



Employment Law update October 2016

Minimum Wage Update

Reminder of the increase to National Minimum Wage rates effective from 1 October 2016 were as follows.

- The rate for workers aged 25 and over (the National Living Wage) will remain at its initial rate of £7.20 per hour.
- The rate for 21–25 year old will increase from £6.70 to £6.95 per hour.
- The rate for 18–20 year olds will increase from £5.30 to £5.55 per hour.
- The rate for 16–17 year olds will increase from £3.87 to £4.00 per hour.
- The apprentice rate will increase from £3.30 to £3.40 per hour.

Home Working Guidelines

More people are working from home than ever before but while research has in the past suggested that people who work from home are more productive than office-based workers, a recent study shows that the benefits of full-time home working may disappear over time.

Researchers found that as home working becomes the norm some managers may feel that employees are taking advantage of being allowed to work from home.

However many employers want flexible working to succeed. We offer some tips to help make the arrangement beneficial for both parties:

- Make sure that employees working from home have suitable and reliable equipment, and decide who pays for what in advance of the arrangement starting
- Give home workers suitable access to the organisation's information systems, with appropriate security settings to ensure access is controlled
- Consider security and data protection issues, and implement clear rules to deal with how confidential documents should be transported and destroyed. This may involve an initial investment in resources and facilities but is likely to save time and reduce risks in the long term
- Pay attention to health and safety issues. Many employers carry out routine assessments in relation to office equipment, for example, but do not do the same for staff who use their own equipment and furniture at home



- Remember insurance. It is important to decide whether the equipment used for home working will be covered by the employer's insurance policy or one taken out by the employee
- Ensure that staff working remotely or flexibly are adequately supported, supervised and monitored, and that they remain part of the team in all respects. Communication is crucial, so the arrangements and timings of meetings and even of social events should be considered on an on-going basis
- Remember that part-time workers are protected from being treated less favourably than full-time workers, and that there is no qualifying period for bringing a claim for less favourable treatment. All managers should receive training to help them avoid inadvertently treating part-time workers less favourably than their full-time colleagues

If there are concerns about how home working, job sharing or other forms of flexible working will operate in practice, try it for a trial period before making the arrangement permanent, and contact us to discuss the suggested arrangement.

QUESTION AND ANSWER CORNER

Q: We are going through a recruitment process at present and have two great candidates for the final stage of the process. However, one has a tattoo and our Managing Director sees this as a 'no no' and does not want to offer the role on this basis alone – the candidate meets all our essential criteria for the role. Can we justify this decision?

A: Under UK law, employers are currently permitted to refuse to hire someone because they have a tattoo, can ask employees to cover up any visible tattoos while at work, and dismiss an employee for getting a tattoo.

The Metropolitan Police, for example, bans tattoos on the face, neck and hands, as well as any that are "*discriminatory, violent or intimidating.*"

However, there are exceptions. *In cases where the tattoos may have religious significance employees could find they have a case for being discriminated against by reason of their*

Q: When would you rely on some other substantial reason (SOSR) as a reason for dismissal?

A: Dismissal for SOSR is a potentially fair reason for dismissal. It is widely seen as an important residual or "catch-all" category of dismissal, intended as a safety net — enabling employers to



sweep up reasons for dismissal that do not fall conveniently within other categories. The label has been held to apply to dismissal in a variety of situations, including:

- dismissals arising out of re-organisations (usually changes to terms and conditions), which fall short of constituting a redundancy
- dismissals at the behest of third parties and to situations where an employer takes action to protect its legitimate business interest
- dismissal of temporary employees who are replacing employees medically suspended or pregnant — individuals should always be warned of the temporary nature of the post
- TUPE dismissals for a genuine economic, technical or organisational reason entailing changes in the workforce.

It is regarded as a useful category of dismissal for senior employees who are concerned whose leadership failings do not fall neatly into either the “conduct” or “capability” boxes. It has also been a useful category for dealing with particularly troublesome employees who are unable to get along with their colleagues.

As always, the employer must follow a fair procedure in dismissing the employee under the SOSR label.

If you have a particular question that you would like answered email training@scottishwholesale.co.uk or call 0800 9995 121 and we will publish next month – all names will be removed to ensure confidentiality.