EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

August 2018 Update

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

In this month's edition, we report on:

- Clear Social Media Policy?
- Confidentiality and Protecting the Employer's Reputation
- Do you need to pay an on-call employee while they are sleeping?

Clear Social Media Policy?

An employee's dismissal over derogatory comments she made on Facebook, which identified a business, was found fair in a recent Tribunal case despite her having a clean disciplinary record.

Putting a social media policy in place which clearly sets out expectations for employees' use of social media (while recognising individual rights) is important. It reminds employees that social media activity is not necessarily private if an employee identifies themselves with the employer, and its business.

In such situations employers can discipline staff if they breach such a policy. It also reminds employees that online conduct can affect the employer's reputation and can even amount to gross misconduct.

A suitable social media policy will need to fit with the other main employment policies such as anti-harassment, bullying policies and disciplinary procedures.

Make sure you regularly review such policies, so they remain up to date and relevant, as the use of social media changes rapidly.

Training is an important aspect of a social media policy so make sure you provide clear training, especially at the induction stage. Employers should also train managers on what monitoring is appropriate and on how to enforce social media policies. Monitoring should be conducted without breaching employees' privacy rights, which can be a balancing act, so be clear that you monitor the systems.

Employers: This is a reminder that you should have a good policy in place to guard your business and reputation.

Contact us: We can assist with drafting a social media policy, inductions and training.

Confidentiality and Protecting the Employer's Reputation

Junior staff are not the only ones who can breach confidentiality by mistake and be a liability, often it is senior managers who should know better and often cause more damage by casual comments.

A recent case involved a senior director, where the Financial Conduct Authority imposed a fine of almost £40,000 on the employee for disclosing client confidential information over WhatsApp. Apparently, he did this to impress a friend, who was also a client.

Company information such as supplier contracts are often confidential information, which should not be appearing on social media. It is vital in training and induction to remind all staff about the dangers of over-sharing such information informally on messaging services.

Often employees still do not view their use of applications such as WhatsApp as a breach of confidentiality, as they think of these as an informal way of contact. However, this breaches their employment contract by disclosing confidential information to a third party. It may also be a breach of data protection as well as causing reputational damage and significant embarrassment for the employer.

It is dangerous to ignore misleading statements made about the company or its clients on social media by employees at whatever level.

Companies should respond appropriately in accordance with policies in place, this will also depend on what has been said. Acting quickly to remove a post and finding out who has shared it is vital to limit damage.

Employers: Tell employees about monitoring arrangements in place, which shouldn't be excessive, and must be justified.

Contact us: We can help if you are concerned staff may have breached confidentiality.

Do you need to pay an on-call employee while they are sleeping?

The much-awaited decision of the Court of Appeal (CA) in the case *of Royal Mencap Society v. Tomlinson-Blake* has just been handed down. The CA overturned the ruling of the Employment Appeal Tribunal (EAT) which found that carers working sleep-in shifts were entitled to the National Minimum Wage (NMW) for every hour of their shift. It didn't matter if they were awake and carrying out relevant duties or sleeping. It was because they were required to be at their place of work overnight.

In overturning this decision, the CA has finally found that sleep-in workers are only entitled to the NMW when they are awake and "actually working". This now makes it clear that such workers are not entitled to the NMW when they are asleep as they are then only "available for work".

Therefore, only time spent awake and "actually working" should be included in the calculation of NMW payment, even if a worker by arrangement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

This approach is limited to the facts of sleep-in workers who are contractually obliged to spend the night at or near their workplace. It is on the expectation that they will sleep for all or most of the period but may be woken if required to undertake some specific work task.

Employers: This decision has been welcomed by employers, particularly in the care sector who now don't need to make significant back payments.

Contact us: We can help advise on Working Time Regulations and National Minimum Wage.

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

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