



CHILTERN HR

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NEWSLETTER

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1. **Guidance on zero hours contracts**

The Department for Business Innovation and Skills (BIS) has published guidance on zero hours contracts for employers.

The guidance <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers> explains what zero hours contracts are, what employment rights an individual employed on a zero hours contract has, when it may be appropriate to employ someone under a zero hours contract and inappropriate use of zero hours contracts. It also explains the alternatives to zero hours contracts and provides best practice guidance where someone is employed under a zero hours contract. It also explains that exclusivity clauses or terms in zero hours contracts are prohibited by law.

2. **On-call worker was not 'working' and was not entitled to carry forward holiday from previous years**

The Employment Appeal Tribunal has held that an on-call night care assistant, who was provided with free accommodation in a care home and who was required to be in the care home from 10 pm until 7 am but was able to sleep during those hours unless he was required to respond to any request for assistance by the night care worker on duty at the home, was not 'working' throughout each night shift. This was because his home was his place of work and the time in question was spent at home. Only on the rare occasions when he was called upon to do so by the night care worker on duty was he working.

He was not entitled to carry forward his paid holiday leave entitlement from previous leave years when his employment came to an end. This was because, whilst a request for leave is not necessary to carry forward the right to pay in lieu where a worker is prevented from taking leave, for example by ill-health, in this case the worker could have requested paid leave but chose not to do so.

What does this mean?

As the worker was not working throughout each night shift he was not entitled to be paid the National Minimum Wage for the hours between 10 pm and 7 am. On the rare occasions when he was called upon he was working but the small flat rate he was paid each week (plus accommodation) meant that he was at all times in receipt of the National Minimum Wage for those hours.

Workers only have the right to carry forward paid holiday leave entitlement from previous leave years in instances whether they are unable or unwilling to take annual leave as it fell due for reasons beyond his control, for example due to sickness or maternity or paternity leave or because the employer would not allow the worker to do so.

What should employers do?

Employers who employ workers who are required to be on call should take specific legal advice as their entitlement to be paid the NMW wage for such hours will depend on the facts of a particular case. Employers should allow workers to carry forward untaken holiday where they are prevented from taking it.

3. Plans to extend shared parental leave to pay to working grandparents have been announced

The Chancellor has announced that working grandparents will be able to share parental leave and pay in the future.

The government intends to consult on the details in the first half of next year and aims to implement the change by 2018.

4. Apprentices: a zero-rate of NICs will be introduced from April 2016

A zero-rate of secondary Class 1 National Insurance Contributions (NICs) on earnings paid to 'relevant' apprentices, that is those under the age of 25 and who are employed as an apprentice, will be introduced from 6 April 2016.

The zero-rate will apply to earnings up to an upper secondary threshold (which will be the same as the upper earnings limit for the tax year starting 6 April 2016), for those apprentices.

This means that it will be more affordable to hire new apprentices as NICs will only apply to the highest paid apprentices under the age of 25.

Regulations defining 'apprentice' for the purposes of the zero-rate of employer Class 1 NICs are expected to be passed within the coming months.

The Government has indicated that guidance for employers on the definition of an apprentice and on how to apply the zero-rate through the payroll will be available in January.

5. Limited company was protected from discrimination

The Employment Appeal Tribunal has held that a limited company could bring an age discrimination claim based on the age of its sole director and principal shareholder.

What does this mean?

A limited company can bring a claim that it has been directly discriminated against where it suffers detrimental treatment because of the protected characteristic of someone with whom it is associated.

The fact that only individuals can have the protected characteristics listed in the Equality Act 2010 does not mean that only individuals can be protected from discrimination. Reference was also made to the Interpretation Act 1978, which defines 'Person' as including a limited company unless the statute indicates a contrary intention (which the Equality Act does not).

What should employers do?

Employers should remember that it is not just individuals who can be protected from discrimination.

6. Whistleblowing guidance for charity employees

The Charity Commission has published guidance on how an employee of a charity can make protected disclosures about serious wrongdoing at the charity.

The guidance <https://www.gov.uk/guidance/whistleblowing-guidance-for-charity-employees> explains how a whistleblowing report should be made, who is protected, how the Commission will consider a protected disclosure and where employees can obtain free confidential advice about whistleblowing. It also explains the limits on the Commission's abilities to ensure anonymity for whistleblowers.

7. Dispute relating to contractual terms can be a protected disclosure

The Employment Appeal Tribunal has held that a dispute between an employer and a group of four employees relating to their terms and conditions of employment was capable of being a protected disclosure entitling them to seek protection against unfair dismissal under whistleblowing legislation because the dispute was a matter capable of being in the public interest.

What does this mean?

In this case the dispute between the employer and employees related to their terms and conditions of employment in particular, the way in which overtime was allocated among drivers was capable of being a protected disclosure. This was because there was a suggestion that those making the disclosure had been raising concerns of vehicle safety and road worthiness, which raised wider issues of road safety, which the Employment Appeal Tribunal said, might also be thought to be a matter of public interest.

What should employers do?

Employers should always take specific legal advice before dismissing an employee or taking steps short of dismissal as it will be necessary to consider whether any possible claim could arise.

8. Pension entitlements for part time workers and spouses in a same sex marriage

The Court of Appeal has dismissed two appeals relating to the way in which pensions are calculated for part time workers and the spouse in a same sex marriage following changes to discrimination law.

In the first appeal, which concerned a part time judge, the Court held that his pension rights were determined by reference to the EU law which applied at the time of the period of service in respect of which those rights were acquired.

Similarly, in the second appeal, which concerned a pensioner in a same sex marriage, the Court held that his entitlement must be judged by reference to the EU law in force at the time of his service. Further, the partial exemption in the Equality Act 2010 which permits a spouse's pension payable to a surviving civil partner being restricted so that it reflects the period of the deceased member's pensionable service since 5 December 2005 (the date on which the Civil Partnership Act 2004 came into force) was not incompatible with the EU law.

What does this mean?

Part-time judges are only entitled to a pension under the judicial pension scheme calculated by reference to pensionable service from 7 April 2000, the date on which the UK was required to transpose the Part-Time Workers Directive into national law.

A spouse's pension payable to a surviving civil partner can be restricted so that it reflects the period of the deceased member's pensionable service since 5 December 2005, the date on which the Civil Partnership Act 2004 came into force.

In this particular case the employee's service occurred entirely prior to coming into force of the law prohibiting discrimination on the ground of sexual orientation, which meant that his partner would receive only a small pension based on his contracted-out rights.