121 HR SOLUTIONS LTD
Changing the Way Businesses Do HR

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# Obligations of a Limited Company Director

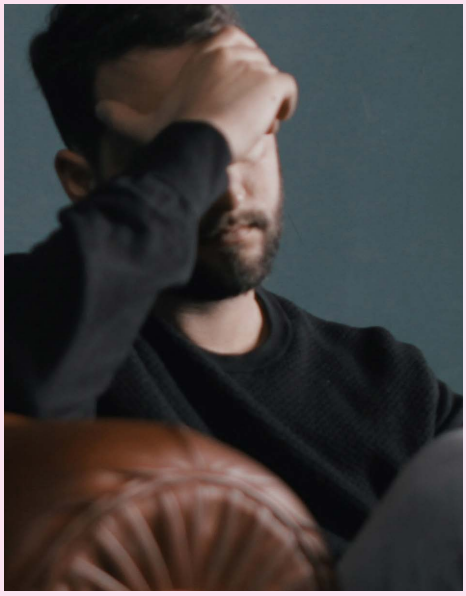
**Limited company directors can be held responsible for their business's wrongdoings. In a recent case, the court ruled that as a general principle, a director will not be personally liable for inducing a breach of contract by their company if they act in good faith and within the scope of their authority. However, if a director does not act in good faith, resulting in the company breaching an employment contract, the director may find him or herself personally liable.**

The claimants were Lithuanian nationals employed by a company at various farms as chicken catchers. Once caught, the live chickens would then be transported for slaughter and processing. The claimants complained that they were employed in an exploitative manner, working long hours and being paid less than the statutory minimum wage. Payments were withheld as a form of punishment, and no payments were made to them for holiday pay or overtime. Deductions were also made from their salary unlawfully for "employment fees" and for rent.

The High Court found that the sole director and shareholder of the company, and the company secretary, who together ran the company, were fully aware that it was unlawful not to pay the chicken catchers the minimum wage, holiday pay or overtime to which they were entitled. They were also aware that it was unlawful to withhold payments from the employees' wages, which amounted to unlawful deductions. The High Court found that the director and the company secretary acted dishonestly and did all these things because they were trying to maximise the profits of the company. As a result of their actions, the reputation of the company was ruined, it lost a gangmasters' licence which it needed to employ the chicken catchers and the company was almost destroyed.

The director and company secretary were in clear breach of their statutory duties to the company. The Companies Act 2006 requires directors to act in good faith to promote the success of the company and in so doing to have regard to the consequences of any decision in the long term, the interests of the company's employees and the reputation of the company. Given that the company was practically ruined by the dishonest and self-serving actions of the director and company secretary, they had not discharged their duty and were therefore personally liable for the breaches of the employees' contracts that they had induced.

# Homophobic Slurs: £17,000 Pay-out



**An Irish restaurant has been ordered to pay £17,000 in compensation to an employee after he was subjected to a barrage of hatred after revealing his sexual preference**.

The case was brought to the Workplace Relations Committee in the Republic of Ireland (Ireland's equivalent of the Employment Tribunal) and gave numerous examples of the treatment. The company's two directors made frequent homophobic comments both in and out of work.

One example was a message stating "Happy pride day you big queer," in a work WhatsApp group. The directors tried to claim that no one meant any harm by the treatment but their actions provided an opportunity for other staff to feel that it was justifiable for them to join in with the mocking and bullying.

As well as the £17,000 compensation, the owners were ordered to conduct staff training aimed at preventing harassment for future employees.

# IR35 legislation is changing – are you ready?


**IR35 legislation states that where an individual provides his or her services to a client via a limited company and the relationship between that individual and the client is otherwise one of employment, then the limited company is liable for tax and social security contributions on earnings for the provision of those services, as though it were the employer of the individual in question.**

Consequently, the limited company must pay employer's national insurance and deduct income tax and employee's NI via the PAYE system on the entirety of the individual's earnings from the provision of the services. Typically, individuals who supply their services in this manner will pay themselves from their company a level of salary, on which employer's national insurance is paid.

However, with significant amounts paid via dividends on which lower tax rates and no national insurance contributions arise, using the limited company structure does result in savings to the individual.

From 2020, it is proposed that the obligation to apply the IR35 regime, and so deduct tax and national insurance from payments to limited companies falling within IR35, will be placed on the client, which is a significant change for business using the services of individuals who trade in this way.

