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CHILTERN HR NEWSLETTER MARCH 2017

WHEN A NEW EMPLOYEE STARTS WITH YOU ARE THEY MADE WELCOME

Have you ever started a new job when you were sat down at your desk and left to get on with it? Did it make you feel confused, unwelcome and unsure of just about everything? It doesn't need to be that way. These five simple tips will help to ensure that new employees have a positive experience when they join the company:

Employment Contract - You have to give new employees a 'written statement of employment particulars' within two months of their start date. But instead, why not email them a copy of their contract of employment as soon as they accept your job offer. Ask them to let you know if they have any queries and any concerns or issues they have will be ironed out before they join. This will help to get the employment relationship off to a great start.

Company Induction - Carry out an induction with all new employees. It may only take a couple of hours. Tell them the story behind the company and introduce them to key members of staff. Talk about future plans and where they fit into them. Deal with the paperwork, P45 or P46, bank details and any other information you need. Make sure they know about the trivial stuff, where do they make a cup of tea/coffee, toilets, fire alarm tests, arrangements for the lunch break. It's also a great opportunity for them to get any answers to questions they may have.

Employee Handbook - This will help to ensure that the new employee understands their responsibilities – and yours. Who do they call if they are sick, what's your email and internet policy, how much notice do they need to give when booking holidays, etc.

IT Set-up - If you make sure you have set up to all the relevant systems in advance, it will show that your company is professional and organised. This will avoid having a member of staff sitting around twiddling their thumbs while they wait to get access to their email and other systems they need to do their job.

One-to-Ones - Particularly important during the early days, regular one-to-ones will enable you to discuss your new employee's progress, give constructive feedback and sort out any issues before they escalate.

These simple steps can be implemented by YOU and rather than having confused employees, there is every chance they will be engaged, productive and happy.

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TRIBUNAL AWARDS AND STATUTORY PAYMENTS TO INCREASE

Limits, which apply to certain tribunal awards and statutory payments, are set to increase from 6 April. The maximum compensatory award for unfair dismissal will rise from £78,962 to £80,541.

The minimum basic award for certain unfair dismissals such as dismissals for reasons of trade union membership or activities, health and safety duties, pension scheme trustee duties or acting as an employee representative or workforce representative, will rise from £5,853 to £5,970.

The maximum limit on a week's pay, which is used to calculate statutory redundancy payments and various awards such as basic an additional awards for unfair dismissal, will rise from £479 to £489.

In cases involving dismissal, the new rates will only apply where the effective date of termination falls on or after 6 April 2017. The current rates will apply to dismissals made before that date.

EMPLOYING DISABLED PEOPLE GUIDANCE

The Government has published new guidance on employing disabled people and people with health conditions.

The guidance explains the benefits to employers of employing disabled people, what their legal obligations are and where they can get financial help where an individual requires support or adaptations. It also contains guidance on recruiting disabled staff and advice on specific conditions such as mental health conditions and physical impairments. The guidance also signposts employers to other organisations who are able to give further guidance.

'SELF-EMPLOYED' CONTRACTOR WAS A WORKER

The Court of Appeal has held that an individual was a worker rather than self-employed.

His contract described him as a 'self-employed operative' and suggested that he was in business on his own account. He was required to wear the company's uniform, use a van leased from the company and work a minimum number of hours per week. He could choose when he worked and which jobs he took, was required to provide his own tools and equipment, and handled his own tax and insurance. The company did not guarantee to provide him with a minimum number of hours. There was no express term in the agreement allowing him to send someone else to do the work. Plumbers could swap jobs but this was more akin to swapping a shift between workers than substitution. The agreement also contained covenants restricting his business activities after the agreement was terminated, most of which were expressed as lasting for a period of 12 months post-termination.

Courts and tribunals will look at the reality of the relationship when determining the employment status of an individual rather than what the documents state. In this case the individual was found to be a worker largely because of the obligations on him to provide work personally and also

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because restrictive covenants had been placed on him. He was an integral part of the company's operations and subordinate to the company.

Employers should always take specific legal advice is they are unsure as to the employment status of an individual.

REFUSAL OF FIVE-WEEK HOLIDAY WAS NOT DISCRIMINATION

The Employment Appeal Tribunal has held that an employer's refusal to allow an employee to take a five-week holiday to attend religious festivals was not indirect discrimination.

On the facts of this case it was found that the asserted religious belief was not genuine and had not been made in good faith as he had not in the past attended all of the religious festivals that he had previously stated were important for him to attend each year. The real reason for wanting to take the lengthy period of holiday was the desire to be with his family.

