



CHILTERN HR

NOVEMBER 2014

NEWSLETTER

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1. Family friendly laws in the pipeline

The Government plans to introduce further family friendly reforms over the course of the next few months.

On 5 April 2015 the existing parental leave regime is expected to be extended to parents of children under the age of 18 (at present parental leave is only available to parents of children aged 5 and under or under the age of 18 if the child is disabled).

Also on 5 April 2015 the current right to adoption leave is expected to be extended to individuals fostering a child under the 'Fostering for Adoption' scheme run by local authorities and an entitlement to shared parental leave and pay for qualifying individuals adopting from overseas is expected to be introduced.

On 1 December 2014 regulations are expected to come into force providing an entitlement to adoption, paternity and shared parental leave to qualifying 'parental order' parents, that is intended parents of a child born to a surrogate mother. In such cases the child born to a surrogate mother will be treated as the intended parents' own child.

2. New list of prescribed persons for whistleblowing

A new list of prescribed persons to whom a whistleblower may, in certain circumstances, make a disclosure came into force on 1 October. The content of the new list is very similar to the previous one. However, it does contain some new prescribed persons such as the National Society for the Prevention of Cruelty to Children and the National Crime Agency and some bodies, who are no longer responsible for regulating a particular sector, have been removed.

The new list applies to disclosures made on or after 1 October and the previous list, which was introduced in 1999, will continue to apply to disclosures made before that date.

3. Guidance on BYOD

The Government has published guidance on managing 'bring your own device' (BYOD) risk.

The guidance is aimed at organisations whose staff use their own devices, such as mobile phones and tablets, for work purposes. It describes the key security aspects organisations should consider in order to maximise the business benefits of BYOD whilst minimising the risks. The guidance sets out best practice for ensuring that such devices are secure and provides guidance on designing network architecture so as to prevent devices from accessing particularly sensitive data. It also highlights the risks associated with common BYOD scenarios such as where sensitive business emails are stored in a personal cloud.

4. Guidance on surveillance cameras

The Information Commissioner's Office has published an updated code of practice for surveillance cameras and personal information.

The code of practice explains the legal requirements operators of surveillance cameras are required to meet under the Data Protection Act 1998 and promotes best practice. It covers the use of a wide range of camera related surveillance equipment and provides guidance on information governance requirements, such as data retention and disposal.

5. Trainees were not apprentices because training was not the primary purpose of their contracts

The Employment Appeal Tribunal has held that trainees at a livery yard and horse riding centre who performed duties including general yard and horse maintenance and teaching riding lessons and whose employer paid for them to sit exams in recognised professional qualifications of their choice were not apprentices for the purposes of the national minimum wage.

What does this mean?

The trainees, in this case, were not employed under contracts of apprenticeship for the following reasons:

- The primary purpose of the contracts was not training as the contracts were very much for the benefit of the employer and the training aspect was incidental and subsidiary.
- The contracts of employment contained notice provisions and a power to dismiss for gross misconduct on no notice, which was not consistent with a contract of apprenticeship (The Employment Appeal Tribunal explained that apprentices cannot be dismissed unless a frustrating event or repudiatory act has the effect of fundamentally undermining the ability to teach them, which it explained is a much narrower test than merely establishing gross misconduct meaning that a contract of apprenticeship cannot be brought to an end by conduct that would ordinarily justify dismissal).
- The contracts of employment were not for a fixed term, which was not consistent with a contract of apprenticeship.
- Neither party had intended a contract of apprenticeship to exist.

What should employers do?

Employers should always pay at least the national minimum wage applicable to a particular individual. The applicable rate will depend on a person's age, although true apprentices can be paid the apprentice rate.

6. Could a ban on colour-blind recruits be discriminatory?

A decision by Police Scotland to reverse a blanket ban on colour-blind officers has raised the question as to whether banning colour-blind recruits could amount to discrimination.

The decision followed a legal challenge by a candidate who had been rejected during a recruitment exercise on the ground that he suffered from moderate colour-blindness despite having passed all of the other tests to begin training to become a police officer.

Lawyers on his behalf argued that as colour-blindness affects more men than women, the policy of banning colour-blind recruits amounted to indirect sex discrimination against men. They also argued a blanket ban was unlawful and recruits should instead be considered on a case-by-case basis, since there are different degrees of colour blindness. Accepting that there is potential for colour blindness being an issue for officers if that means, for example, that they are unable to accurately describe a suspect's clothing or identify a vehicle, his lawyers argued that such issues could be overcome by pairing colour-blind officers with officers who had full vision.

7. Disciplinary proceedings did not breach duty of care

The Court of Appeal has held that an employer did not breach its duty of care to an employee by pursuing disciplinary proceedings against her for having allegedly written a misleading reference for a colleague which overstated his qualifications.

What does this mean?

The Court of Appeal said that question as to whether there had been a breach of the duty would depend on whether, on the facts, the decision to commence disciplinary proceedings had been unreasonable in the sense that it was outside the range of reasonable decisions open to an employer in the circumstances. This, it said, required an objective assessment, not one that was made with the benefit of hindsight. The circumstances, it said, included both the evidence which had been available to the employer at the time, and such other evidence as would or should have been available had the investigation been properly conducted.

In reaching its decision the Court of Appeal pointed out that reasonable people could reach different judgments on the same question which meant that it was possible for a reasonable person to be 'wrong'. However, being wrong it said was not the same as being negligent.

What should employers do?

Employers should always carry out a thorough investigation into disciplinary allegations and take specific legal advice before embarking on disciplinary proceedings.

8. Local authority was entitled to suspend teacher

The High Court has held that a local authority was entitled to suspend a teacher employed at a maintained community school who had been released from her teaching duties to work as a union representative on secondment from the school for 14 years.

What does this mean?

Teachers who work at maintained schools are by virtue of section 35 of the Education Act 2002 employed by the local authority. Despite the fact that a school's governing body has the power to suspend a person employed under a contract of employment to work at the school, that power did not take away the local authority's power to discipline staff at schools.

What should employers do?

Irrespective of the circumstances of a particular case specific legal advice should always be obtained before suspending an employee.