



110 Butterfield, Great Marlings  
Luton • Bedfordshire • LU2 8DL

## CHILTERN HR NEWSLETTER JUNE 2017

---

### **Holiday and Casual Workers**

First of all, what is the status of the casual worker. They are usually on a zero-hours contract, have no obligation to accept the work offered to them and the employer has no obligation to offer them work. The hours and work is casual and offered on an as and when basis and no regular pattern of work exists.

Casual workers would accrue holiday for the hours they work. The calculation for this as advised by ACAS is 12.07%. This figure is arrived at (52 weeks minus 5.6 weeks holiday = 46.4 weeks) 5.6 weeks' divided by 46.4 multiply by 100 = 12.07%.

Where the worker has accrued holiday they are entitled to take that holiday. It is usually found that the holiday is taken at the end of the casual work assignment or it is paid in lieu of being taken. However, bear in mind that where it is paid in lieu of being taken, this must show as a separate item on the payslip and not rolled up with the hourly rate of pay.

Where holiday pay accrued is not paid, the worker can claim unlawful deduction of wages either through the Employment Tribunal or Civil Courts.

### **Absent Employee fails to maintain contact**

There may be times when an employee is absent from work and fails to maintain communication with the employer. There may be clear guidelines in place pointing out that the employee is required to call in by a specific time and explicitly stating how often. Even where there are guidelines in place an employee may fail to maintain contact with their employer which is frustrating because the employer is no clearer on when the employee is expected back to work, how long they may be off, what adjustments may help the employee return to work.

Where the employee has not contacted their employer, the employer has the right and duty of care to contact the employee by telephone and letter to ask about their health, treatment and likelihood of a return to work.

If there is no response to messages left on telephones, then the next step is to contact their emergency contact and it would be appropriate to write to the employee reminding them that failing to maintain contact could potentially be a disciplinary matter. In addition, the letter should request the employee to make contact immediately, agree how often contact is expected, perhaps a copy of the absence guidelines as a reminder, if one is in place.

It may be applicable to have a meeting with the person, the purpose of having contact with the employee can be helpful in the employee returning to work sooner and deal with any challenges that may be preventing a return to work. It also helps the business to plan business operations, there is of course the duty of care the employer has towards the employee.



110 Butterfield, Great Marlings  
Luton • Bedfordshire • LU2 8DL

There is a need to understand what the reason for the absence is and whether that condition is also protected by disability discrimination, in which case advice should be sought before taking any action.

### **Salary Sacrifice Schemes**

From 6 April, only employer pension contributions, childcare benefits, cycle to work schemes and ultra-low emission company cars can be provided through salary sacrifice arrangements, although schemes in place prior to this date can continue to benefit from the tax advantages they provide until April 2018. Accommodation, school fees and other company cars may be provided under salary sacrifice arrangements until April 2021.

### **Termination Payments Taxation**

The government plans to make changes to the taxation of termination payments from April 2018. The proposals include:

- removing the distinction between contractual and non-contractual PILONs (payments in lieu of notice) so that all PILONs are taxable and subject to Class 1 National Insurance Contributions (NICs)
- ensuring that the first £30,000 of a termination payment remains exempt from income tax and that any payment paid to any employee that relates solely to the termination of the employment continues to have an unlimited employee NICs exemption
- aligning the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax)

### **New GCSE grades**

Employees often advertise jobs requiring applicants to have a certain number of GCSEs at grade C or above. The current grading system is, however, set to change this summer.

On 24 August GCSEs in English language, English literature and mathematics will be graded from 9 to 1. 9 will be the highest grade and 1 the lowest.

Currently there are four grades (A\* to C) above the threshold for having to retake a GCSE. However, under the new grading system there will be six grades (9 to 4). Currently there are four grades below the threshold (D to G), whereas there will now be only three (3 to 1). Ungraded GCSEs will continue to be denoted with a U.

The new GCSE content aims to be more challenging and assessment will be mainly by exam.

English language will include an assessment of speaking skills that will not contribute towards a student's 9 to 1 grade. Spoken language performance will be reported as a separate result, at the level of either 'pass', 'merit', 'distinction' or 'not classified'.



110 Butterfield, Great Marlings  
Luton • Bedfordshire • LU2 8DL

These GCSE changes will only apply in England. Wales and Northern Ireland will retain grades A\* to G, but students may be able to take some English GCSEs graded 9 to 1. In Scotland students will continue to sit Nationals



### **Criminal records disclosure scheme needs revising**

The Court of Appeal has held that the revised scheme for disclosure of criminal records requires further refinement for it to be in accordance with the law and not in violation of an individual's right to a private life.

The Court of Appeal said that there had to be a mechanism for weighing the nature of the offence, the lapse of time and the relevance of the data to the employment sought. Disclosures, it said, need to be proportionate and linked to the protection of the public and therefore necessary in a democratic society.

Employers can expect to see a revised scheme being introduced to prevent repeated challenges to the current scheme.

### **Social media dismissal was fair**

An employment tribunal has held that an employee who made derogatory comments relating to her employer on her own Facebook page was neither unfairly nor wrongfully dismissed despite the fact that she had 17 years' service before her dismissal and had a clean disciplinary record.

The dismissal was fair as the company had a clear social media policy, which amongst other things contained a non exhaustive list of the sort of things that employees should not be doing, reminded employees that conversations between friends on Facebook are not truly private and can still have the potential to cause damage, stated that any breach of the policy would be taken seriously and may lead to disciplinary action and that serious breaches would be regarded as gross misconduct and may lead to summary dismissal.

The employee's Facebook profile was linked to the company in that her profile named her employer and stated her job title (once as an 'operator' and once as 'general dogsbody' at the company). Other employees had seen the comments, were upset about the contents and had raised their concerns with her team leader.

The employee had breached the policy, the employer had reasonable grounds to sustain that belief and there was a reasonable investigation. This meant that the decision to dismiss was within the range of reasonable responses test even though it may have been seen as harsh given her long service and clear record.

Employers should take specific legal advice before embarking on disciplinary action.



110 Butterfield, Great Marlings  
Luton • Bedfordshire • LU2 8DL

## CONTRACTS OF EMPLOYMENT

The contract is the most important HR document you'll have in your business and it should be kept up to date with changes to salary and working hours, plus any changes to employment law. The biggest problem we often find is that many businesses don't have contracts. We advise all employers to issue employees with a contract.

At the very least you are legally required to provide all members of staff with a written statement of the terms and conditions of their employment within 60 days of starting employment. By setting out what is expected from both the employee and the employer in writing, this can prevent misunderstandings in the future and make managing employees much easier.

Having an up-to-date written set of terms will become essential should matters ever come to a head.

**Note:** Changes to employment law come into force in April and October every year, so you need to make sure your contracts are updated.



### PHILIP IVINSON LLP

- Specialist in all Employment Matters
- For all your HR Help and Guidance

Telephone: 01582 439795

[www.chilternsolicitors.co.uk](http://www.chilternsolicitors.co.uk)

[philip.ivinson@chilternsolicitors.co.uk](mailto:philip.ivinson@chilternsolicitors.co.uk)



**Please email us back with the word stop to unsubscribe**