121 HR SOLUTIONS LTD
*Where People Make the Difference*

BULLETIN
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# Vehicle Tracking and the Law

**If your company uses vehicle tracking devices there are a number of rules and regulations that apply. It is important to understand the underlying vehicle tracking laws and what their implications are. As an employer, you need to know your obligations towards your employees and your rights in tracking data. Failing to comply can lead to fines and convictions.**

A GPS tracker installed in the vehicle collects data on time, date, speed and locations. Timely analysis of this data can provide employers with daily reports of performance. This allows them to make faster and more informed decisions. Most of these benefits are drawn from the fact that employers can track their employees. This can be considered as 'spying' or 'infringement of privacy' if not done properly, so to protect employees from their employers and any misuse of personal data, there are some established Vehicle Tracking Laws.

It is completely legal for a company to track their own business vehicles. However, the collected data must only be used for the management purposes of the company. Tracking devices are not in place to track employees at their workplace – they are there to track vehicle movement. If the data gathered is used for observing employee behaviour, the company is in breach with the vehicle tracking law and risks fines and penalties.

Sometimes business vehicles are used for personal use by employees. An employer may install a GPS tracking device in business vehicles that are used for private purposes. However, when the employee is contractually entitled to use the vehicle for personal use outside of working hours, the GPS tracker must be turned off. Privacy tracking can be avoided by use of a "privacy button". This button allows the employee to turn off the data collection and ensure that they are not being monitored outside of their working hours – but ONLY if the employee is contractually entitled to use the vehicle for private mileage away from work. If this is not the case then the tracker can be left enabled throughout.

Covert tracking means hiding a tracking device in a vehicle. A reason for hiding a device might be to prevent theft. This is allowed only with the driver's consent and knowledge of what kind of data is being collected. Employers may not insert a tracking device in a vehicle without the employee's knowledge of it.

Always communicate thoroughly with employees before making any decision or changes regarding the vehicle tracking device. To avoid any confusion and mistakes, make sure that employees know and agree to where the device is and what, when and how it tracks.

There are multiple benefits that the data extraction from GPS trackers can provide such as:

- Real time tracking gives opportunities for faster assistance if employees are in need.
- Location data safeguards against theft, as the vehicle location is known. This often leads to discounts in theft insurance of up to 30%
- Employees are more aware of their driving, which can reduce accounts of speeding by 60%
- Overall employee efficiency can improve by 10% to 20%

# Spotlight on 121 Employee Engagement Surveys

**Aside from a Partnership agreement with us we provide many other additional services to our clients. Below, we "spotlight" Employee Engagement**

An "engaged employee" is defined as one who is fully absorbed by and enthusiastic about their work and so takes positive action to further the organisation's reputation and interests.

Have you ever wondered how engaged your workforce is – or are you having any recurring employee issues in your business?

Do you want to grow your business and want to make sure you bring your team with you?

Have you recently undergone some change and want to ascertain how your employees feel now?

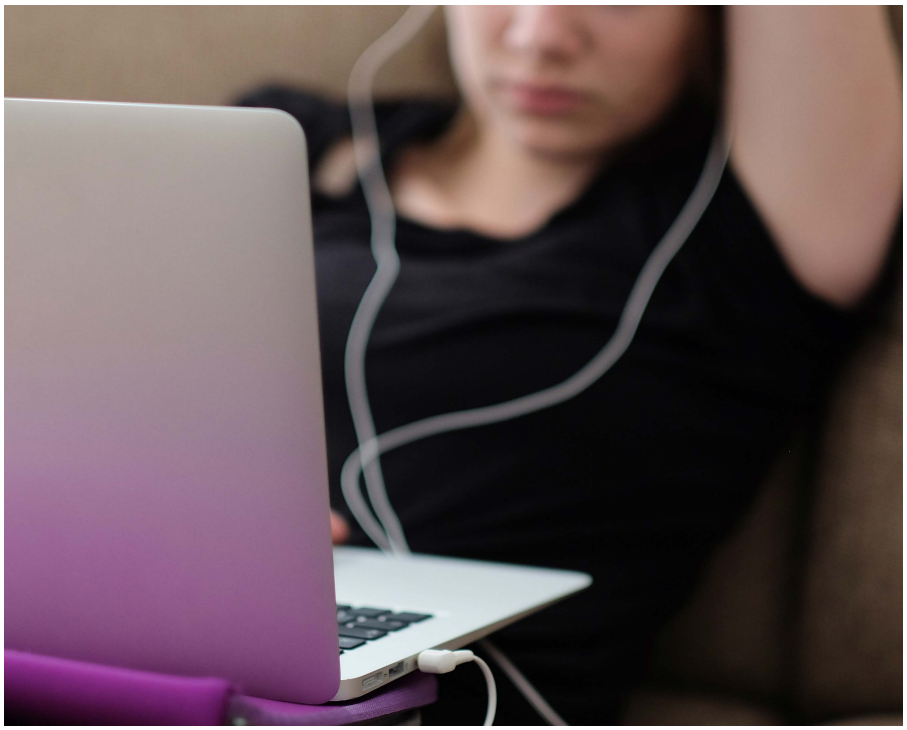
Do you really understand which issues your employees feel most strongly about?

