



Employment Law update February 2018

Key Dates So Far for HR and Employment Law in 2018

Below we detail the issues coming up:

1st April – Minimum Wage

The annual minimum wage increases come into effect. Remember to check if you have staff who are affected and also remember to put any birthdays into the calendar to ensure that you capture staff who may qualify during the year, into the next band.

5th April - Gender Pay Reporting

Gender pay reports must be available to the public for organisations who have 250 or more staff. The report must be published on the business' website and uploaded to the Government's web page too.

6th April – Statutory Payments

Other statutory payments will increase. The Lower Earnings Limit will rise to £116 per week and eligible payments such as statutory maternity, paternity adoption and shared parental pay will rise to £145.18.

6th April – Auto Enrolment

Auto-enrolment minimum contributions increase to a total of 5% (2% employer and 3% employee).

25th May – GDPR

The EU General Data Protection Regulation (GDPR) will become mandatory. The Regulation will apply to the UK post-Brexit as the GDPR has been incorporated into the Data Protection Bill. It seeks to force organisations to take accountability for data privacy and security.

Are managers adequately equipped to deal with absence?

In a recent Employment Appeal Tribunal (EAT) decision, an employer dismissed their employee, stating that they were reorganising his duties and were planning to outsource the majority of his duties.

With an average business cost of £522 per employee per year, according to the Chartered Institute of Personnel and Development (CIPD), the business case for tackling absence at work is clear. Policies that help managers understand how to deal with employees who are absent, guide them through the process of establishing when they will return and dealing with return to work meetings



are essential. Although sickness absence policies that address the return-to-work process are not a legal obligation, they can help establish expectations, roles and responsibilities.

The responsibilities of both managers and employees should be clearly set out, including processes for seeking medical advice when relevant. Absence policies should also outline the circumstances under which an employer may consider dismissing an employee who is on long-term sick leave, along with how cases that relate to disability are managed.

According to research conducted in 2017, a third of workers who had a four week or longer absence in the past five years said they had failed to receive regular communication or support from their employers while off work.

Phased return to work can also help returners cope better with their job demands as well as considering short-term redeployment.

In cases where there's been a significant change to an employee's ability to conduct their role due to illness, injury or disability, there's a legal requirement under the Equality Act 2010 to review workplace risk assessments and, if necessary, amend them to identify new hazards.

Having sound processes in place and training managers to communicate regularly with absent workers will reduce the extent of absence in the workplace which will inevitably reduce its cost.

Government announces measures to prevent sexual harassment at work

The Government has called on organisations and individuals in the UK to submit evidence on sexual harassment against women at work, as it launched a full inquiry to track its extent and determine how to improve existing laws.

Experts have proposed extending time limits for sexual harassment employment tribunal claims, reinstating employer tribunal questionnaires, reducing legal costs and bolstering sanctions for non-compliance with harassment laws. The inquiry will also examine the effectiveness of current legal routes to redress for female workers who suffer sexual harassment, including improved access to tribunals and options for remedies.

In measures designed to safeguard against sexual harassment, the introduction of mandatory workplace risk assessments and line manager training to change work cultures and encourage the reporting of harassment, alongside third-party liability for employers, were all suggested. The public can submit their views on women's experience of sexual harassment at work and proposals for effective government action for one month until Tuesday 13 March.



Currently, employers are not liable for third-party harassment of employees – after the government repealed in 2013 a legal provision to that effect in the Equality Act 2010. As part of addressing the legal action around sexual harassment, the committee will also scrutinise the pros and cons of using non-disclosure agreements (NDAs) in sexual harassment cases.

QUESTION AND ANSWER CORNER

Q: We are in the process of completing a tender document and have been asked if we are “a relevant commercial organisation as defined by Section 54 (transparency in supply chains etc) of the modern slavery ACT 2?

A. First of all, some background: Commercial organisations with a total turnover of at least £36 million are required to publish a slavery and human trafficking statement under section 54 of the Modern Slavery Act 2015 (“the 2015 Act”) for each financial year if it supplies goods and services. The statement must show the steps the organisation has taken during that year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business (or a statement that the organisation has taken no such steps). The statement must be published on the organisation’s website with a link to the statement in a prominent place on that website’s homepage (an organisation that does not have a website must provide a copy of the statement on request within 30 days).

This requirement came into force on 29 October 2015. So if your turnover is less than £36 million, you may not require to have your own policy and statement but your suppliers or future clients have to ensure that their supply / purchase chain is “clean” if they are large enough that they meet the regulations.

* seek advice for appropriate wording if required.

Q: We have a pregnant member of staff who has to drive a company car for work purposes. Are there any issues we need to consider when assessing the risks associated with pregnancy and driving?

A. Driving during pregnancy is absolutely fine, as long as the expectant mother has a healthy pregnancy. The two main issues are the potential for fatigue and the ability of the driver to comfortably use the vehicle as the pregnancy progresses. Generally, mental and physical fatigue increases during pregnancy, and long working hours can have a significant effect on the health of expectant mothers. It should also be noted that driving while fatigued can increase the risks of road traffic accidents occurring.

The following control measures may be considered:



- Avoid long distance driving if possible. If long journeys cannot be avoided consider sharing the task of driving with another member of staff and/or scheduling in regular rest and comfort breaks.
- Ensure that the driver is well rested and feeling healthy
- Consider the time of day driving will need to be undertaken such as rush hour or unsociable hours and avoid where possible.
- Take into account any medications that are being used

Make sure that a risk assessment is undertaken at regular stages throughout the pregnancy to ensure that any risks are flagged and mitigated.

Q: Does a rejected job applicant have the right to demand access to his or her interview notes?

A. Under the subject access provisions of the Data Protection Act 1998, job applicants will, in most cases, be entitled upon written request to access all information recorded about them personally, whether held in a manual file or on computer. This will include access to any interview notes. Best practice is to retain the official interview record with a written note of the reason(s) why the person was not the most suitable candidate for the job in question and to destroy any individual handwritten notes.

Such records should normally not be retained for more than six months or so.

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.