



CHILTERN HR NEWSLETTER APRIL 2016

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.

Plus, 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.

National Minimum Wage rates from 1 October 2016

The Government has announced the National Minimum Wage (NMW) rates, which will apply from 1 October 2016

The National Living Wage Rates are as follows:

Workers aged 25 and over	(Rate remains unchanged)	£7.20
Workers aged between 21 and 24	The Standard Adult Rate	£6.95
Workers between 18 and 20	Youth Development Rate	£5.55
Workers under 18 but above the compulsory school age and to whom the Apprentice rate does not apply		£4.00
Apprentice rate – apprentices under the age of 19 or those aged 19 and over but in the first year of their apprenticeship		£3.40



Nursery owner banned from being a director for failure to pay the NMW

A sole director of a limited company, who failed to pay her staff the National Minimum Wage (NMW) whilst continuing to take personal benefits from the company, has been disqualified from being a director of a limited company for 6 years following the company going into liquidation.

She was pursued by the Insolvency Service on the basis that not paying staff the NMW is a breach of a director's duties.

Childcare vouchers provided under a salary sacrifice scheme do not have to be provided during maternity leave

The Employment Appeal Tribunal has held that there is no statutory obligation to continue childcare vouchers under a salary sacrifice scheme during maternity leave.

- Childcare vouchers provided under a salary sacrifice scheme are part of the employee's 'remuneration', and therefore do not have to be provided during maternity leave. For this reason it was not an unlawful detriment, nor discriminatory, for the employer to cease to provide them during a period of maternity leave, as the obligation to maintain terms and conditions during maternity leave does not extend to remuneration.
- However, where the vouchers are provided on top of salary, without a salary sacrifice, they are not part of the employee's remuneration and must therefore be continued.
- The Employment Appeal Tribunal also said that HMRC guidance to the effect that the employer must continue to provide childcare vouchers under a salary sacrifice scheme was wrong and should not be followed.
- Employers who offer childcare vouchers may wish to review the terms and conditions on which they are offered. However, in this month's budget it was announced that childcare voucher schemes will be closed to new entrants from April 2018.

Employer was liable for employee's assault on customer

The Supreme Court has held that an employer was vicariously liable for an employee's unprovoked violent assault on a customer.

- In this case there was a sufficiently close connection between the assault and the employee's job of attending to customers, for it to be just that the employer should be held vicariously liable for his acts.
- Employers should be aware that they could be held responsible for an employee who attacks a customer, especially if their role is to attend to customers, and should take all sensible and reasonable precautions to reduce the likelihood of such events occurring.



Ministry of Justice was liable for negligence of prisoner working in kitchen

The Supreme Court has held that the Ministry of Justice was vicariously liable for the negligence of a prisoner working in a prison kitchen despite the absence of an employment relationship.

- A relationship is in principle capable of giving rise to vicarious liability where an individual carries on activities for another's benefit as an integral part of its business, and where that other, in assigning those activities to the individual, has created a risk of a negligent act being committed.
- Employers should be aware that they could be held responsible for the actions of someone who is not an employee of theirs if a court considers it to be fair, just and reasonable.

Financial penalties for unpaid tribunal awards

On 6 April a new scheme for penalising employers who fail to pay employment tribunal awards or settlement sums following ACAS conciliation is being introduced.

Under the scheme the employer will first be issued with a warning notice that a financial penalty will be imposed unless the outstanding sum is paid by a specified date.

If the employer fails to pay the outstanding sum before the date specified in the notice a penalty notice may be issued requiring the employer to pay a financial penalty, of 50% of the unpaid sum (subject to a minimum of £100 and a maximum of £5,000) to the Secretary of State by a specified date.

If the employer pays the unpaid sum and the penalty within 14 days the amount of the penalty will be reduced by 50%. If the financial penalty is not paid on time interest will continue to accrue on it.

Employers will be able to appeal if certain grounds are met.

Writing to employee on sick leave amounted to constructive dismissal

The Employment Appeal Tribunal has held that in writing to an employee while she was on sick leave for work related stress, to raise concerns with her employment that were not serious or urgent, the employer was in repudiatory breach of the implied term of mutual trust and confidence, and the employee had, therefore, been constructively dismissed.

- If an employer raises employment concerns with an employee who is absent for work related stress, and who is feeling aggrieved about their treatment at work, they risk a successful claim of constructive dismissal, particularly if the concerns are not serious or urgent.
- Employers should exercise caution when contacting employees on sick leave. Where an employee has a potential grievance and there are also work related concerns it would be advisable to deal with the grievance first and then address the work related concerns.



There is a downside to social media

You see not many people want to know what you had for breakfast but quite a few people want to know where you ate it.

These people are criminals and they really want to know the best time to break into your home to rob you. Of course they don't make appointments or formally ask you where you are because they don't need to.

So many people tell the world that they are on holiday that surfing the web for likely homes to rob is now something done by 75% of burglars. Some of them don't bother with breaking in to your home. They are too busy stealing the car you left on the drive.



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- **Specialist in all Employment Matters**
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Telephone: 01582 439795

www.chilternsolicitors.co.uk

philip.ivinson@chilternsolicitors.co.uk

