



Employment Law update March 2017

Minimum Wage Update

The draft National Minimum Wage (Amendment) Regulations 2017 have been published and will come into force on 1 April 2017.

They raise the national living wage rates to the following:

- £7.50 per hour - 25 yrs old and over
- £7.05 per hour - 21-24 yrs old
- £5.60 per hour - 18-20 yrs old
- £4.05 per hour - 16-17 yrs old
- £3.50 for apprentices under 19 or 19 or over who are in the first year of apprenticeship

Capability Disciplinary

Dealing with poor performance can be difficult and time consuming. Any dismissal as a result of poor performance can be rendered unfair if the employer goes straight in and dismisses the employee on the grounds of capability without properly managing the issue.

A fair procedure is essential if a tribunal is to find the dismissal to be fair. The following steps are essential:

1. As a first step, invite the employee to a confidential chat to ascertain the reasons for the poor performance.

Use a performance improvement plan to work through the issues with the employee, setting out standards of performance and timelines for improvement. It should also detail what support is available to help the employee improve.

2. If there is no improvement in performance, instigate the organisation's disciplinary procedure – this would be a disciplinary on the grounds of capability.

3. Continue to provide guidance, supervision and a specific period of time for the necessary improvement and warn the employee of the consequences of failing to improve- ie disciplinary warnings, leading to dismissal.

4. Confirm the discussions and requirements in writing — a casual chat in the corridor will not be good enough; there must be a formal documented meeting each time.

5. Review the employee's performance after the stipulated period. This is imperative as the employer has a responsibility to follow up the agreed standards and provide feedback on achievements.



6. If the employee has still not met the required standard, consider the possibility of suitable alternative employment in the organisation. This would be regarded as a fair alternative to capability dismissal.

7. Only after these steps should the employer consider dismissal. At the final meeting (which would only occur after initial disciplinary warnings had been issued) the employee should have the opportunity to state his or her side of the issue and would have the right of appeal against the decision to dismiss.

The procedure should always follow the Acas Code of Practice on Disciplinary and Grievance Procedures. Failure to do so may lead to uplift in any compensation awarded to the employee by the employment tribunal.

QUESTION AND ANSWER CORNER

Q: *An employee has phoned in to say that she has had to take time off because of an unexpected illness of her husband. She expects to be away for up to three days. What is the legal position in terms of time off for this type of absence?*

A: An employee is entitled to take *reasonable* time off to deal with unexpected problems or emergencies involving *dependants* — that is, family members or others who depend on the employee.

Therefore, a dependant could be a spouse, partner, child, parent, or someone who depends on an employee for care, for example, an elderly neighbour.

The leave can be taken, for example:

- to deal with a breakdown in childcare
- to put longer-term care in place for children or elderly relatives
- if a dependant falls ill or is taken into hospital
- to arrange or attend a funeral.

This time off is unpaid unless an employer is willing to give paid time off under the terms and conditions of employment.

The right is to a *reasonable* amount of time off. Again, *reasonable* is not defined further in the statute — it will normally mean a day or two, but this will depend on individual circumstances.



Q: *We made an offer of employment to someone but they have failed to turn up on their first day of work. What should we do?*

A: Try to contact the employee to discover why they have not turned up for work — there may be a good reason.

If there is a contract you will need to give notice to terminate it. However, if the absence is unauthorised then it is unlikely you will need to pay the notice period — except if the employee is sick.

On the evidence available, you are not in any danger of a claim for unfair dismissal as the individual has not a service qualification of two years in your employment necessary to bring a claim to the tribunal. You should be careful, however, if your investigation discovers that the person suffers from a mental health condition or a disability. Once you know of this you are under a duty of reasonable adjustment. Failure to do this may lay you open to a claim of unlawful discrimination.

Always keep a record of your communication with the individual and your attempts at contacting them.

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.