121 HR SOLUTIONS LTD
Changing the Way Businesses Do HR

BULLETIN
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Night working rules

Over the past decade, there has been a notable shift away from the traditional working day of 9-5. According to research by the TUC, the number of night workers has risen in the UK by more than 250,000 in the past five years.

However, a growing body of research indicates that those who work at night are at greater risk of infection, cancer, heart disease and diabetes. Night work also puts pressure on relationships, which can lead to isolation, and in turn lead to mental health problems. The Working Time Regulations 1998 (WTR) contain special provisions for night workers, in addition to the protections that apply to all workers, such as the 48-hour maximum weekly limit on working time (which can be opted out of) and minimum rest breaks of 20 minutes in any shift lasting more than six hours.

A night worker is someone who regularly works for at least three hours between 11pm and 6am. Further, employees may be classed as night workers under the terms of a collective agreement – a contractual agreement between a union and the employer.

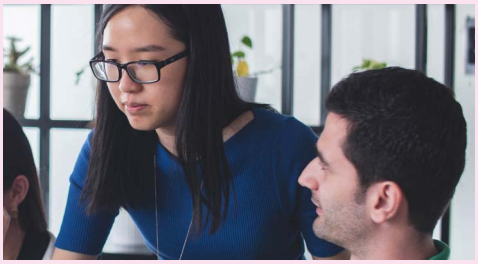
Employers must comply with the following limits:

- Night workers must not work more than an average of eight hours in a 24-hour period (an average is usually calculated over 17 weeks)
- Employers must factor in overtime when working out the average. Overtime is included where it is regularly worked, or is obligatory and guaranteed.

Where night work involves special hazards and mental or physical strain, the WTR impose an actual eight-hour limit in any 24-hour period. The average length of the shift is irrelevant:

- Employers must keep records of night workers' hours to demonstrate that they are not exceeding the limits. The records must be kept for at least two years.
- A risk assessment must be carried out to identify special hazards and work involving mental and physical strain.
- Employers must offer a free health check to any worker who is or intends to be a night worker. The health check must be repeated at regular intervals: good practice is to do this annually. This can be via a questionnaire, and workers are not obliged to undertake the assessment.
- Where a GP advises that a worker is suffering from health problems connected with night work, the worker is entitled to be transferred, where possible, to suitable work during the day.
- Employers must ensure workers over the compulsory school age but under 18 do not work between 10pm and 6am.

Can you force foreign employees to speak English at work?



There are numerous languages spoken in the United Kingdom today. According to the 2011 census, at least 7% of the population spoke a first language that wasn't English. This mean that it is likely that languages other than English, will be spoken at work.

Employers with workers who are of various different nationalities may decide that it is easier to ask everyone to speak English at work as a matter of course but this should be done with caution. Although language is not a protected characteristic under the Equality Act 2010, it is closely related to the characteristics of race and nationality. Potentially, imposing a requirement on an employee not to speak in their first language (by only speaking in English) could indirectly discriminate against them. This is because it could place these individuals at a particular disadvantage in the workplace.

If the business can find valid reasons for requiring staff to communicate in English then this will help the process, for example the need to prevent miscommunications and strengthening adequate health and safety procedures. The other reason that may justify such a move is that employers may be concerned that, in situations where employees are talking in a different language to their colleagues, other members of staff may feel excluded. This unwitting exclusion of English-speaking workers may in itself be sufficient justification.

Disability discrimination award of nearly £50k

A bank manager was discriminated against when his employer unfairly dismissed him for failing to undertake proper checks, something he attributed to the side effects of his 'uncontrolled' diabetes.

An Employment Tribunal (ET) ruled that HBOS unfairly and wrongfully dismissed the employee after his diabetes inhibited his ability to follow the proper security and closing procedures at his branch. He was found to have left keys in the door on multiple occasions, and once locked a customer in after closing time.

The tribunal concluded that if HBOS had obtained occupational health advice, it would have been told the employee was disabled and that "the disability was uncontrolled and likely to have had an effect on his concentration and his tiredness".

