EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

January 2017 Update

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

Workers v Self-Employed

It was difficult to avoid the press reports recently on the case involving Uber, the taxi hailing app. The definition of what is a worker in the Employment Rights Act 1996 is not very helpful. Being a worker, means there are more entitlements than being self-employed, but less than being an employee.

Uber argued it was just a technology company, providing the app to put passengers in touch with self-employed drivers and not a taxi company. This was rejected by the Tribunal. The level of control that Uber had over the drives was the key point. Uber interviews and recruits drivers, imposes conditions on the drivers, controls their performance, duties and key information. Uber will of course appeal this decision but it has major ramifications on other businesses

So what does this mean for those found to be workers rather than self-employed? They are entitled to:

- 5.6 weeks' paid annual leave each year for full-time work
- The national minimum wage / national living wage
- possible rights to pension contributions under pension auto-enrolment regs

- Protection under whistleblowing legislation

However, workers do not have the following rights:

- The right to claim unfair dismissal
- The right to statutory redundancy payment
- The benefit of the implied term of trust and confidence
- TUPE (transfer of business) protection

Employers: In the meantime, if you engage contractors and exert control over them and how they provide their services or portray them as your own workers, then you may need to take advice as it is a risk they may be found to be workers.

Contact us: we can assist advising on contractor and self-employed relationships

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Gross Misconduct Allegations – when an employee hands in a sick note

What are an employer's options if an employee facing gross misconduct allegations asks for more time to prepare for a hearing and then submits a fit note for depression or stress?

Does that sound familiar?

Of course they may be stalling the process or there is a chance their illness could be genuine. As the allegation is gross misconduct, it is serious, which means you will need to see it through, however much the employee wears you down through avoidance tactics or legitimate reasons.

As a serious charge it is even more important the employee has a chance to answer the charge. Of course there may be a proper reason for the employee submitting the fit note. Has the disciplinary been sprung on them? How complicated are the issues? Does the employee need time to gather their own evidence?

Pressing on with the disciplinary, if an employee is unable or unwilling to attend in these circumstances is never wise. Of course an employee who repeatedly asks for more time

must be pinned down. The challenge is in judging when that time has come. Take into account:

- your rules and policies
- the seriousness of the charge
- their employment record
- has the employee been uncooperative?
- how many times the employee has asked for a delay

You won't need to agree to a long series of postponements, but satisfy yourself that the employee has a valid reason and make it clear that there is a strict limitation when agreeing to an extension

If someone is signed off with depression it does not mean that they are unfit to attend a disciplinary hearing. In fact, it may be better to attend so it is not hanging over them. In most cases the right thing to do is to postpone the hearing and if the absence continues for a few weeks then you should appoint Occupational Health to report on the employee's condition and their likelihood to attend a rescheduled hearing.

Take your time and advice on the instruction letter to Occupational Health to cover the practicalities of the disciplinary hearing (including possible adjustments) as this could turn out to be a crucial report in these instances.

At some point you will need to draw the disciplinary process to an end, either with the employee there or in their absence.

With gross misconduct allegations it is not a good idea to hold a hearing in the employee's absence, but if you are sure you can show you have done everything reasonable to tolerate the delay then you will need to go ahead, bearing in mind the recommendations of the medical professionals.

Employers: Being the reasonable employer is not as easy as it sounds. There is no easy formula. Remember factors such as the size of the business and resources available do get taken into account when it comes to reasonableness.

Contact us: we can assist with practical advice on dealing with disciplinary hearings.

Gender Pay Reporting

Gender pay gap was a hot topic for HR in 2016. These regulations were introduced as part of the Government's strategy to tackle pay inequality between men and woman.

The regulations come into force on 6 April 2017 and require employers with more than 250 employees to publish reports on their gender pay gaps.

The pay reporting covers basic pay, allowances, holiday pay, shift premiums and bonus pay, profit sharing. It does not cover overtime pay, redundancy or termination payments.

Can smaller companies afford to ignore the Gender Pay Gap Regulations?
Probably... Although as hopefully the larger businesses will need to be more open on publishing reports on pay gap inequalities it should produce some benchmarking figures for employees who move to smaller companies to understand the fair and equitable rates in their industry, sector and level of seniority.

Employers: it is worth reviewing pay scales and groups of employees as well as equality policies in the light of these regulations.

Contact us: we can assist with Gender Pay Reporting guidance

For more information or assistance Email: enquiries@employmentlawsupport.co.uk

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