Employment & HR News

January 2019

Demand for ACAS Conciliation Service

Since the employment tribunal fees were scrapped last year, ACAS has revealed the demand for their conciliation services has increased by 20% (from 1700 a week to 2200 a week). Early conciliation is almost always advised to resolve any disputes or conflicts within the workplace. This is a fair and proactive way of avoiding escalation which can sometimes lead to lengthy and costly employment tribunals.

Latest review of Employment Tribunals statistics reveals another increase.

Although ACAS' conciliations services demand has increased the impact of the fees being abolished for Employment tribunals can be seen in the latest statistics. Single claims rose 165% on this this time last year. This means there were 10,995 single claims in the latest quarter of this year compared to a stable average of 4,300 between 2013 and 2017, the period in which the fees were in force. The number of multiple claims were also up, statistics showing they were quadrupling year on year.

Parental Bereavement Leave and Pay Act 2018

This new act is expected to come into force in 2020. This will allow all employed parents a right to 2 weeks leave if they lose a child under 18 or experience stillbirth from 24 weeks of pregnancy. Parents will be able to claim pay for this period providing they meet the correct eligibility criteria.

HR Matters

At Apex HR, we want to keep you updated with the latest developments. Our Newsletter will inform you of Employment Law changes and we will keep you 'in the know' with current and relevant topics that hit the headlines.

Most talked about Employment Law topics!

#Metoo Movement

Since early 2017, sexual harassment in the workplace has been brought to the attention of a world-wide workforce through campaigns such as the #metoo movement. Whilst sexual harassment in the workplace has been in existence for years, some employers have opted to 'sweep it under the carpet' rather than face hard truths. Since the Weinstein case and the publicity around the #metoo movement, more and more people are speaking out and are no longer afraid to report sexual harassment. It has been reported according to a recent poll carried out by the BBC, 40% women have experienced sexual harassment in the workplace. However, it is not just about women, 18% men have also experience sexual harassment in the workplace. It is apparent that sexual harassment remains part of too many workplaces and the issue has been debated within the UK government of late.

The government has announced that they will work with the Equality and Human Rights Commission to introduce a new code of practice for employers to understand their legal responsibilities to protect their staff and to tackle sexual harassment at work. The code of practice is designed to address the failure of employers in taking this subject seriously and to ensure that such behaviour does not arise in the first place, by addressing it quickly.

So, how do we distinguish between harmless 'banter' and sexual harassment?

Lighthearted 'banter' is always good to have in the workplace, it lifts the team's spirits and keeps working relationships positive. But when 'banter' goes 'too far' or 'crosses the line' what may seem like banter or 'just a joke' to one person could be offensive to another. This, of course, is hard for employers to manage, as they strive for a healthy and fulfilling workplace. All too often employees do not understand the impact of certain behaviours and this can cause difficulties in the workplace.

So what typical behaviours constitutes sexual harassment?

Below are just some of the behaviours that may be deemed as sexual harassment according to ACAS:

- written or verbal comments of a sexual nature, such as remarks about an employee's appearance, questions about their sex life or offensive jokes
- displaying pornographic or explicit images
- emails with content of a sexual nature
- unwanted physical contact and touching
- sexual assault.

Employers should raise awareness of sexual harassment and make clear to workers what sort of behaviour would be considered sexual harassment and that it is unacceptable.

There are effective ways in which the employer can avoid liability by taking reasonable steps to prevent such behaviours from happening. Although each workplace dynamic is different, simple steps can be put in place to raise awareness of such behaviours in each workplace.

There is no need to wait for the sexual harassment code of practice to be in force. To find out more on how you can avoid the liability from a sexual harassment claim, contact us at Apex HR and we can give you the advice and guidance you require.

For further support on workplace strategies, analysis, contingencies and how Brexit could affect your workforce, contact Apex HR for help and support.

What's Next for the Workforce after Brexit?

Brexit! Brexit! Brexit! - day in day out that is all you hear on the news, social media and in the newspapers. You cannot get away from it, but how will Brexit potentially affect the workforce and UK employers. The decision for the UK to leave the EU will have major implications for many employers, especially those who hire a high volume of EU nationals. Hospitality, Construction, Food Production, Healthcare and Retail are typically the main sectors who employ EU nationals and will have an impact on from the decision to leave; based on the government stating its intentions to introduce migration restrictions. In Addition to migration restrictions, Brexit will also have an impact on the labour market and employment law in the UK.

Some employers have never had to worry about availability of suitable workers; they will now have to think about workforce planning in a way they haven't previously. The UK labour market is already at its tightest, with high full employment levels and with the migration restrictions employers could face challenges in recruitment and retention.