In a report prepared for the tribunal, the employee's GP explained that the effects of diabetes are worsened by stress, poor diet and irregular breaks. The GP added that it was important for a diabetic to avoid drops and spikes in blood glucose levels and that the diabetes had deteriorated because of work-related stress, poor upkeep of diet and the demands of his job.

The tribunal concluded that those symptoms amounted to a "more than minor adverse effect" on the employee's ability to carry out normal day-to-day activities, such as attending work and concentrating.

The ET ruled in favour of the employee and ordered HBOS to pay £49,457 for unfair dismissal, discriminatory dismissal and notice pay for wrongful dismissal.
This case highlights why it is essential for employers to take disclosures of a disability into account during a disciplinary procedure. Despite the fact that the employee had committed serious misconduct and would likely have faced a sanction for this, the failure of the organisation to investigate that a disability was impacting upon his performance meant they were found to have discriminated against him.

Social Media:
love it or loathe it?

Love it or hate it social media is everywhere and it infiltrates every aspect of our lives. In terms of work, there is no legislation that prohibits employers from investigating a prospective employee's social media profile and it may be worth having a browse on your prospective employees' sites to make sure that they will be a suitable ambassador for your business.

Employers should develop policies that set out what they see as acceptable or unacceptable behaviour on social media at work and employees should be made aware that breaking these guidelines could lead to disciplinary action.

The policy should set out what employees can and cannot say about the organisation, other employees or customers, and if there are set times that employees can use social media; for example, their lunch break.
While policies should be in place for employees using their personal accounts, employers should be mindful of those used for work purposes. Whether it's being used for community management or paid social posts, organisations need to make sure that employees handle accounts appropriately, making sure that for employees who leave the business their passwords and access are immediately changed.

Costa Coffee deducted wages for training costs

Costa Coffee employees have had up to £200 deducted from their wages for training and till shortages, according to a recent news report. 13 current and former Costa Coffee employees at stores in Essex say they have also been subjected to other deductions for till discrepancies and running costs.

It is only legal to make deductions from an employee's pay packet for training if it is specifically stated in that person's contract that the employer has permission to do so.

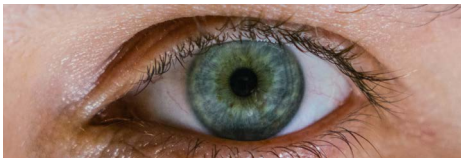
Employees must also be given a written copy of terms so that they know their liability and any deduction made must not exceed 10% of an employee's gross pay packet unless it is their final pay packet.

Deductions from workers to cover training costs and cash shortages are within the law and employers are permitted to make deductions from workers' wages if there is a contractual right to make the deduction if the employee has consented in writing. Many employers will have a standard clause in contracts permitting deductions to be made, but prudent businesses will also have a separate written agreement or form covering consent from the worker for specific deductions – such as for training costs or the recovery of enhanced maternity pay when an employee chooses not to return to work after leave. These separate agreements should make clear the amount that would be deducted, and over what period, so that there are no surprises for the worker.

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.

Colour blindness led to sex discrimination claim

A police officer with a form of colour vision defect faced indirect sex discrimination after his employer temporarily removed him from its firearms and rapid response driving teams due to his colour vision defect, before being reinstated following an investigation. He argued this was indirect sex discrimination as his condition, which was genetic, affects significantly more men than women.



An EmploymentTribunal (ET) ruled that the force indirectly discriminated against him when it temporarily banned him from the rapid response driving team because it did not thoroughly investigate colour vision standards.

The tribunal heard that the officer was a "mild or moderate deuteranomalous observer", which affected his performance when an object or target was defined primarily by a red-green colour difference. Experts told the tribunal that about one in 20 men are deuteranomalous compared to only 0.35 per cent of women. As such, men are 14 times more likely to be deuteranomalous than women. Most colour vision defects are genetic and neither improve nor deteriorate, so once diagnosed there is little need to retest.

