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## January 2021 Update

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

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In this month's edition, we report on:

- Are your Contracts of Employment and Policies compliant and effective?
  - Staff Reorganisation and Redundancies
  - Will workplace testing become mandatory?
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### **Are your Contracts of Employment and Policies compliant and effective?**

As we kick off the New Year, it's a good time to review your Contracts of Employment, Policies and Data Protection compliance and make sure they are up to date and effective for your business. We can help you to ensure that your contracts and policies are legally compliant and effective in protecting your business as well as managing employees going forwards.

Whilst we all tend to think of a contract as a paper document, it can also be based on verbal agreements, which are called implied terms (being the duty of trust between employer and employee). And as employment law is regularly updated with new regulations, a regular review of an employment contract can help protect your rights and entitlements as an employer, as well as those of your employees. Of course, don't forget that terms of employment under a contract should be varied if both you and your employee agree to a variation, although sometimes businesses can force through a change.

## Fit for purpose

In the last 12 months, there have been regulatory and employment law developments, so it's worth checking that when it comes to your employees, your contracts are still in good shape and reflect the working arrangements. Here are some issues and areas that might necessitate a review.

- From April 2020, all new employees and workers have the right to receive either a Contract of Employment or a statement of written particulars on or before their first day of employment. Before this an employer had 8 weeks to do this.
- If your organisation has had a structural reorganisation, merged with another company, sold specific divisions, relocated the workforce or you have had to make redundancies terms and conditions may have changed.
- If you have experienced any disputes around current employment contracts, make sure that you double check that contracts are accurate when it comes to salary/pay, holiday, annual leave entitlement and pay, equal pay or flexible working requests.

It's not just your employment contracts...

As well as reviewing your contracts, you might want to check a few other important documents and policies. We encourage you to:

1. Ensure your Company Handbook is up to date.
2. If you don't have a Company Handbook, make sure that important policies, including Internet, Email, Social Media, Computer and Privacy are accurate, up to date and in place.
3. Check that your Company's General Data Protection Regulations (GDPR) compliance is still effective.

**Employers:** Ensuring your contracts and policies are up to date safeguards against future misunderstandings or disputes.

**Contact us:** We can review your documents and policies

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## Staff Reorganisation and Redundancies

Of those planning to make redundancies, more than a quarter said they would be telling staff via video calls or over the phone.

Only a third intended to tell people in person.

These figures are not surprising as many businesses had been struggling over the past few months. However, it is essential that businesses know the law and procedures involved before embarking on this process.

Redundancies should be a last resort and employers must use a fair and balanced selection process and conduct consultation proceedings with all employees affected with as much warning as possible.

Given the significant number of redundancies expected over the coming months, it is very important employers and HR plan these in the most fair and open way possible.

Companies may need to build extra time into the consultation process to allow for any logistical issues that arise from having to tell people remotely rather than face to face. Don't forget employees still had the right to be accompanied at these meetings. Every employer should approach a redundancy process with compassion and treat all employees with dignity, respect and kindness.

Make sure that the consultations are meaningful, and as such employers should factor in the difficulties that conducting these processes over the phone or via video calls could present. Sometimes a message that can be delivered clearly face to face can get lost over electronic communication.

Consultation with individual employees was fundamental to the fairness of any dismissal for redundancy and collective consultation is required in any situation involving 20 or more redundancies. The fact that 24 per cent of employers are unaware of this law is a concern.

**Employers:** make sure you follow a fair and transparent procedure at all times

**Contact us:** We can assist with redundancy support and guidance

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**Will workplace testing become mandatory?**

It has been reported that the UK government may begin to urge companies to have regular workplace Covid-19 testing.

With further lockdown announcements there may be some employees who are finding it very hard to work at home and are finding their wellbeing affected with constant home working.

Of course, those employees unable to do their job at home for whatever reason should attend the office. Workplaces need to ensure that have a Covid-19 Risk Assessment in place to ensure that it is safe to attend the workplace, particularly with concerns of a new variant of the virus.

Many employers are considering workplace testing for those employees that need to be in the workplace.

#### **What kits are available and how much are they?**

Current testing methods range in price, with the choice depending entirely of course on a company's budget. The range of costs for testing starts from free, especially trial period offers on apps, to £400 per person.

#### **What if an employee refuses?**

While employers have a responsibility under the Health and Safety at Work Act 1974 to keep all employees safe, even if the Government recommends it an employer cannot insist an employee takes a test.

If an employee is not showing symptoms it may not be a reasonable request to expect them to get a test frequently or to seek to discipline them if they refuse. Instead, it is advisable to consider any mitigating factors behind their refusal, for example, the employee could have a disability.

#### **How often should employees be tested?**

It is important to recognise that testing is a one-off and, as people come into contact with others, for instance socially or shopping, then further, ongoing testing would be needed. Of course, the longer you spend with an infected person, the higher the likelihood of transmission becomes and different workplaces pose different risk levels.

In the workplace you probably spend more time with colleagues than anyone, other than your family, and so a routine testing approach may be recommended in certain industries but is not guaranteed.

In certain industries routine testing is being carried out particularly with the potential 10 or 14-day incubation period. Of course, there are clear cost implications for employers as much as logistical considerations, alongside how you 'police' any testing policy introduced.

**What are the GDPR implications of testing?**

It is important to remember that testing involves the taking and storing of employee personal health data, is classed as highly sensitive 'special category' personal data under the GDPR.

Employers need to ensure their processing of this data is lawful.

Companies will need to make sure they do not collect more data than is necessary, retain the confidentiality of who has been tested and avoid naming positive tests to colleagues as much as is possible.

**Employers:** We can assist with Covid-19 Risk Assessments and advice

**Contact us:** If your business is needing Covid HR support

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

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**Silverstone**  
Business Forum

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