

What's happening with Employment Law in 2019?

(aside from Brexit!)

Along with the inevitable changes that will be brought by Brexit there are some other employment law implications for 2019...



Post-Brexit immigration rule changes

Regardless of whether a deal on the UK's exit from the EU is agreed, the rules around the employment of EU nationals will change sooner or later. The Government has introduced a scheme under which EU workers already in the UK will be able to apply for "settled status", to be able to live and work in the UK indefinitely. However, employers need to be aware that, going forward, the employment of workers from the EU is likely to be subject to restrictions in the same way as the employment of other foreign nationals, so will need to adjust their recruitment processes.

Executive pay reporting

Rules coming into force on 1 January 2019 mean that UK quoted companies with more than 250 employees will have to report on ratios between the CEO and employees' pay and benefits. The requirement applies to financial years beginning on or after 1 January 2019 so the first of reporting will start in 2020.

Extend itemised pay statements to workers

From 6 April 2019, the right to an itemised pay statement will extend to workers, not just employees.

Where a member of staff's pay varies according to time worked, the employer will have to include on the itemised pay statement the total number of hours worked for which variable pay is received.

Publish second gender pay gap report

Employers with 250 or more employees on the "snapshot date" (31 March in the public sector and 5 April in the private and voluntary sectors) must report on their percentage gender pay gap annually within 12 months of that date.

This means that the deadlines for the second round of reports are 30 March or 4 April 2019.

Organisations must publish reports on their website and on the GOV.UK website. In the private and voluntary sectors, reports must also be accompanied by a written statement confirming their accuracy and be signed by a senior person as prescribed by the legislation.

National minimum wage rate increases

The national living wage is due to increase to £8.21 per hour from 1 April 2019.

Other national minimum wage rates are also due to increase, with hourly rates rising to £7.70 for workers aged at least 21 but under 25, to £6.15 for workers aged at least 18 but under 21 and to £4.35 for workers aged under 18 who are no longer of compulsory school age.

The hourly apprentice rate will increase to £3.90 and the daily accommodation offset will increase to £7.55.

The weekly amount for statutory family pay rates is expected to increase to £148.68 for 2019/20. This rate will apply to maternity pay, adoption pay, paternity pay, shared parental pay and maternity allowance.

The increase normally occurs on the first Sunday in April, which in 2019 is 7 April.

The weekly rate for statutory sick pay is expected to increase to £94.25 from 6 April 2019.

Continued overleaf...

Is the Good Work Plan likely to make an impact?

The Government has detailed proposals for its “Good Work Plan” and is undertaking a period of consultation on the proposals. It claims that this is the biggest reform of employment law in 20 years but there is as yet, no firm detail around the content of the proposals which are as follows:

- Continuity of employment: Currently service can be “broken” if an employee leaves an organisation for one week but it is proposed to extend this to four weeks.

- The right to a written statement of terms and conditions to workers (as well as employees), and requiring the employer to provide it on the first day of work. Currently a written statement must be provided within the first eight weeks of employment.
- Legislation to improve employment status regulations so they are the same for employment and tax purposes, to avoid employers classifying employees as self-employed.
- Banning employer deductions from staff tips

- Increasing the employment tribunal penalty for employer’s aggravating conduct from £5,000 to £20,000

It was expected that legislation would be introduced as a means of tackling abuse of zero hour contracts but the only proposal in this regard is that the Government is proposing a right to request a fixed working pattern for those who do not have one, after 26 weeks.

What is missing from the Good Work Plan are details of how these proposals will be introduced and enforced.

How does GDPR affect home workers?

Whether at home or in the office, employees continually access data. This always carries a risk. However, remote workers may be using public networks to access data and may move their devices into public spaces, increasing the risk of that device being forgotten on public transport or left somewhere public. When working remotely it can be more difficult to track a data breach and to identify how that breach has occurred.