The police officer worked for 26 years as a uniformed officer undertaking a full range of duties, including rapid response vehicle driving. The Police's occupational health (OH) adviser, on finding out about his colour blindness felt that it was likely to impair the officer's ability to be part of the firearms team and removed him from that team but also removed him from his driving duties. This decision was based on a perceived health and safety risk. However the OH later concluded that the results on testing showed that the office met the force's current colour vision standard for firearms, and he was to return to his previous duties.

The ET found the force's decision to take the officer off the rapid response driving team was "made in haste and abandoned quietly". The officer was reinstated to both of his previous roles – in firearms and in driving, on the instruction of the tribunal.

If employers are concerned about possible health and safety risks, they need to consider what the worker suffers from, if that is a legitimate danger to the public, what are the appropriate tests to determine this and investigate what the possible impact of their condition will be on the public before making decisions that may affect employability.

New stalking legislation

Stalking is one of the most common forms of abuse, with around one in five women and nearly one in 10 men becoming a victim of stalking after the age of 16. The majority of stalking offences take place in a domestic abuse setting but there remain a number of stalking offences that are perpetrated by strangers.

It is this 'stranger stalking' that the new Stalking Protection Act 2019 is designed to tackle, and it came into force on 15 March 2019. The Act's purpose is to introduce stalking protection orders (SPOs), which can be applied for by the police to prevent the stalker from continuing their abuse of the victim. When drafting the Act the Government made it clear that the conditions imposed on the person by the SPO should not interfere with the place or times of the person's work. Therefore, employers will require to do a risk assessment for an employee who has disclosed the need for protection from an individual who is subject to an SPO, including informing building security that an individual should be prevented from entering the building and circulating a picture and name.

Where it becomes a challenge for employers is where the victim works with the person subject to the SPO. In this situation, employers will need to take steps to ensure the employee does not breach the conditions of their SPO. This may include measures such as amending shift rotas, so they do not work at the same time, or ensuring their work is arranged so the victim does not have to make contact with the stalker.

Employers may have previously been unaware of the employee's behaviour until they were informed of the SPO; in cases where the person has targeted a co-worker, it may be necessary for the employer to conduct their own investigation into the person's conduct and follow their internal harassment policy. The stalker may be fairly dismissed for 'some other substantial reason' where working arrangements cannot be put in place to separate the victim and perpetrator, but there needs to be caution if there has been no criminal prosecution and the employer has a duty to satisfy themselves that there is evidence and grounds for any dismissal.

November/December Training Workshops

Equality, Diversity and Inclusion

27th November **Dundee**
4th December **Glasgow**

Increasingly, businesses need to be switched on to equality – recognising when behaviour can unwittingly be discrimination. This workshop covers the legal aspects of discrimination but also takes a proactive approach to managing inclusivity and diversity to create a more balanced and diverse workplace. This workshop will provide valid evidence that staff and managers have been trained in and commit to equality legislation because it is not enough to have a policy – people need to be trained to use the policy.

- What is equality, diversity and inclusion?
- The Equality Act 2010 – protected characteristics and types of discrimination
- Discrimination, equality, diversity and inclusion at work – the implications of each
- Dignity at work – what does it look like and why does it matter
- Understanding your responsibilities of a diverse and inclusive working environment
- Appropriate/inappropriate language, behaviours and actions
- Challenging inappropriate language, behaviours and actions
- Understanding the needs of individuals.
- Respecting others and their needs.

Cost £160 per delegate
(10am till 4pm)

Changes to IR35 and its effect on your Business

10th December Dundee
12th December Glasgow

The rules for engaging contractors are changing – are you ready?

So called "off payroll" regulations may mean that contractors must be treated as employees from April 2020 – even if they are engaged via a third party umbrella company. This won't affect every business but for those that it does affect the implications are huge.

We will let you know the changes, tell you how to prepare and allow you to put in place plans now, to deal with these important changes to the way you engage sub-contractors.

Cost £95 per delegate
(9.30 – 12.30)

Book now!

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