



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

CHILTERN HR NEWSLETTER MAY 2016

In 2016, employers will begin to feel the impact of the employment law reforms made by the first Conservative Government in nearly 20 years, with some controversial decisions affecting a number of HR areas.

The introduction of the national living wage sees a major change to minimum pay levels; this will be a big issue for many employers as they consider how to introduce it.

For the first time, large employers will also be required to publish details of their gender pay gap.

Aside from these two big reforms, other changes to which employers need to pay attention include the Trade Union Bill and new rules on exit payments for public-sector workers.

Workers given power to seek redress where employer ignores ban on exclusivity clauses

Exclusivity clauses in zero hours contracts were prohibited in 2015. New regulations that apply from 11 January 2016 aimed at addressing avoidance of the ban, give employees the power to make a complaint to an employment tribunal where they have been dismissed or subjected to a detriment following breach of an exclusivity clause.

Updated laws on employing foreign workers

The Immigration Bill makes various changes to the law applying to foreign workers, including: creating an offence of illegal working; requiring all public-facing public-sector employees to speak English fluently; and introducing an immigration skills charge for employers that use foreign workers.

Employee was not discriminated against for promoting religious views

The Employment Appeal Tribunal has held that an employee who was disciplined for inappropriately promoting her religious views at work was not discriminated against.

Furthermore, there had been no breach of article 9 of the European Convention on Human Rights, which provides the right to 'freedom of thought, conscience and religion' and freedom to manifest religious beliefs.

Article 9 did not give the employee 'a complete and unfettered right to discuss or act on her religious beliefs at work irrespective of the views of others or her employer'.



She was not disciplined because of her religion, but because her actions ‘blurred professional boundaries and placed an improper pressure on a junior employee’ (She had attempted to convert a junior Muslim colleague to Christianity, had offered to pray for her colleague, gave her a book about a Muslim woman who converts to Christianity, and invited her to church events).

Employers should bear in mind that there is a distinction between an employer that disciplines an employee for simply manifesting a religious belief (which would be unlawful discrimination) and one that takes disciplinary action against an employee for improperly manifesting a religious belief (which an employer is within its rights to do).

ACAS has published a new guide to help combat sex discrimination

ACAS has published a new guide to help employers and managers prevent sex discrimination in the workplace.

The guidance includes best practice advice on the following six common workplace areas where sex discrimination can occur:

- Recruitment
- Pay, terms and conditions of employment
- Promotion opportunities
- Training opportunities
- Dismissals
- Redundancies

It also contains guidance on how employers should handle sex discrimination complaints.

Employee was fairly dismissed as employer had genuine and reasonable belief that he was not permitted to work in the UK

The Employment Appeal Tribunal has held that an employer's genuine and reasonable belief that an employee was no longer permitted to work in the UK was sufficient to show that a subsequent dismissal was for some other substantial reason and was both substantively and procedurally fair.

The employer did not actually know whether the employee was no longer permitted to work in the UK but because it had taken very extensive steps to try and establish his immigration status (including asking the employee to provide proof of his right to work in the UK) it was found to have acted reasonably and fairly in concluding that he may no longer be permitted to work in the UK.

Employers should always carry out checks to establish whether staff are permitted to work in the UK. If there is any doubt as to a worker's immigration status legal advice should be taken.





Staff handbook provisions were incorporated into employee contracts

The Court of Appeal has held that absence management provisions set out in a staff handbook had been incorporated into employees' contracts and the employer was not entitled to change them unilaterally.

The section of the handbook concerned was expressly stated to be incorporated into employees' contracts of employment. That being the case, a new attendance management procedure which the employer had purported to introduce was not effective to vary the contractual terms of the employment contracts and was not contractually binding on the employees.

It is generally advisable to use a completely non-contractual staff handbook as it will be easier to vary.

ACAS has published a new guide on employing young workers

ACAS has published a new guide to help employers manage and support young workers, including apprentices.

The guide contains advice for employers on recruiting young workers, starting to employ a young worker and the legal rights of young workers. It also contains guidance on how employers can support a young worker and on retaining young workers.

Employee had no reasonable expectation of privacy

The Employment Appeal Tribunal has held that an employee had no reasonable expectation of privacy in respect of emails sent to a work colleague, with whom he had had a relationship, and photographs on his iPhone. Some of the materials had been seized by the police in the course of a criminal investigation and were given to the employer after the criminal investigation came to an end and were subsequently used as evidence in internal disciplinary proceedings, which resulted in his dismissal.

The employee did not have a reasonable expectation of privacy in respect of the material based on the facts and circumstances of this case. This was because whilst the matter related to a personal relationship with a workplace colleague they were brought into the workplace by the employee himself and were introduced into the workplace as giving rise to work related issues. Emails had been sent to colleagues at work email addresses which had an adverse consequence on other employees and raised issues of concern regarding the employer's relationship with the employee.

It was also significant that the employee did not at any time object to the use of or reliance on any of the material during the disciplinary proceedings.

The question as to whether an employee will have a reasonable expectation of privacy will depend on the facts and circumstances and employers should bear this in mind.



Auto enrolment upper level of qualifying earnings has increased

On 6 April the upper level of qualifying earnings increased. Qualifying earnings are the gross earnings received by a worker in a pay reference period. They determine whether a worker qualifies as a 'jobholder' and, therefore, whether they are someone who must be auto enrolled into a workplace pension or someone who has the right to opt in.

Minimum pension contributions are assessed by reference to the jobholder's qualifying earnings. This means that contributions only have to be paid on the earnings within a worker's qualifying earnings band.

Gross earnings that count as qualifying earnings include salary or wages, commission, bonuses, overtime, Statutory sick pay, Statutory maternity, paternity, shared parental and adoption pay.

The upper level of qualifying earnings will depend on how often staff are paid. If they are paid weekly from 6 April the upper level is £827 but if they are paid monthly the upper level is £3,583.

For other pay cycles the upper levels are as follows:

Fortnightly	£1,654.00
Every 4 Weeks	£3,308.00
Quarterly	£10,750.00
Bi-Annually	£21,500.00
Annually	£43,000.00

The lower level of qualifying earnings and the earnings trigger for auto enrolment remain the same for the 2016/17 tax year.



PHILIP IVINSON LLP

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

Telephone: 01582 439795

www.chilternsolicitors.co.uk

philip.ivinson@chilternsolicitors.co.uk