We have carried out many engagement surveys for our clients – ranging from one of our largest city centre clients in the IT sector to one of our smallest family run farm shop clients. Each survey is designed for your business and we interview all your employees- this is done via online questionnaires and face to face or telephone interviews.

We analyse the data and provide you with a comprehensive report containing our findings and recommendations for you to action.

Contact us at **enquiries@121hrsolutions.co.uk** for more details.

# Employers simply not ready for GDPR



A new report has warned that 60% of companies are unprepared for the EU's General Data Protection Regulation with less than three months until their implementation. Under the legislation, which will apply to UK organisations from 25 May 2018 companies will be subject to new rules around the collection and processing of individuals' data, and could face fines of up to £17m, or 4% of their annual turnover, for failing to comply.

Despite this, a new report has shown that both UK and EU businesses have been slow to get their houses in order ahead of the introduction of the new rules. Three in five organisations said they were not yet 'GDPR ready', while a quarter were deemed 'at risk', suggesting that companies could face significant fines.

A reported lack of preparation for the GDPR could be the result of smaller businesses. According to the report, companies could be forced to spend eight hours a day, or 172 hours a month, on data searches after the implementation of the GDPR, with more than one in three UK-based directors saying they were concerned about their ability to be compliant. More than one in 10 UK companies said they were not confident they knew where their data was housed, while 12% reported that they had not accounted for all databases.

Bevitt advised HR professionals to take initial steps to ensure any UK and EU-based employees were aware of their rights under the new legislation, and that employment contracts were up to speed with the regulation.

The ICO has issued GDPR guidance, so may enforce more collaborative actions to help a business learn about the changes rather than punishing organisations straight away – however, they will possess enforcing actions so, if there is a breach or data is not being processed as it should be, those organisations that have ignored it altogether could face consequences.

**121 is still running GDPR workshops throughout April and May so if you feel you would benefit from attending a short, informative workshop then contact us on 0800 9995 121 today!**

# Gender reassignment discrimination results in a £47k payout

A transgender Primark employee told by her employer she had a "man's voice" and "smelled like a men's toilet" was subjected to gender reassignment discrimination, a tribunal has ruled. In a judgment from December 2017, published on 7 February 2018, the judge allowed the claim for harassment, finding that Primark had conducted "very severe" injury to her feelings and that she was "bullied out of a job".

Gender reassignment is a protected characteristic under the Equality Act 2010. The tribunal found that Primark did not properly deal with the discrimination or harassment the woman was subjected to on several occasions.

One of her supervisors called her "Alexander/Alexandra" in front of customers and another colleague. The tribunal recommended that Primark adopt a written policy regarding how to deal with transgender staff or those who wish to undergo gender reassignment, and amend materials it uses for employees' equality training to include references to transgender discrimination.

The Judge said that she had been constructively dismissed and that her treatment violated her dignity and created an "intimidating, hostile, degrading, humiliating or offensive" environment in which she was subjected to gender reassignment discrimination.

The respondents subjected the claimant to direct gender reassignment discrimination by failing to properly investigate the matter and deal with it appropriately. She was awarded £47,433.03, including a 25% uplift from Acas, past and future loss of earnings and loss of pension of £19,872.86, injury to feelings of £25,000, interest on past loss of earnings of £472.50 and interest on injury to feelings of £2,087.67.

# What constitutes payment?

When businesses are fined for failing to pay the National Minimum wage, the most common reasons cited for underpaying staff is failing to pay workers when they were travelling between jobs, not paying overtime and deducting money from staff wages for uniforms.

There are four categories that can be considered as pay for the purposes of the NMW:

- the gross amount of basic salary;
- bonus, commission and performance incentive payments;
- piecework payments; and
- accommodation allowance.

The accommodation allowance is the one non-cash benefit that can be taken into account for the purposes of the NMW. However, even this allowance has to be considered with caution as, regardless of the notional value of the accommodation provided, the allowance that can be added to the worker's basic salary is not particularly high. From April 2018, if the worker is provided with free accommodation, the allowance will be a daily rate of £7 or a weekly rate of £49.

Overtime is also an area that can cause organisations problems. The premium paid for overtime work cannot be taken into account for NMW purposes, so if a worker was normally paid £6.50 per hour but is paid £8.50 for overtime, only the basic rate of £6.50 will count. Employers therefore cannot use overtime payments to top up normal hourly rates that fall below the NMW. Another area that can cause issues is in relation to certain deductions that an employer makes from a worker's salary. Deductions that are connected to employment, such as costs of tools or uniforms are unlawful if they reduce the overall level of pay below the NMW. For workers on salaried hours, who are paid for a fixed number of hours' work a year and are paid in equal weekly or monthly instalments, the following will be considered working time for NMW purposes:

- actual work;
- standby or on-call time where the worker is required to be available at or near a place of work;
- travelling time on business during normal working hours, although travelling between home and work will not count;


- training during normal working hours either at work or elsewhere; and
- absence when the worker is paid their normal pay; ie holiday and sick leave.

