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## September 2017 Update

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

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- The new General Data Protection Regulations.
- Part-time workers' discrimination.
- Grievances – confidentiality issues.

### The new General Data Protection Regulations

The GDPR is set to kick off on 25 May 2018. It increases the obligations on all businesses to ensure the safety of personal information of individuals stored on their systems, whether they are customers, suppliers or employees.

The GDPR will apply to data 'controllers' (employers) and now data 'processors' (employees). Previously, the Data Protection Act only applied to controllers. Processors involve the storing, retrieving and erasing of data. Controlling involves manipulation in terms of interpretation or decision based data.

The GDPR applies to personal data, but the definition is wider than under the current Data Protection Act (DPA). The regulations place greater emphasis on the documentation that data controllers must keep, to demonstrate their accountability.

Many of the GDPR's main principles are similar to those in the current Data Protection Act (DPA). So if your business is complying properly with the present law, then most of your current compliance will remain valid and can be the starting point to build from.

However, there are new elements and significant enhancements. Your business will have to do some things for the first time, and a number of things differently. It is essential to start planning your approach to GDPR compliance now, with the rules coming into effect in May 2018.

As a starter you will need to gain 'buy in' from key people in your organisation. You may need, for example, to put new procedures in place to deal with the GDPR's new transparency and individuals' rights provisions. The cost of which depends on the complexity of your business.

One key new feature is having to show how you comply with the rules. Evidencing compliance is known as the 'accountability' principle.

**Employers:** we suggest as a start that you undertake a Gap Analysis to review your current processes against the GDPR requirements.

**Contact us:** we can assist with GDPR compliance.

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### Part-time workers' discrimination

What happens if a part-time employee works more than 50% of full-time hours, but is paid only 50% of the full-time salary? Is this seen as unfavourable treatment against the Part-Time Workers Regulations 2000?

The Employment Appeals Tribunal (EAT) in the case of *British Airways v Pinaud* found that it was.

The full-time crew worked a 6/3 pattern. Six days on, three days off, giving 243 available days and 122 days off each year. Part-timers worked a 14/14 pattern with ten available days needed each fortnight.

This worked out as 50% of full-time availability (243) is 121.5 days. However, it seemed that the part-time employees had to be available for 130 days, 3.5% more.

BA argued that the bidding system for work and choices created this anomaly but the EAT upheld that this was plainly less favourable treatment, which could not be justified.

When looking at the justification, it was suggested that increasing part-time pay to 53.5% would "cure" the discrimination. However, the EAT held that this "simple expedient" oversimplified the matter and the statistical evidence would need to be reviewed carefully.

**Employers:** the impact of this decision is that a worker should not be worse off financially by working part-time, even if it is not clear from the shift patterns or way of working.

**Contact us:** we can assist with part-time workers payments.

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## Grievances – confidentiality issues

Handling employee grievances can be tricky for managers. The issue of confidentiality plays a significant role, as employers juggle the obligation to the employee who brought the grievance, and other employees who are involved in the complaint.

Here are some top tips:

**\* Keep the pool small**

It is best to keep the matter as confidential as possible, limiting the number of people who are aware of the grievance and the information that each person has access to.

**\* Work with the aggrieved employee**

If you expect that confidentiality is going to be an issue, it is important to ensure that the employee in question fully understands the grievance procedure and how the company intends to handle confidentiality. It is a good idea to suggest a list of people that you think need to be aware of, or involved in the grievance.

**\* Need to know**

If someone needs to know, be careful about how much detail that individual is given. It may not always be necessary to give full details. The line manager may not always be involved in the grievance as it depends on the nature of the complaint. Of course if the grievance relates to the line manager, then this must be dealt with sensitively.

\* Confidentiality for witnesses

If witnesses are being interviewed, it is crucial that they understand how their evidence will be used to avoid misunderstandings. This particularly involves how their evidence will be shared, as this can create problems.

\* Access to data

What an aggrieved employee is entitled to see in the context of their grievance is often in dispute. Be aware that the notes and other information collected could also be sought by way of a subject access request under the Data Protection Act.

**Employers:** each grievance raises different issues. Be aware of confidentiality from the outset, which will assist resolving further disputes.

**Contact us:** we can assist with investigations and disciplinary procedures.

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





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