



CHILTERN HR

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NEWSLETTER

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1. The Health and Work Service

The Government has announced that it will be launching a new Health and Work Service later this year.

The Health and Work Service will be a free service aimed at helping employees who have been on sickness absence for 4 weeks to return to work. It will also support employers to better manage sickness absence among their workforce.

It will offer a work-focused occupational health assessment and case management to employees in the early stages of sickness absence. GPs will be able to refer employees for assessment by the new service once they are absent, or expected to be absent, from work due to illness for four weeks. Employers will also be able to refer employees.

The occupational health assessment will identify the issues preventing an employee from returning to work and draw up a plan for them, their employer and GP, recommending how the employee can be helped back to work more quickly. The plan will include a timetable for a return to work, fitness for work advice, as well as signpost to appropriate help. Employees will be supported throughout their time with the service, so they can return to work as soon as they are able to.

It will also provide an advice service on the internet and telephone for anyone who needs it.

2. The Employment Allowance

On 6 April an Employment Allowance is expected to be introduced, enabling employers to reduce their Class 1 National Insurance Contributions.

Eligible employers will be able to reduce their Class 1 NICs by up to £2,000 each tax year and it is estimated that this will result in 450,000 businesses stopping paying NICs altogether.

HM Revenue & Customs has published guidance for businesses, setting out details on eligibility and how to claim the allowance which will be done through their payroll providers.

3. Early Conciliation

On 6 April an Early Conciliation service will be launched. It will be mandatory from 6 May.

Anyone thinking of making an Employment Tribunal claim will, in most cases, need to notify ACAS first. ACAS will then offer them the Early Conciliation process which is aimed at trying to resolve disputes quickly without the need for legal action.

Parties won't be under an obligation to actually engage in conciliation and if it is refused by either party, or is unsuccessful, the claimant will be able to go ahead and present their claim to a tribunal.

The service will be free and if the parties enter into Early Conciliation they will have an extra month to attempt to resolve the dispute as it will stop the clock on the limitation period to present the claim to a tribunal.

4. Emails amounted to a protected disclosure

The Employment Appeal Tribunal has held that emails taken together were capable of amounting to a protected disclosure.

What does this mean?

Three emails raising concerns about the dangers of driving in snowy conditions amounted to a qualifying disclosure for the purposes of the whistle blowing provisions of the Employment Rights Act 1996. Each email was not a qualifying disclosure on its own but taken together the three emails did amount to such a disclosure. It did not matter that the third email did not have the same recipient as the earlier two because the earlier emails were 'embedded' in the third one. The emails communicated information about danger to the health and safety of individuals and were not simply an expression of an opinion.

What should employers do?

Employers should take specific legal advice before dismissing or subjecting an employee to any detriment if they have disclosed information that a malpractice has taken place, is taking place or is likely to take place.

5. Discrimination and illegal contracts

The Employment Appeal Tribunal has held that an employee who was illegally working in the UK could bring a claim for sexual harassment.

What does this mean?

If a detriment complained of does not entirely depend on there being a contract of employment and upon its terms an illegal workers is not precluded from bringing such a claim. The fact that someone may have been working illegally does not amount to a defence to a sexual harassment claim.

What should employers do?

Employers relying on illegality to end a contract should take specific legal advice before doing so.

6. Civil partners' pensions

The Employment Appeal Tribunal has held that pension scheme trustees can restrict the pensions for surviving civil partners to the period of the member's service on and after 5 December 2005.

What does this mean?

The Civil Partnership Act 2004, which came into force on 5 December 2005 and which prohibits discrimination on grounds of sexual orientation does not have retrospective effect. That being the case a surviving civil partner will not be entitled to the benefits derived from the employee's service prior to that date unless the pension scheme specifically extends the right to civil partners and not just spouses.

What should employers do?

For pensionable service completed from 5 December 2005, registered civil partners must be treated in the same way as spouses on the death of a scheme member.

7. Non-EU seasonal workers

Non-EU seasonal workers are to be given more rights and better working conditions.

The European Parliament has passed legislation to regulate the employment of non-EU seasonal workers. Member states have two and a half years to implement the new rules, which are aimed at ending exploitation and to prevent temporary stays becoming permanent.

Each member state will be required to fix a maximum length of stay for non-EU seasonal workers, of between 5 and 9 months over a 12-month period. These workers will be able to extend their contracts or change employers within that limit.

Any application to enter the EU as a seasonal worker will have to include a work contract or a binding job offer specifying essentials such as pay and working hours. At MEPs' request, it will also have to include evidence that the worker will have appropriate accommodation. Where accommodation is arranged by the employer, the rent must not be excessive or be automatically deducted from a worker's wage.

Non-EU seasonal workers will have the same rights as EU nationals as regards minimum working age, pay, dismissal, working hours, holidays, and health and safety requirements. They will also have the right to join a trade union and have access to social security, pensions, training, and advice on seasonal work offered by employment offices and other public services, except for public housing.

Employers in breach of their obligations will face penalties and will have to compensate the seasonal worker concerned. Sub-contractors may also face penalties and employers could also be banned from employing seasonal workers.

The new rules will also simplify and speed up procedures allowing non-EU seasonal workers to return to the EU for temporary stays and work. This may be done by speeding up paperwork for returning applicants, giving them priority for admission or issuing several seasonal worker permits at once.

The new rules will not affect the right of member states to decide how many seasonal workers they allow in.

8. Accommodating breastfeeding employees in the workplace

ACAS has published guidance to help employers and employees better manage requests to breastfeed in the workplace.

The guidance explains what employers are required to do by law and sets out good practice guidance that can support an employee returning to work after her maternity leave.

The guidance also covers requests for facilities to express and store milk and time away from work to do so.