Although there is uncertainty on the final outcome of Brexit and how it will affect the UK labour market, employers can take strategic steps now to prepare for what could be a challenging time on the final curtain fall. There is strategic analysis that can be completed such a PESTLE, these look at external factors such as Political, Economic, Sociological, Technological, Legal and Environmental. From this analysis contingency actions can be determined, depending on the findings of the business analysis and risk assessment and what fits with the business long term goals. Workforce development by strategic planning is worthwhile to ensure business sustainability regardless of the Brexit outcome. With such planning and proposed changes, a vital step to be successful and to ensure the longevity of the business; consultation and communications with the existing workforce is key. It is important to consult and engage with the staff on plans to develop the workforce as a result of Brexit and the journey through uncertain times. This not only gains the respect of the workforce, but the loyalty too which in turn can reduce turnover in an already turbulent time.

Research conducted by CIPD suggests that not only will Brexit affect workforce requirements but will potentially complicate labour availability as well. The CIPD recommends that organisations should take a proactive approach to the possible outcomes of Brexit and have an understanding about where the risks and opportunities will come from and how employers should respond to these. Testing small changes that can be implemented quickly, monitor these and accept and manage risks and adapting to an ever-changing environment.

Who knows what journey lies for employers after Brexit but by being proactive and thinking logically in how to adapt it will reduce further uncertainty. The UK's membership of the European Union is due to end on March 29th, 2019, unless agreed otherwise during current negotiations.

Employment Law is a topical debate within parliament frequently. Certain statute of employment law is constantly being updated, changed or repealed. It is always good to be in the know with these updates, changes or repeals. As your HR provider, HR Matters issues will supply you with this information on current and relevant updates, changes or repeals.

Zero Hours Contracts (ZHC's) Code of Practice.

The clarity surrounding the so-called gig economy and the use of zero hour contracts continues to be interpreted by Tribunals. Establishing employment status and therefore rights, whether people are a 'worker' 'employed' or 'self-employed' continues to be a challenge for employers. It can be a confusing picture and inadvertently employers can end up on the wrong side of the employment rules. There have been high profile employment tribunal cases surrounding this opaque area, given the rise of this type of tribunal cases the government has taken steps to look again at the employment laws surrounding this.

Employment law reforms will give new rights to gig economy workers. The reforms will mean that members of staff, including agency and zero-hour contract workers will have to be told of their rights on the first day of a job, including whether they qualify for paid leave. In addition, everyone will have their holiday pay calculated over 52 weeks rather than 12.. The government is also looking at closing the loophole for agency workers to be paid the same as permanent staff. At the moment agency workers get a lower rate for not being permanent.

Although this reform will not come into force until April 2020, the employment law reform is welcomed by employers to have better clarity when recruiting staff and the use of contracts under employment law. It will also prevent exploitation of workers and using such contracts in an inappropriate way. Workers will be

Employment Law Changes from April 2019.

National Minimum Wage and Living Wage increases from 01 April 2019

Reference Period	Apprentice	Under 18	18-20	21-24	25 and over
Hourly rates April 2018-March 2019	£3.70	£4.20	£5.90	£7.38	£7.83
Hourly Rates applying from 01 April 2019	£3.90	£4.35	£6.15	£7.70	£8.21
Difference	+20p per hour	+15p per hour	+ 25p per hour	+32p per hour	+38p per hour

New Statutory Rates increase from 01 April 2019

Statutory Maternity Pay (SMP) Statutory Paternity Pay (SPP) Shared Parental Leave (ShPP) Statutory Adoptive Pay (SAP)	£148.68 per week
Statutory Sick Pay (SSP)	£94.25 per week

His Honour Judge David Richardson

"Finally, I would add the following. In my judgment, it is good employment relations practice for an employer in circumstances of this kind to offer an appeal. Experience shows that it is an anxious time both for employer and employee when a limited leave to remain or work expires, and a further application has to be made.
There will be cases, and in my experience, they are not particularly uncommon, where an employer wrongly believes that an employee does not have a continuing right to work. The appeal process affords an opportunity for this kind of case, which can result in real feelings of injustice, to be looked at again."

Typical Tribunal Cases Put Forward
Three examples of tribunal cases:

Afzal V East London Pizza Ltd/A Domino's Pizza

The claimant made a claim to the ET in regard to **unfair dismissal.**
The respondent (East London Pizza Ltd) gave the claimant advanced warning to produce in-time application documents, to prove he was legally able to work in the UK. Despite many reminders, the claimant emailed documentation late on the deadline date in which the respondent was unable to open the documents.
In response to this and to comply and protect the business in line with 'Immigration, Asylum and Nationality Act 2006,' the respondent made a decision to post a dismissal letter to the claimant. The claimant was dismissed on the grounds of for other substantial reasons, where there was lack of evidence of his right to work in the UK and genuinely believed that his employment was prohibited by statue. No offer of internal appeal was given.
The ET said there was nothing to appeal against and therefore it was not unfair to offer an appeal. The claimant took this to an employment appeal tribunal. The EAT allowed the appeal.
Throughout the claimant had a right to work in the UK and the EAT had ruled that had there been an internal appeal process this could have been resolved fairly outside of ET. By doing so the respondent would not have been prohibited by any law, criminal or civil from reinstating him.

