



110 Butterfield, Great Marlings
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WHAT TO EXPECT IN 2016

- 11 January: Regulations came into force providing a remedy for zero hours workers whose employers include exclusivity clauses in their contracts of employment. The Regulations give zero hour employees the right not to be unfairly dismissed. They also give zero hours employees and workers the right to not be subjected to a detriment for failing to comply with an exclusivity clause.
- 7 March: New rules requiring regulatory references for certain financial sector employees are to be introduced.
- 26 March: A provisional deadline has been set for the government to introduce gender pay regulations requiring private sector employers with 250 or more employees to report gender pay gap information. It is not known, however, whether this deadline will be met.
- 1 April: The National Living Wage is set to be introduced, entitling workers aged 25 or over (apart from those in the first year of an apprenticeship) to be paid at least £7.20 per hour.
- 3 April: Statutory Maternity Pay, Statutory Paternity Pay, Statutory Shared Parental Pay and Statutory Adoption Pay rates will remain at £139.58 per week for the 2016/17 tax year.
- 6 April: The weekly rate of Statutory Sick Pay will remain at £88.45 for the 2016/17 tax year. The income tax personal allowance will increase to £11,000 and the basic rate tax threshold will increase to £32,000. A zero-rate of secondary Class 1 National Insurance Contributions on earnings paid to 'relevant' apprentices, that is those under the age of 25 and who are employed as an apprentice, will be introduced. A new state pension is being introduced which will apply to those reaching state pension age from 6 April. Skilled migrant workers who apply to settle in the UK under the tier 2 general and sportsperson categories will be required to earn at least £35,000 (or the appropriate amount for their job, if higher). A restriction on pension tax relief for high earners (those earning over £150,000) is to be introduced.
- 7 September: PRA and FCA rules on whistleblowing in the financial services sector are being introduced.





HOW TO RESPOND TO A HEAT OF THE MOMENT RESIGNATION

What do you do if an employee resigns in the heat of the moment and walks out threatening to send in a resignation letter with immediate effect?

- Should you accept it and follow your normal resignation process?
- Should you bother spending time looking into the reason why they have resigned so dramatically when they are leaving anyway?
- These are some of the questions and considerations many employers have:
- If an employee suddenly announces they are resigning and perhaps walks out of the office there and then, this usually means there is something more ominous that is the reason for their resignation and not that they have just found alternative employment.
- It may be they have had a disagreement or they are unhappy with their treatment at work. Ultimately, what they are saying their position in the Company is untenable they have no option but to leave. This raises concerns as the employee may be able to claim constructive dismissal if the Company have not handled the immediate resignation correctly.

In the first instance, write to the employee expressing your concern of their sudden resignation and invite them to a meeting to listen to their concerns. The point of the meeting is to amicably resolve any conflict that might be the cause of the unexpected resignation. It also demonstrates, the employer is unaware of the concerns but is giving the employee the opportunity to air those concerns and work together to find a resolution. Allow the employee the right to be accompanied and take notes of the meeting. Usually, such matters can be resolved informally but where they can't the employee has the right to raise a formal grievance which should then be investigated

If the employee does not wish to partake in any meeting, then it can be assumed they have resigned but caution should be exercised and attempts to contact the employee should be made to speak to them and offer them the opportunity to withdraw their resignation.

HOW TO DEAL WITH AN *ABSENT WITHOUT LEAVE* EMPLOYEE

What is an *AWOL employee*? This simply is an employee who is absent without approved leave such as holiday or where it was agreed they had an appointment and would be in work later that day. An *AWOL employee* could also be an employee who has not followed the sickness absence procedure and called in by a designated time to inform their employer



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they are not attending work that day due to them being unwell, or that there is an emergency problem with another close member of their family.

Where an employee or someone on their behalf has failed to contact their employer to report their absence, the employer has the right to call the employee on the contact numbers provided by the employee. Failing that the emergency contact or next of kin could be approached to ascertain the whereabouts of the employee and speak to the employee to establish the reason for the absence and their likely return to work date.

The employee may have had an accident or problem on the way to work and is not able to call into work, so therefore the employer has a duty of care to contact the employee.

Where an employee has failed to follow the correct sickness absence reporting procedures this could be dealt with under the disciplinary procedures, unless of course they were so seriously ill that they could not get to a phone and no one was available to call in on their behalf to report a problem.

As in any case where disciplinary action is being considered, a fair process should be followed including an investigation, allowing the employee the right to be accompanied to a disciplinary meeting and the offering the right to appeal

If the employee remains *AWOL*, they should be reminded that a disciplinary hearing will be heard in their absence and a decision made on the facts that are available.

HOW TO DEAL WITH DISGRUNTLED / UPSET EMPLOYEES

People spend a lot of time at work and inevitably there will be employees who become disgruntled or annoyed about another work colleague, a process or some element of their job. Their complaints may be in writing, but this may not always be the case and employers should not necessarily wait until a complaint is in writing to respond. Some employees never put their grievances in writing for a number of reasons, but remain unhappy at work and become less and less engaged with the business

When you become aware of an employee who is not happy or disgruntled with their job, they should be listened to. Allow them to air their grievance and it is usually possible to resolve the matter at this point. If not, then assure the employee that you will look into the issue and arrange to meet with them again and report back. Knowing that they are being listened to, and that their complaint is not being brushed away will help employees to become engaged with the business and work towards creating harmonious working conditions

This also helps to alleviate the number of more formal grievances the business has to respond to. Stress and absence often go hand in hand with formal grievances, so where employers are tackling concerns at grass roots then they will also see a drop in absenteeism and stress levels with their employees.



COMPARATORS IN AN AGE DISCRIMINATION CASE

The Employment Appeal Tribunal has held, in a case involving an employee who was denied the opportunity to apply for voluntary redundancy during a restructuring exercise because he was over the age of 50, that the fact that employees over the age of 50 were entitled to early retirement benefits under a pension scheme (making their severance costs much higher than for employees aged under 50) was not a 'relevant circumstance' which could render the comparison with two employees under 50 invalid.

- What does this mean?

The extra cost was a direct result of the employee's age and on the face of it, it was direct discrimination for the employer to have taken age into account. (The case has been remitted to the tribunal to determine whether the employer's actions were objectively justified).

- What should employers do?

Employers should always take specific legal advice when embarking on a restructuring exercise.

MONITORING DID NOT BREACH RIGHT TO PRIVACY

The European Court of Human Rights has held that the monitoring of an employee's personal messages on a work-related Yahoo Messenger account did not breach the right to privacy. However, the facts of this case were unusual because the employer's internal rules strictly prohibited any personal use whatsoever of the company's computers, internet or telephones.

- What does this mean?

This case differed from previous cases where it has been held that telephone conversations, emails and internet usage at work are on the face of it covered by the right to privacy because in this case personal internet use was strictly forbidden.

- What should employers do?

Employers should take legal advice before monitoring staff.





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