121 HR SOLUTIONS LTD
Changing the Way Businesses Do HR

BULLETIN
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Employee Injuries at Work

The Health and Safety at Work Act (1974) governs the laws on health and safety management in the workplace. Every business should have a policy for managing health and safety and should detail who has specific responsibilities, the general health and safety policy and what practical arrangements are in place, showing how policy aims will be achieved.

Employers must make 'suitable and sufficient' risk assessments. For businesses with more than five employees, risk assessments must be written down and should record the hazard, how that hazard may harm people and what is already being done to control this hazard.

Despite taking all reasonable measures to ensure a safe working environment, there will always be a risk of an accident in the workplace. If an employee is injured at work, there are a number of things an employer should do:

- Report all accidents. Businesses with more than 10 employees must keep an accident book, in which all accidents, no matter how minor, should be recorded. More severe injuries such as serious burns, occupational diseases, gas incidents and death must be reported in a report under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) within 15 days of the accident.
- Notify the employer's insurance company. It is important to notify the insurance company as soon as an accident occurs. This is so a claims investigator can be appointed to investigate the accident immediately in case it turns out to be much more serious than anticipated and a claim is made against the business.
- Improve health & safety. Revisiting risk assessments will allow employers to prevent similar accidents.

If you have a need for a review of health and safety in your business, 121 can help. Contact us on **enquiries@121hrsoltions.co.uk** for more information.

Suspension From Work

Suspension is where an employee continues to be employed but does not have to attend work or do any work and usually occurs when:

- a serious allegation of misconduct has arisen
- there are medical grounds to suspend
- there is a workplace risk to an employee who is a new or expectant mother

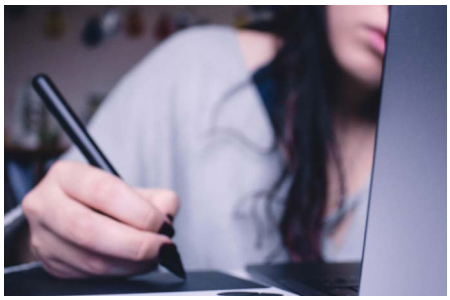
Suspension should not be used as a disciplinary sanction and should not be automatic when dealing with a potential disciplinary matter as normally an employee will be able to continue doing their normal role while the matter is investigated.

Suspension should be considered if there is a serious allegation of misconduct and:

- the working relationships have severely broken down
- there is a risk that the employee might tamper with evidence, influence witnesses and/or sway the investigation into the allegation
- there is a risk to other employees, property or customers
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

Suspension should always be followed up with a letter outlining the reason for the suspension and where possible, confirming the likely length of the suspension. 121 can support the process of suspension – contact us on **0800 9995 121** for assistance.

Discrimination of an Autistic Employee



A senior analyst on the autism spectrum has won a claim for indirect disability discrimination after his employer failed to make reasonable adjustments for his condition. The employment judge said that the employer failed to take reasonable steps to understand the employee's disability and failed to implement two sets of reasonable adjustments, one of which had been recommended by its own in-house occupational health provider!

The employee's manager stated in tribunal that she felt compelled to hold an informal discussion with the new employee about his "disruptive and loud behaviour" on his second day. Things didn't improve and after a further meeting during which the manager warned the employee about his disruptive behaviour she stated that she would hold weekly catch up meetings but these did not happen.

The employee reported that he "felt subject to distraction", and the "noise and smells" at work caused him distress. He felt he was not getting support from his colleagues so he tried to cope alone and said that he was not given sufficient work to keep him "occupied".

The employee went off sick and was diagnosed by his GP with an anxiety disorder. He then underwent an autism assessment and was referred to occupational health on 11 April. He was then diagnosed as autistic and recommendations were made to support his return to the workplace. The report also confirmed that the employee would be regarded as disabled under the Equality Act.

A welfare meeting was held to discuss the employee's ability to return to work and it was followed up with a letter, stating that his absence "fell short" of the employer's attendance requirements and mentioned of the possibility of offering him a lower-grade role.