The GDPR increases fines for any data breach, while also giving individuals more rights with

personal data. Many companies have put in place workplace policies that allow employers to track employees’ use of devices and their location. However, employees often use devices to access both work and their personal life and that makes separating work and personal activity difficult. Without that degree of separation, the use of keystroke tracking technology could infringe the employees’ rights under GDPR, as such processing could be deemed as excessive and potentially disproportionate.

Article 32 of the GDPR requires that all organisations use technological and security measures, and while there are no prescriptive methods, there is a list of items that are considered suitable, e.g. encryption of data. Data encryption means that only approved users can access a

data set, meaning that if a laptop were lost, the data would not be accessible without the encryption keys/code. Blocking access to personal email, on the grounds that personal email is unlikely to carry the correct technical and security measures may also be a necessary intervention on work devices, for home workers.



Do your employees “perform their best”?



More than one in four employees are ‘not performing their best’ and are giving less than 100% at work, according to a new report.

Of the more than 2,000 UK people questioned a third said they were ‘not stimulated by what they do’ and almost two in five said their work was ‘not meaningful’.

The report also found the UK lagged behind its European counterparts. On average, just one in five employees across Europe said they were not performing at their best.

For the UK to remain a globally competitive economy, more needs

to be done to address productivity and the skills gap in the workplace. Employers must offer support to strengthen workers’ skills and communicate the value their roles are bringing to their company.

Building new skills is critical for UK workers when it comes to their job satisfaction. Three in five said advanced IT was a key competence for them to remain employable, a third said problem-solving skills would be needed and a third said teamwork was important.

We are running Appraisals Workshops in April – look out for details!

Brexit causes recruitment difficulties

Businesses across all sectors are facing significant and increasing difficulties in recruitment, which Brexit may exacerbate even further, according to the latest figures from the British Chambers of Commerce (BCC).

The organisation's quarterly economic survey, which polled 6,000 companies across the UK, found both hiring and broader development and availability of skills were under pressure amid an economy that began 2019 in a "weak holding pattern".

Manufacturing was a particular pinch point, with 81% of firms in the sector reporting recruitment difficulties, the joint highest level ever recorded in the survey. Uncertainty over the ability to recruit EU nationals into the sector post-Brexit was a particular concern. Applications from the EU fell notably as uncertainty over the state of Brexit negotiations grew.

Yet another unfair dismissal following a poor investigation

A hospital security officer was unfairly dismissed after lodging a grievance with his employer, a hospital, which went on to fire him 'in bad faith', a tribunal has ruled. It found that the dismissal was "outside the range of reasonable responses" after the employer failed to properly investigate issues raised in a collective grievance stating that security officers had lost trust in management.

The concerns were passed on to the HR department, who met with the employee. The officers went on to contact their trade union and raised a collective grievance about their treatment, signed by seven individuals. The hospital instructed an independent HR consultant to investigate the grievance. He interviewed managers and some

of the complainants. After initial meetings, all the individuals withdrew from the grievance, with the claimant the last to do so.

The consultant ruled that the grievance had been made in "bad faith", citing provisions in the Grievance and dispute policy and Acceptable behaviour at work policy suggesting that where grievances or complaints were found to have been made maliciously or in bad faith this would be treated as potential gross misconduct.

But the judge found that the consultant "had not investigated the grievance, made findings of fact and determined it had been made maliciously or in bad faith". He had "simply conducted some initial interviews". A disciplinary hearing took place and it was found that the action amounted to gross misconduct.

The Judge said the outcome was "outside the range of what was reasonable in terms of investigation, grounds for belief and procedure" and awarded the employee £10,990 for his unfair dismissal.

The case highlights the need for employers to carry out full investigation and manage disciplinarys appropriately. Attend our disciplinary and grievance workshop in February and learn more about how to manage tricky situations!

Be clear of arrangements to pay bonus

A recent employment tribunal judgment focused on the effective date of the claimant's resignation and interpretation of the bonus clause in the employment contract. The judgment has some useful guidelines on the interpretation of contracts.

