EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

September 2019 Update

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

In this month's edition, we report on:

- How long should you keep employee records for?
- Data Protection - Subject Access Requests
- Whisteblowing - is it OK if an employee believes it is in the public interest?

How long should you keep employee records for?

While recruiting there is a lot of data that comes your way, such as CVs, interview notes and emails. Ideally keep this information for at least 6 months, which is the period of time a discrimination claim can be brought.

For other employee data, such as personal records, performance appraisals, employment contracts, etc. we suggest if you can try to keep them for up to 6 years after they have left. This is because of potential tribunals for the 3-month risk period during which terminated employees can bring a claim, but it could be used for defending a county court or high court claim, which can occur many years down the line.

HMRC can also ask questions regarding former employees up to 7 years after they have left.

Under the GDPR, the reason for processing would be legal obligation or legitimate interest to justify the length of time you need to keep this data.

Employers: you need to consider both your legal and business requirements to decide how long to store data.

Contact us: we can help with data protection

Data Protection - Subject Access Requests

The Information Commissioner's Office (ICO) has updated its guidance on timings to respond to data subject access requests (by individuals).
These are often shortened to SAR's.
When calculating the one-month period to respond as a business, the day of receipt is day one rather than the day after receipt.

Businesses that reflect the previous position in their policies on handling SAR requests should update these so that it is clear when the one month time frame starts.

If your business receives a subject access request, you may ask them to be more specific with the request and/or ask for more clarification to try and narrow it down, such as defining dates.
If the request is complicated, you can make a charge and ask for more time to deal with it.

Employers: make sure your managers do not write personal opinions about staff in emails

Contact us: for guidance on data subject access requests

Whisteblowing - is it OK if an employee believes it is in the public interest?

Yes, held the EAT in *Okwu v Rise Community Action*.

Rise was a small charity, giving support to individuals affected by domestic violence.
It employed Miss Okwu as a domestic violence specialist worker. Having raised a number of issues regarding her performance, Rise extended her probation period by three months.

She then wrote to Rise stating they were acting in breach of Data Protection legislation as they had not provided her with her own mobile phone with secure storage.
She said this was necessary when she was dealing with sensitive and confidential personal information.

Her employment was then terminated on performance grounds. She claimed she had been unfairly dismissed as she had made protected disclosures (blown the whistle).

The Employment Tribunal (ET) held that the points raised by Miss Okwu were not in the public interest (needed for whistelowing) but were about her own contractual position.
Her claim was dismissed.

On appeal, the Employment Appeal Tribunal (EAT) found the tribunal had failed to ask whether Miss Okwu had a reasonable belief that her disclosure (potential breaches of the Data Protection Act) was in the public interest.
Given the sensitive information involved, the EAT said it was hard to see how it could not have been.

Employers: assess any whistleblowing issue an employee raises carefully

Contact us: we can assist with whisteblowing issues

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

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