Employers may be able to justify their refusal of an extended holiday request even if there is a genuine religious belief if they have a policy of limiting holiday and such policy is a proportionate means of achieving a legitimate aim.

WHISTLEBLOWING ANNUAL REPORTING

Regulations requiring 'prescribed persons' to produce annual reports of whistleblowing disclosures are expected to come into force on 1 April.

The draft Regulations set out the requirements for prescribed persons to report annually on disclosures of information received from workers. The draft Regulations provide that the reporting period will be 12 months beginning on 1 April each year, and set out how the report should be published and what it should contain. The draft Regulations do not require the reporting of any detail that would enable the identification of a worker who has made a disclosure or an employer or other person in respect of whom a disclosure has been made.

NATIONAL MINIMUM WAGE: RECORD NUMBER NAMED AND SHAMED

The Department of Business, Energy and Industrial Strategy has named and shamed a record number of employers for failing to pay the National Minimum Wage and National Living Wage.

The list names 359 employers, including Debenhams and Subway, who between them underpaid 15,513 workers a total of £994,685. As well as being named and shamed the employers on the list will be required to pay back pay to the workers who they underpaid plus penalties totalling around £800,000.

Employers in the hairdressing, hospitality, retail and social care sectors feature prominently in this naming and shaming round. Excuses given for underpaying workers included using tips to top up pay, docking workers' wages to pay for their Christmas party and making staff pay for their own uniforms out of their wages.

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Shortly after this list was published it was announced that Argos had been ordered to pay NMW arrears of £2.4m to 37,000 workers after it was found that it had scheduled staff briefings before workers began their shifts and had insisted on carrying out staff security checks outside of working hours.

CAN A COMPANY REFUSE AN EMPLOYEE'S HOLIDAY REQUEST?

There are many reasons why an employer can refuse an employee's holiday request such as too many employees requesting leave at the same time which could leave the Company short of resources.

The Company holiday policy should point out how much notice is required to take holiday. The usual rule is to give double the amount of notice to the length of the leave requested. However, your Company policy can specific what suits your business.

Where possible if holiday has to be refused, it may be possible to reject some of the holiday and not all of it. The same rule applies to the employer for refusing the leave. For example, if an employee asks for two weeks' annual leave then the employer must give two weeks' notice of refusal.

It is important to remember that employees must have a minimum of 28 days' holiday per year; they must be allowed to take this time off to rest from work. A continuous refusal to allow an employee to take their leave can be a breach of The Working Time Directive.

HOW TO MANAGE A PERSONALITY CLASH BETWEEN EMPLOYEES

Just as we can't choose family, we can't choose who we work with so there will be individuals who don't get on but they need to work together. This can be difficult and time consuming to manage if the individuals don't try to work together. They are more likely to raise grievances against each other, be less productive, and have high levels of sickness absence or leave to work elsewhere.

Failing to deal with this can create the onset of stress, anxiety and depression and as this would be classed as workplace stress, the responsibility is on the employer to try to resolve the conflict.

The first step in managing the situation is to be able to spot there is conflict as it does not always manifest itself as arguments, but can be more subtle such as one individual withdrawing themselves or avoiding working with the other individual.

Once it has been spotted, having a gentle conversation with both concerned can usually nip the problem in the bud. Individuals do not have to become friends but they must be professional and

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behave with dignity towards each other. Having a Dignity at Work policy is handy to refer to in these circumstances.

If the problem continues or is worse than originally anticipated it may be appropriate to investigate the matter as per the Company grievance policy and then if necessary disciplinary action may be fitting if there has been misconduct or a breach of the Dignity at Work policy. During investigations, it is possible or applicable to either transfer an employee to another department/team or may be even suspend them whilst investigations take place.

A skilled mediator can be used at any time to help both parties to resolve their differences and create a professional, harmonious, working relationship.

CAN AN EMPLOYEE BE DEMOTED AS A DISCIPLINARY SANCTION?

At a disciplinary hearing a manager can demote an employee as a sanction following a disciplinary hearing instead of a warning or dismissal. However, it is imperative this option is stated within the contract and/or the Company disciplinary policy.

This could result in a lower salary, reduced benefits and lower status for the employee, but it would not be for ever. Where the disciplinary is about misconduct, a time limit needs to be specified for how long the demotion will take effect just as it is necessary with a warning. Where the issue is about capability then it may be appropriate to not place a time limit on such demotion. The clause within a contract must be worded correctly to allow the demotion with salary and benefit reduction to occur.

Finally, this decision must be confirmed in writing with details of what improvement in the individual's conduct is required and of course, they are allowed the right to appeal against the decision.

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