



January 2018 Update – Happy New Year!

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

- When Disciplinary and Grievances Collide
- General Data Protection Regulation (GDPR)
- Holiday 2018-19

When Disciplinary and Grievances Collide

One of the significant challenges for employers to overcome when disciplinary and grievances collide, is when an employee who's in trouble tries to save their own skin. It's easy to be cynical about it, that doesn't make you a bad employer as it's a very human response. However, your feelings of cynicism must be kept under your hat as you can't assume anything.

There are three main things that you need to do: a) keep an open mind. b) you've got to deal with the grievance. c) keep up to date records of how seriously you are taking it and be prepared to justify your decisions.

So, should you postpone the disciplinary process, in order to deal with the grievance? You can, but it's not necessary. There's nothing in the law to say that you must put the disciplinary on hold. In most cases, it makes sense to deal with them both together, especially if the issues cross over. However, ignoring the grievance simply isn't an option. If you do nothing about it at all, you are probably breaching the ACAS Code and that could mean more compensation for the employee if they were to bring and win an unfair dismissal claim at a later stage.

So what to do? Firstly, understand the grievance and what the employee is alleging. Does the grievance relate at all to the disciplinary, are there any common features? These are then your different options:

1. **Postpone the discussion.** A lot of employers would see this as a safe option and it shows that you are giving the employee breathing space. Also, an employer can be seen to be giving the employee a fair chance. ACAS gives a few examples of when an employer may want to suspend a disciplinary meeting. a) Where the grievance relates to a conflict of interest that the manager holding the meeting is alleged to have. b) Where bias is alleged in the conduct of the meeting. c) Where management have been selective in the evidence they have supplied to the manager holding the meeting. d) Where there is possible discrimination.
2. **Carry on with the disciplinary.** If the grievance is unrelated to the disciplinary, there's no need to halt it. Keep the process going and deal with the grievance alongside it.
3. **Deal with them both together.** If you are going to deal with the grievance and disciplinary together, give each aspect the time and attention it needs. There are still procedures to follow and while the issues may overlap, don't be complacent about the steps you need to take to deal with them both properly. Make sure that the employee knows exactly what is happening and give them time to prepare before any meeting or hearing.

Employers: Be prepared to push things back if need be but don't let things slip. Keep on top of timings and evidence and make sure that any grievance doesn't hold things up unnecessarily. Beware of any delay 'tactics'.

Contact us: We can assist you with all aspects of the disciplinary and grievance procedure.

General Data Protection Regulation (GDPR)

One of the main employment stories set to dominate the news in 2018 is the General Data Protection Regulations (GDPR). These new regulations come into force on the 25th May 2018 and the impact of these regulations could be minimal for smaller companies, or huge for larger organisations.

Larger employers could be encountered with a substantial administrative task to complete when all employees will have to be asked for their permission to hold any information about them, which is not applicable to the discharge of the employment contract. Larger organisations may consider employing a Data Protection Officer (DPO) to make sure they are GDPR compliant, if they employ more than 250 staff.

However, the new GDPR doesn't only apply to employees and the data employers can lawfully keep on them. It also has an impact on businesses that a company deals with, and consumers. The new data protection regulation puts the consumer in the driver's seat, and the task of complying with this regulation falls upon businesses and organisations. GDPR is applicable to all businesses and organisations founded in the EU. Companies outside of the EU must adhere to GDPR if they offer goods and services to consumers in the EU.

Early preparations for May 2018.

1. Map your company's personal data (staff and consumers) identifying where all personal data comes from, where it is stored, and document it.
2. Establish what personal data you need to keep and don't keep more information than necessary. Carry out a clean-up process.
3. Implement security measures to help protect the data, avoiding any data breaches.
4. Review your company documentation as individuals must clearly consent to the gaining and processing of their personal data.
5. Implement procedures for handling personal data in these situations:
 - a. How can individuals give consent in a legal manner?
 - b. What is the procedure if an individual wants their data deleted?
 - c. How can you ensure that this data really is deleted across all platforms?
 - d. How will you check that the person who requested to have their data transferred or deleted, really is the person they say they are?
 - e. What is the company procedure should there be a case of data breach?

GDPR will create challenges but it can also create business opportunities. Companies that show great customer care by being transparent about how data is used, retain more loyal customers. So, is your company GDPR ready?

Employers: The earlier your company starts to become compliant, the better. Failing to comply with GDPR can result in tough penalties with substantial fines.

Contact us: We can assist with all aspects of GDPR.

Holiday 2018-19

Is your company or business in England or Wales? Are you operating an April – March holiday year? If your answer is yes to both of those questions, 2018/19 holidays may well require some assistance from you.

You may or may not know, but all workers are legally entitled to a minimum of 5.6 weeks paid annual leave, which equates to 28 days holiday leave if you are a full-time employee, working a five day week. Contractually, we usually state either 20 days plus bank holidays, or 28 days including bank holidays. If, as an employer, you give additional holiday to employees, for example 25 days plus bank holidays, you are not required to do anything.

Easter in 2018 is divided between March and April; Good Friday is on 30th March, and Easter Monday is on 2nd April. If your company operates a holiday year commencing from 1st April 2018 to 31st March 2019, this means you will not have a Good Friday bank holiday entitlement because it falls in the 2017/18 holiday year.

So, employers with an annual holiday entitlement of ‘20 days’ plus bank holidays’ will only be CONTRACTUALLY entitled to 27 days’ holiday in 2018/19—crucially, this is of course one day short of the legal minimum. If this is your company - what action do you need to take? The minimum requirement is that you MUST give 5.6 weeks’ holiday. To avert breaching your employee’s rights, you must increase your staff holiday entitlement for the 2018/2019 holiday year.

With that in mind, what about the 2017/18 holiday year? For exactly the same reasons, employees with April-March holiday years may well receive an extra day’s holiday in March 2018, giving 9 bank holidays in total for this holiday year - but it really does depend on the wording within their contracts.

As an employer, here are the various options you can consider:

Option 1 - Where your contract states the employee is entitled to ‘20 days’ plus eight bank holidays’ and specifically states the eight bank holidays, there will be no right to take the second Good Friday bank holiday.

Option 2 - Where your contract states ‘20 days’ plus bank holidays’ but doesn't specify or give an amount to the number of bank holidays, your employees will be entitled to 29 days’ holiday in the 2017/18 holiday year.

Option 3 - Where your contract has a definitive contractual holiday cap of 28 days holiday, this will be unaffected.

Employers: As March/April is fast approaching, it may be worthwhile checking holiday entitlements to ensure you are offering the legal minimum requirement of holiday to workers.

Contact us: We can assist you with calculating holiday entitlements and pay.

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





Silverstone

Business Forum

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