The employee in question joined a business under an executive employment agreement which was later updated to state that the employment would continue (unless terminated earlier under the agreement) until ended by 52 weeks' written notice by either party, and that notice by the employee could not expire before 31 December 2016.

The agreement stated that he would receive a bonus advance of £500,000, but this was backed by a repayment clause which expressly stated that if he resigned on or before 31 December 2016 the advance would be repayable in full. The employee resigned; the employer sought to recover the bonus as it believed that the clause had been broken and the employee argued. Essentially, after legal wrangling the appeal court agreed that the employee was expected to repay the bonus in full and relied on the "unambiguous language" in the bonus clause.

This case reminds us of the need to be very clear around bonus payments - in particular when the employer would NOT wish them to be paid out! If you want to ensure that your bonus clauses are equally tight and protect the business then ensure that the following is in place:

- Use clear and concise language. Avoid long-winded sentences which may be ambiguous.
- Decide on the form of bonus you wish to pay – a guaranteed amount and whether it can only be paid in full or in part.
- Decide if the bonus is to be discretionary, or a guaranteed amount. It is possible to have a completely discretionary bonus as long as the rules relating to discretion are explained fully.
- Set out the payment arrangements – will the bonus be paid in one amount or in instalments?
- Decide whether any target has to be met by the employee or the business before payment is met and be clear about it.
- State what happens to the payment if the employee has given notice to end employment or has left the business or is on garden leave.
- Do not exclude women on maternity leave from bonus entitlement.





February/March Training Workshops - **Book Now!**

Managing Disciplinary and Grievance

26th February Dundee
28th February Glasgow

Many managers will find that during some point of their careers, they will be involved in handling a disciplinary or a grievance. There is very specific legislation as to how a disciplinary/

grievance procedure should be carried out, which can be a minefield.

We will guide you in a step-by-step way leaving you with confidence to proceed.

This workshop will cover:

- Recognising and understanding when a situation needs to be managed, using a disciplinary or grievance procedure

- Full guidance and tuition in how to apply the ACAS Code
- Guidance as to how to respond to and manage conflict and internal tension
- Coping strategies for dealing with difficult people and difficult situations
- Support to reduce the effects of disputes in your team

Cost £160 per delegate

Dealing with difficult situations and challenging behaviour in the workplace

12th March Dundee
14th March Glasgow

Many managers will find that during some point in their role as manager, they will be involved in handling a difficult situation which has led to or could lead to conflict - whether it's a dispute over salary, tension between employees, or having to deliver bad

news; unfortunately, conflict at work is inevitable.

This workshop will cover:

- Understanding conflict and its impact on the workplace - and why managers need to intercept conflict and build strong teams.
- Establishing techniques to build effective workplace relationships - looking at personality types and understanding why people behave as they do.
- Building skills and techniques to confidently manage difficult situation- with role play to provide a safe learning environment.

- Understanding what a difficult conversation is and when to have it.
- Understanding body language and rapport and interpreting it during difficult situations.
- Guidance on how to respond to and manage conflict and internal tension - looking at the various techniques and understanding when to use them.
- Coping strategies for dealing with difficult people and difficult situations.
- Support to reduce the effects of disputes in your team and therefore build a more effective team.

Cost £160 + VAT per delegate

Developing Job Descriptions

26th March Dundee
28th March Glasgow

Having clear, concise and accurate job descriptions for each member of your staff will help you match the roles they have, to the strategic goals and objectives of your business.

Effective job descriptions mean that your team always understand what is expected of them, new recruits understand their job from the outset and your managers understand the responsibilities of their staff.

The workshop will cover:

- How to understand the importance of having accurate and up-to-date job descriptions for all employees
- How to understand the link between

clearly defined job descriptions and effective performance management processes

- How to identify key role requirements, turning these into effective job descriptions
- How to use template documentation to develop effective job descriptions within your organisation

Cost £160 + VAT per delegate

To book email us at events@12hrsolutions.co.uk or call **0800 9995 121**
Full details of our training workshops can be found at www.12hrsolutions.co.uk