an introduction which states that the policies may be incorporated into employees' contracts as a contractual term.

This used to be prevalent, however a recent case, *Department for Transport v Sparks*, found that the absence management policy did have contractual effect, even though parts of the handbook were cited as contractual terms and some not.

The appeal focused on a short-term absence management policy, which, if contractual, restricted managers' ability to take disciplinary action until specific trigger points had been exceeded, 21 days of short-term absence in any 12-month period here.

This left the Company in a difficult position as if they wished to deviate from the policy – if they did it could be a breach of contract.

**Employers:** check the wording in the introduction of your Handbook to see if the policies are contractual or not

### Contact us if you need help with updating Company Handbooks

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## State Second Pension

From 6 April 2016, a new single-tier state pension will replace the current two state pension elements (S2P). Currently, occupational pension schemes have been allowed to contract-out of S2P by providing similar alternative benefits to those received under S2P.

However, S2P will no longer exist from 6 April 2016, so occupational pension schemes will no longer have the ability to contract out. Both employers and members of contracted-out schemes will see an increase in their National Insurance contributions. In effect, members and employers of contracted-out schemes currently pay lower rates of NI in return for not participating in S2P.

**Employers:** there may be options for employers to offset this additional financial burden. If your business operates a contracted-out scheme it would be wise to seek expert pension advice. We can put you in touch with an appropriate adviser who can review this and your pension auto-enrolment obligations.

**Contact us if you need help with pension advice**

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

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# Silverstone

Business Forum

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