



April 2017 Update

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

Managing conflict - Part 2 to be published in May.

References – what do employers need to watch for?

The starting point is, a reference should be true and accurate. You need to not give a misleading impression but of course there is a worry that what an employer writes may lead to a claim. If the negative part of a reference is accurate and made in good faith, with evidence to back it up, there should not be a concern of a claim. Still employers are wary of doing so.

In most cases a referee does not have to show a copy to the employee although this can change if they start legal proceedings. Potentially a reference could fall within the Data Protection Act ('DPA') as personal data. However, there is an exemption in Schedule 7 of the DPA for disclosure, if the reference is given in confidence for education, training or employment purposes.

Though this still raises the question of whether the reference can be disclosed to the employee by a third party – i.e the prospective employer. It would require consent by the ex-employer before the reference is disclosed.

So, it is wise to write on a reference, that this is given 'in confidence' so that the new employer would have to contact the ex-employer to ask if they object to the disclosure of the reference.

However, your objection won't necessarily block the disclosure of the reference to the employee if it would be reasonable to disclose it. It may be that the reference can be disclosed by blacking out who wrote it, if it is a bigger organisation.

Employers: be careful when writing references ensuring they are accurate and made in good faith. Be aware an employee can use the DPA to officially request disclosure of a reference. There is an exemption to this but it is wise to mark the references 'in confidence'.

Contact us: we can advise on the content of references, particularly when there are disciplinary, performance or sickness issues.

Apprenticeship Contracts – can an employer terminate them?

An employment tribunal has recently awarded £25,000 for breach of contract to a roof tiler whose apprenticeship was ended early in the case of *Kinnear v Marley Eternit Ltd t/a Marley Contract Services*.

The apprentice roof tiler was advised that there had been a downturn in business and that his employment was being terminated on the basis of redundancy before his apprenticeship had ended. The tribunal acknowledged that the lack of a roofing qualification might disadvantage him in the labour market for a number of years to come.

In upholding Mr Kinnear's claim, the tribunal noted that he had 122 weeks left to run on his apprenticeship. It assessed that he would have been paid £24,217 for the remainder of his apprenticeship.

There are two different types of apprenticeships and the distinction can have a major effect on the relationship between the employer and apprentice. Contracts of Apprenticeships are governed by common-law principles and are generally fixed term and cannot be terminated early except for extreme misconduct.

The other type is an Apprenticeship Agreement which complies with an 'apprenticeship framework' published by the Government, with a training element generally through an external training provider. Government funding is available to cover part of the cost of

training and unlike some common-law contract of apprenticeships, an apprentice can be dismissed in the same way as any other employee.

Employers: be careful when putting together and agreeing an apprenticeship contract that you have come under the Apprenticeship Agreement conditions as this gives you an ability to terminate the contract like any other employee.

Contact us: we can advise on apprenticeship agreements and draft contracts for your business.

Statutory Payments Increases

From 1st April 2017, the following rates will apply: The National Living Wage (NLW) which applies to workers aged 25 and over, will be increase from £7.20 to £7.50.

The National Minimum Wage (NMW) will increase:

- The rate for apprentices increases from £3.40 to £3.50 per hour;
- The rate for workers aged 16 to 17 years old increases from £4.00 to £4.05 per hour;
- The rate for 18 to 20 years old increases from £5.55 to £5.60 per hour; and
- The rate for 21 to 24 years old increases from £6.95 to £7.05 per hour.

From 2nd April 2017, rates of Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay will increase from £139.58 to £140.98 per week (or 90 per cent of the person's average weekly earnings, if lower). The rate of Statutory Sick Pay will increase from £88.45 to £89.35 per week from 6th April 2017.

Employers: it is easy to not pay the NMW when an employee goes into the next age bracket. Make sure your payroll software details the age bracket and when the employee moves into the next pay scale in order for it to be flagged up.

Contact us: we can advise on different statutory payments and how to calculate them.

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



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