Particular difficulties have arisen recently and are likely to continue to be an issue in relation to whether on-call workers are not only available for work but are actually working. In some cases, the worker may be considered to be working and therefore entitled to the NMW while they are relaxing at home, or even sleeping.

## The difference between bullying and assertive management

Bullying can be described as 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient'. The key point is that one person's bullying may not be another's. Subjectivity comes into play in this area of the law, which makes it a difficult area.

Bullying is most often used in the employment law context as the foundation for a constructive dismissal claim where employees can argue that the term of mutual trust and confidence implied into every employment relationship has been breached. This could entitle the employee to resign with or without notice and bring a constructive dismissal claim. Also, bullying can lead to personal injury claims.

Here are some tips for achieving assertive management that does not constitute bullying:

- Set clear objectives that are regularly reviewed. Addressing performance is part of any manager's job and it can be made easier if employees are aware of what is expected of them.
- Do not get personal. Do not target an individual's personal characteristics as this could lead employers into discrimination territory. Keep it neutral.
- Communication is everything. Two people can communicate the same message and it can sound entirely different. Managers needs to be trained to understand how to communicate effectively.
- Understand workloads and listen to the employee. An employee may have a perfectly acceptable reason for falling beneath required standards temporarily. Listen to the justifications and take them on board.
- Keep it private. The employee will be able to satisfy the Acas definition of bullying in feeling humiliated by any sort of public dressing down.
- Praise. Praise is a motivator much overlooked. Introduce positivity where possible.

# Capability dismissal leads to award of £19,000

**A former airport logistics agent for British Airways who was dismissed after an illness affecting his eyes, has won an unfair dismissal claim at an employment tribunal and been awarded more than £19,000.**

The employees' role included driving duties in the vicinity of aircraft. He was dismissed due to his inability to carry out his role after suffering back, knee and eye injuries. However BA did not give the employee "fair or proper warning" that he may be dismissed, and did not act reasonably in treating incapacity as sufficient reason for his dismissal within the meaning of the Employment Rights Act 1996.
The history of this case follows a pattern that many employers would take – regular meetings, occupational health reviews and medical reports from Doctors and consultants. The issue, however, is that at no point in the communication process between BA and the employee, did BA inform the employee that dismissal might be a possible outcome of the various review meetings and neither did the employer genuinely seek to make adjustments to support the employee's return to another or different role. The Judge in this case said that BA had a "closed mind" and the employee was awarded £19,074.88, composed of a £10,687.50 basic award, compensatory award of £17,510.50, and £400 for his loss of statutory rights.

Employers must fully consider whether an employee can be given adjusted duties or alternative duties as an alternative to dismissal and follow absence procedures carefully and, before any decision to dismiss for capability, check that they have considered all medical evidence, whether any reasonable adjustments can be made to enable the employee to return to the workplace, and whether there are any alternatives before making any decision to dismiss. Dismissal should always be the last resort.

# Readers' Questions & Answers

**Q: I need to schedule a disciplinary meeting for an employee who permanently works night shifts 8pm – 8am. Do I have to schedule this meeting during the night shift or can I schedule it during my normal office hours, ie between 9am – 5pm?**

**A.** You need to act reasonably in scheduling this disciplinary hearing. To insist that an employee attends a meeting outside of their normal working hours may be deemed unreasonable. If you cannot schedule the meeting during the night shift, it is advisable to contact the employee and agree with them that the meeting will have to be scheduled outside of their normal working and that they will be paid for their time spent attending this meeting.

It would be advisable to schedule the meeting either immediately before the start of the shift, eg 7pm, or after the end of the night shift, ie 8.15am, so that the employee is not required to make any additional journeys to work.

Unfortunately, if the employee refuses to agree to attend a meeting outside of normal working hours, then the disciplining officer will need to schedule the meeting for during the night shift hours to avoid an allegation of unreasonable conduct by the employer.

**Q: A member of staff has been off sick for three months but has now been signed as fit to return to work on a "phased return". Whilst we acknowledge we have to make reasonable adjustments and this is something we can accommodate, the employee is demanding a full week's pay when she will only be working three days per week. Do we have to pay her a full week's pay for three days worked? She is currently in receipt of SSP.**

**A.** Unless the employee's contract states that this is the case or custom and practice within the company suggests otherwise, you can pay the employee normal pay just for the days worked. As she has not exhausted SSP she would be paid this for the two days she is not working, during which time she will be considered absent from work due to sickness.

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