The difficulty HMRC has encountered is that there is no absolute test of when a relationship is one of employment rather than genuine self-employment. Each case turns very much on its own facts. IR35 applies if the hypothetical direct relationship between the individual and the end user is one of employment and not genuine self-employment.

HMRC has indicated that it believes the assessment of self-employed or employed status is straightforward but the number of cases leading to tribunals in recent years dealing with correct employment status – for example Pimlico Plumbers indicate this is very clearly not so.

However, the practical risk for individuals who supply their services through companies is that HMRC will in future require that clients make the assessment, and it may come down to whether or not those clients have the will to risk a challenge from HMRC!

# Changes to Tax Breaks for Employers

HM Revenue & Customs

**Proposed changes to employer tax breaks could mean more than a million firms will be paying more towards their employers' national insurance contributions (NICs). Draft legislation has outlined plans to restrict access to the Employment Allowance to smaller companies. The allowance currently enables all employers to claim £3,000 relief annually for each payroll they run. However, from 6 April 2020, the allowance will be available only to firms whose tax bill for secondary Class 1 NICs falls below £100,000.**

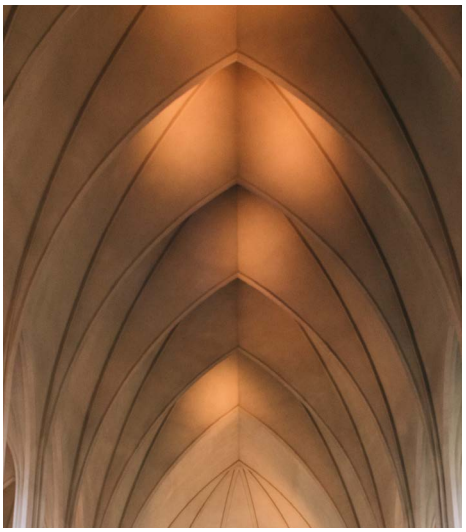
HM Revenue & Customs (HMRC) said the change was designed to refocus the allowance on its original intended beneficiaries – smaller businesses looking to take on their first employees – and that it expected the move to impact nearly 1.2 million businesses currently receiving the benefit.

As part of the changes, employers will also have to claim the Employment Allowance every year, as it will no longer be carried forward from one tax year to the next.

The change to the Employee Allowance was initially proposed by Chancellor Philip Hammond in his October 2018 budget speech.

# Equality Policy Does Not Demonstrate Equal Treatment

**A crematorium worker has been awarded £6,846 in compensation for religious discrimination and harassment after a colleague said white people "wouldn't want to be buried next to a Muslim". The administrative officer lodged a complaint after a manager made a number of offensive remarks about Muslims.**



The Employment Tribunal (ET) decided that the subsequent investigation did not consider religious harassment or discrimination, instead examining whether the offensive remarks were targeted at the complainant. As a result of this they failed to recognise "the fact of religious associative discrimination and harassment and the impact of this on the claimant". The ET decided that, although the comments were not aimed at the claimant they still met the criteria for harassment and discrimination.

The issue began with a staff meeting in which the comment was made. After the meeting, the claimant met with her manager and informed her that the comment had left her distressed. The manager said that the comment had not been made to the employee but was her general opinion and assured the employee that she was a valued employee. However the employee was not satisfied with this as she felt that the impact of the comment was not being considered. She raised a grievance, which was partly upheld. No mention of religious harassment or discrimination was made. The grievance was only partly upheld as the comment was not directed at the employee.

The grievance findings recommended an apology and training for the manager on valuing equality and diversity in the workplace. The employee appealed but her appeal was not upheld. She took her complaint to the Employment Tribunal which ruled that she was the victim of religious discrimination and harassment and as such awarded her £6,846 for injury to feelings and interest.

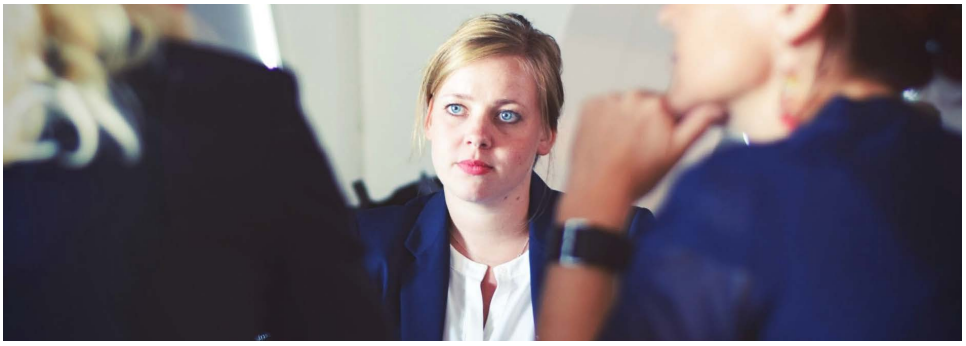
The findings stated that the only evidence of the employer's policies on equal opportunities, harassment and diversity was an equal opportunities policy a page and a half long. There was no evidence of any adequate and accessible definition of or training about discrimination or harassment.

