



July 2017 Update

Welcome to this month's update - where we discuss the latest legislation and guidance. In this Edition, we report on:

- Employees' personal use of social media
- Sleeping/On call workers
- Employment Status: The Taylor Review 'Good Work' Report.

Employees' Personal use of social media

The difficult question for any employer is when does 'personal' become 'my business?' In other words, when is it acceptable to take issue with something an employee has posted in their own time, on their own social media account?

The question of posting in a personal capacity is relevant not only to whether you should take disciplinary action, but also whether you have a PR damage limitation job on your hands. Could your business suffer with customers? Or could your business incur any liability for the things an employee has posted in their personal capacity?

In the recent case of *Crisp v Apple Retail (UK) Ltd*, an employee who made derogatory Facebook comments about Apple and its products, could not rely on a reasonable expectation of privacy, even though his Facebook page could only be viewed by friends. The point was he could not control what was shared or what else was written about his comments. So, perhaps 'private' is never really 'private'.

In this case, Apple had clear policies and staff were aware that such comments would be treated very severely.

Employers: make sure you have policies in place and train your workers to understand that everything they post, at work and at home, can potentially be seen by people other than their friends and may be a serious issue if reflects badly on the Company.

Contact us: we can help draft internet and social media policies

Sleeping / On-call workers

There has been a great deal of case law in this area. Workers could be at home, at their place of work, or even sleeping, but available for work when needed.

Regulation 32 of the National Minimum Wage Regulations 2015, treats 'time work' as any time when the worker is 'available and required to be available' at, or near, his place of work for the purpose of working.

Although, such time is not counted, if it is time when the worker is entitled to be at home or near his place of work, or permitted to sleep at or near the place of work, and suitable facilities for sleeping have been provided by the employer. If it is found that the worker was actually working, then he will be entitled to the National Minimum Wage.

The difficulty is working out how time can be categorised. This depends on whether being present on the employer's premises is part of the job or where the worker is really just 'on-call'.

Recent cases include security guards and care home managers have been found to be working even when they were asleep. In another case a hotel worker who was required to sleep on hotel premises for health and safety reasons, was entitled to be paid for the entire period, even when he was sleeping.

Employers: a tribunal would look at all the factors in trying to assess whether an employee should receive the NMW when on call / sleeping.

Contact us: we can help employers assess the payment that should or should not be paid to workers in these situations

Employment Status: The Taylor Review 'Good Work' Report

Following the recent cases on Self Employed Status, below is a summary of some key employment law proposals from the report:

- ❖ Keep different criteria between employees and workers, but rename workers who are not employees as 'dependent contractors'
- ❖ Place more emphasis on control to find that the person is of employee status
- ❖ Retain the need for personal service in employment contract
- ❖ Extend the right to a written statement (contract) to workers as well as employees
- ❖ Require written statements to be given on day one of employment
- ❖ Consider increasing the rate of the National Minimum Wage for hours that are not guaranteed by the employer
- ❖ Preserve continuity of employment where any gap in employment is less than one month, rather than one week
- ❖ Increase the reference period for calculating holiday pay from 12 weeks to 52 weeks where holiday pay is variable
- ❖ Allow holiday pay to be paid on a 'rolled up basis'
- ❖ Give people on zero hours contracts the right to request guaranteed hours after 12 months

Employers: it is often difficult to work out if a worker should be an employee or a self-employed contractor. It is important to assess all the factors, particularly looking at the level of control exerted by the employer.

Contact us: we can advise on contractor v employee arrangements.

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



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