What can we learn from this;

The respondent knowingly knew his right to work was up for reapplication. How could the employer have supported this employee better in providing this in time? What process could have been put in place to ensure in-time application was made in time of the deadline? The judge advised that an internal appeals process would have been fair to the employee after dismissal?

Employment Judge Segal

"Clearly there was a reasonable adjustment that could have been made and that was made on 28th in that regard, to alleviate the disadvantage: namely the provision of a key for the customer lift. The Respondent as an organisation, in the circumstances, not providing the Claimant with a key for 10 days when there were keys available and when the cost of cutting a further key was agreed to be £3. In summary therefore, the Claimant was exposed to a substantial disadvantage within the meaning of Section 20 for a period of about 10 days during which he worked for 7 four hour shifts and during that period the Respondent failed to make

Mr M Mitchell v Marks and Spencer's plc

The claimant made a claim to the ET in regard to Disability Discrimination, under the Equalities Act 2010. His claim was on the basis that he was at a disadvantage compared to other staff and reasonable adjustments were not made for his basis needs to be met. The facts of the case stated that M Mitchell was disabled and was required to use the staff toilets more frequently that the average person. These were located on the second floor and Mr Mitchell worked on the ground floor. Mr Mitchell found it difficult to climb stairs and use the escalators and his only comfortable means was the customer elevator. To use this the staff were required to have a key card, at which was not given to Mr Mitchell to use for a period of time after he had returned back to work after an operation. For a short period, the failings occurred, however after a certain date this was rectified, but the claimant still suffered in this short period. In conclusion the tribunal found the employer failed to make reason adjustments in relation to section 20 and 21 of the Equality Act 2010. Mr Mitchell was awarded £1000 compensation in respect to injury to feelings caused by the failure

What can we learn from this;

In this particular case there was no mention of a back to work interview to identify either short- or long-term workplace adjustments. It is clear from this example that a structured absent management procedure can benefit both the employee and the employer. It is vital for the employer to consider adjustment for an employee to enable fair and equal working conditions. As in this case these adjustments may not always be long term and continual review ensures compliance under Equality Act 2010.

Judge says;

"Although the contract did provide him with elements of operational and financial independence, Mr. Smith's services to the company's customers were marketed through the company. More importantly, its terms enabled the company to exercise tight administrative control over him during his period of work; to impose fierce conditions on when and how much t paid to him, which were described at one point as his wages, and to restrict his ability to compete with it for plumbing work following any termination of their relationship."

Finally, employers,

Are you confident that you understand the rights and responsibilities of the employer and your employees?

It doesn't have to be a confusing and problematic area, just a good understanding of best practices.

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Pimlico Plumbers Ltd and another *v* Smith

Mr Smith brought an ET claim to his respondent Pimlico Plumbers on the basis he was unfairly dismissed. Pimlico appealed against this decision and eventually this case ended in the supreme courts. This was a major u turn for the so called 'gig economy'.
Going back to the start, Mr Smith worked for Pimlico Plumbers for 6years, there were discrepancies within his working agreements as to whether he was classed as a 'worker' or 'self-employed'. His contract described him as a 'self-employed operative', which meant he would have to submit his own earnings and tax to HMRC. However, the element of control of Pimlico was deemed in the supreme court to be recognised more as a "worker", he was given a company uniform and a van, the terms within his contract meant the company had control over him during his period of work, such as how much they paid him, restricted his ability to compete for plumbing work outside of the company and there was the discrepancy of his right to substitution when he was unable to fulfil the work. However, the supreme court ruled and upheld that Mr Smith should be classed as a 'worker' as under the Employments Right Act 1996, considering the facts of the case. Mr Smith as a 'Worker' now has the employment rights to paid leave, sick pay and has the right to claim unfair dismissal against Pimlico Plumbers. After suffering a heart attack and trying to reduce his hours he was unfairly dismissed, at the time where Pimlico felt it was their right under his 'self-employed' status. Needless to say, Pimlico lost their appeal and ruled in favour of Mr Smith.

What can we learn from this;
In light of recent consultations regarding IR35 rules, its is important for businesses to have transparent employment contracts or contract for services agreements in place which clearly define the terms of the working relationship. It is also important to distinguish at an early stage to understand the status of the person required for the work to be carried out. Further developments on IR35 rules are to due from the government.

The examples and opinions within these cases are provided for information purposes and are not intended to constitute legal advice, and therefore should not be treated as a substitute for specific legal advice relevant to particular circumstances. Each case is individual and will be treated as appropriate according to the facts puts forward.

Apex offer many HR packages that support with your HR business needs. We are able to provide you with advice and guidance on many areas.

So, call or email us at Apex HR and we will be able to discuss the best support package for your business.

Check out our HR Services on our website