Having a policy is not enough. Employers need to show that the policy has been implemented and that employees had been trained or made familiar with it. 121 is introducing an Equality, Diversity and Inclusion workshop in 2019 – watch out for further information!

# 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.

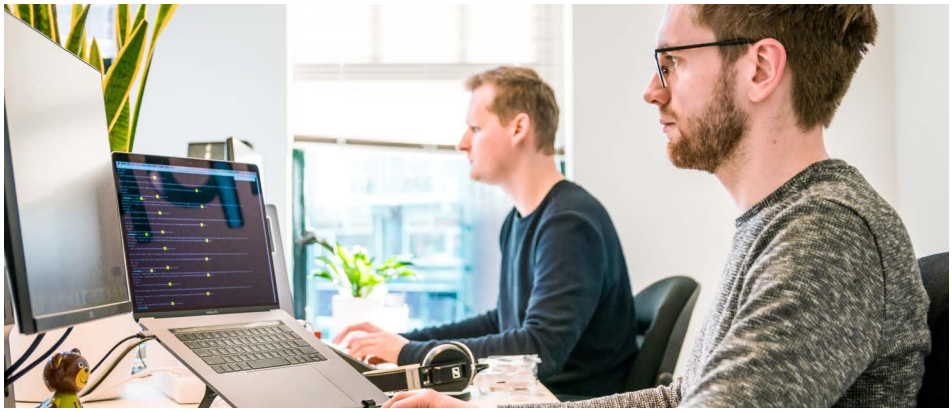
# What is an SOSR dismissal?

**Any employee dismissal must be for a "fair reason". Section 98 of the Employment Rights Act specifies five such fair reasons for dismissal:**

- Misconduct
- Capability
- Redundancy
- a legal reason why their employment cannot continue
- some other substantial reason ("SOSR").

"Some other substantial reason" can result in an employer to dismiss an employee when none of the other potentially fair reasons apply. Some examples of SOSR dismissals are as follows:

**Refusal to sign a restrictive covenant**
Where a business is damaged by departing employees who are setting up in competition, the employer is entitled to protect his business interests by dismissing any other employees who refuse to sign a restrictive covenant.



**Customer Issues**
If a client refuses to work with a particular employee, the employer must demonstrate that it has done everything possible to avoid dismissing the employee.

**Personality clashes**
In such circumstances the breakdown must be irreparable and the employer must have tried to improve relationships and considered alternatives to dismissal.

**Conviction for a criminal offence**
This may be unconnected with the workplace and must be set out as a potential reason for dismissal in the employee handbook.

SOSR dismissals must be dealt with carefully and advice should always be taken! Contact us on **enquiries@121hrsolutions.co.uk**

# High Profile Case Relating to Overtime

**A Manchester City footballer has been ordered to pay more than £3600 to his children's former nanny after an employment tribunal found that he and his wife had made an unauthorised deduction from her wages.**

Manchester City winger Riyad Mahrez, who reportedly earns £200,000 a week, and his wife were the subject of a claim by their nanny who told the tribunal she was paid £12 an hour as the couple's five-day-a week nanny for their two daughters.

Ms Miraflores said that she slept in the same room as the children once the family moved to Manchester and was on call 24 hours a day. She claimed that Mr Mahrez had not paid her expenses she had been promised and failed to make overtime payments.

The Judge ruled that failure to pay his nanny for the time worked outside of her usual hours amounted to an unauthorised deduction of wages. Although there is no automatic right for staff to be paid for any additional hours they may work as overtime, the requirement for them to do so, either paid or unpaid, should be clearly specified in their contract of employment. In the absence of this, employers will find it difficult to justify why they have not paid the employee for the extra hours.

If you need any advice or have any questions regarding this month's articles please contact us at **enquiries@121hrsoltions.co.uk** for more information.