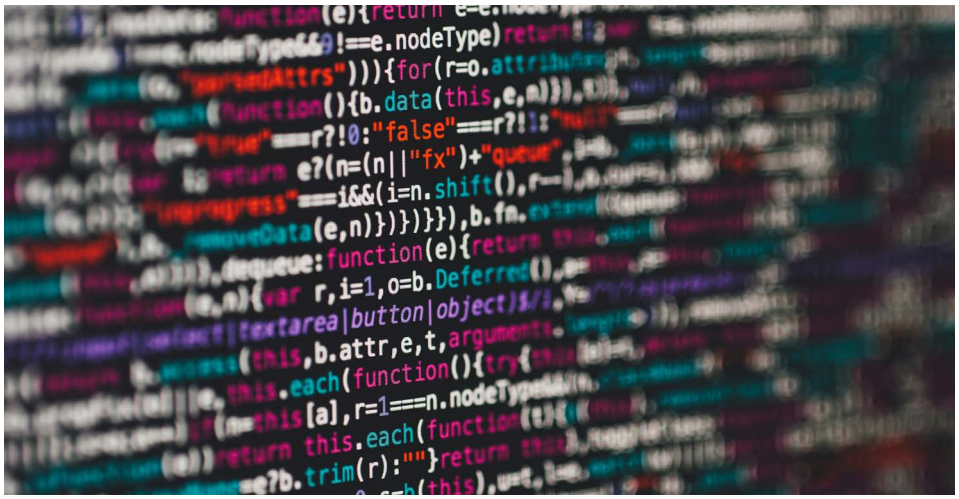
After a difficult return to work in which the employee felt unsupported and ignored in terms of the recommendations that had been made, he brought complaints to the employment tribunal of indirect discrimination on the grounds of his disability and failure to make reasonable adjustments for his autism.

The Judge ruled in favour of the employee saying the employer had failed to implement reasonable adjustments, inappropriately used its capability procedure and used "dismissal as a tool to rid themselves of a disabled employee".

This demonstrates the need to follow professional advice from occupational health, to make reasonable adjustments to support employees with a disability and to ensure that absence is not used in a disciplinary setting when it is directly linked to a disability.

GDPR Crack Down

Businesses have been warned to expect authorities to start cracking down on breaches of the General Data Protection Regulation (GDPR), as the landmark legislation is now a year old.



The Europe-wide data protection rules came into force on 25 May 2018, forcing many employers to rethink how they handle employee data, and massively increasing the potential fines for data breaches. The number of employees trying to using subject data requests as a way to access documents that may help them in an employment dispute continues to rise. The GDPR has heightened awareness of this as a litigation tactic and the removal of fees means there is no reason for employees not to make a request when in the midst of an employment dispute. Employers are having to take requests seriously because of the risk of potentially significant penalties if they do not.

Many employers are nervous about the possibility of vicarious liability in the event an employee breaches data protection law, even if the organisation has complied with all its obligations – as Morrisons experienced when an employee stole data including names, addresses, salaries and bank details of almost 100,000 staff. The supermarket was found liable by the High Court: a ruling that was upheld by the Court of Appeal.

The Information Commissioner's Office (ICO) has issued 127 enforcement notices for an estimated 10,000 data breaches in the UK and 59,000 breaches across the EU 2018 in the last year.

Are Your Managers Equipped to Manage Absence?

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, 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. 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. Businesses put into place effective strategies for dealing with long term absence and we document below some useful tips:

1. Make sure ALL absence is documented – regardless of how busy managers are, absence levels should be maintained and return to work meetings carried out. This is a fundamental in helping to reduce absence and put support measures in place.
2. Make sure that all staff are aware of the absence policy – both in terms of reporting absence and how it is monitored.
3. Train managers so they know how to speak to someone who has a long term condition – particularly when it is mental health related, what is okay and not okay to say and when they may or may not contact that person.
4. Consider phased returns and other support to return to work.

121 offers short in-house training workshops focusing on absence. If you feel that this would benefit your managers, contact us on **0800 9995 121**.

Glasgow City Council Equal Pay Claim

Thousands of current and former Glasgow City Council workers have received offers to settle their outstanding equal pay claims. More than 16,000 workers, employed in previously female-dominated roles such as carers, school cleaners, caterers and education workers – were underpaid by up to £3 an hour compared with men in the same pay grade. They are expected to benefit from a £548 million settlement to be financed over the next 30 years – with women to receive an average of £35,000 each.

A spokesperson for the joint claimant group said: "This should be a moment of pride for Glasgow's equal pay women because it's recognition that they were right to battle as they did and they were right to take on their employer for years of discrimination.

Ultimately, this is the culmination of a decade long battle for equal pay."

The equal pay claims arose due to the implementation of the Workforce Pay and Benefits Review (WPBR) scheme in 2006. The dispute came to a head in October 2018, when over 8,000 workers across the city took strike action in order to force the council to engage in meaningful negotiations, settle the claims, and deliver pay justice for the workforce.

A further settlement offer will be made to the claimants, expected in 2021, following the implementation of a new job evaluation scheme that is currently in the early stages of being implemented.

Failure to make reasonable adjustment results in successful Tribunal claim

An NHS administrator has been awarded £15,039 after her employer unfairly dismissed her for repeated administrative errors she made when she developed cataracts.

The NHS trust who employed her repeatedly set "unrealistic targets" for performance improvements despite her health condition. The Judge at the Tribunal said that although the NHS trust had initially followed a fair capability procedure, it was not reasonable for it to "persist in requiring improvement" once the employee's visual impairment was known "at least not without medical confirmation she could achieve the improvement required".

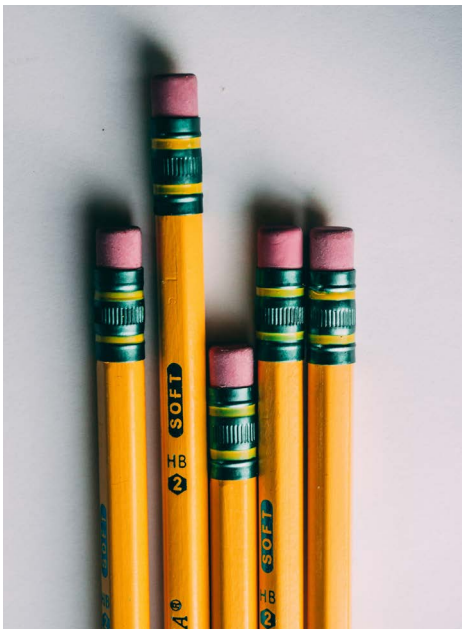
A Personal Improvement Plan (PIP) record noted a number of errors including booking a child into the wrong clinic and sending patients' letters with the wrong venue for their appointments. The records showed that the employee declared that her eyesight had "deteriorated further due to the number of recent delays" and that she was chasing her surgery referral.

The final review meeting resulted in a decision to move past the informal PIP to a formal meeting. She was invited to a formal capability review and the employee presented a report from her ophthalmologist which said he would not have expected her to be able to do computer work. He also confirmed her poor vision had "almost certainly" contributed to her difficulties at work and implored the trust to take this into account.

The employee was informed that some errors could be attributed to cataracts, but that the disciplinary panel had concluded that there was evidence of a prolonged period of management support, adjustments and OH guidance that did not address the errors and their negative impact on patients and the service.

The Judge accepted that the reason for the dismissal was capability, due to the errors made, but said the trust should have adjusted its focus to how "the employee's inability to perform fully while she was visually impaired could be accommodated, rather than to continue to insist upon what was, on the balance of probability, unrealistic improvement." The tribunal ruled that the employee was unfairly dismissed and ordered the trust to pay her £15,039.

Employers are expected to obtain up to date medical evidence when they are aware of a pre-existing condition and use this information to determine what the employee can reasonably be expected to do during any condition that might be impacting on their performance – and judge the performance against this standard. This might mean setting lower targets or providing the employee with additional support.



Modern Slavery – All Businesses are Responsible!

Modern slavery can take many forms including the trafficking of people, forced labour, servitude and slavery. The hospitality sector is particularly susceptible to issues of human trafficking and sexual exploitation – as well as labour exploitation of those working in hotels.

In 2015, the Modern Slavery Act introduced the obligation on certain businesses to publish an annual modern slavery and human trafficking statement. The aim of the statement is to encourage businesses to tackle issues of forced labour and human trafficking within their business and supply chains. Specifically, the need to publish an annual statement applies to those businesses providing goods and services, carrying on business in the UK and with an annual turnover in excess of £36 million.

While to date the government has taken a soft approach to compliance, this is changing. Any organisation that was required to – but did not – publish its latest statement by 31 March 2019 risks being named and shamed by the Home Office following an audit of statements. The Home Office has written to the chief executives of 17,000 organisations which it believes are non-compliant to warn them of this risk!

Organisations which continue to fail to comply and are not put off by the risk of public shaming, should also bear in mind that the Government has launched an independent review into what more can be done to strengthen the effectiveness of the Modern Slavery Act. This includes consideration of how the Act might be amended to impose more robust reporting requirements.