

In this edition Apex would like to welcome to the team

Julie Barker.



Julie is our new Data Protection Business Adviser. She will be advising our clients new and existing on their Data Protection compliance in terms of security needs, training, supporting with Data Breaches and Subject Access Requests (SAR).

Julie is very experienced and skilled in this area and will be able to support with any business needs.

Feel free to drop Julie a line to see how she will be able to support with your data protection requirements.

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HR Matters

Our Newsletter keeps you informed of Employment Law changes and the latest developments in the world of HR. We will keep you 'in the know' with current and relevant topics that hit the headlines.

Most talked about Employment Law topics!

What does IR35 Rules Mean to the Private sector?

The blurred lines on IR35 rules.....

The Latest developments on the IR35 rules for the private sector shows evidence that HMRC are actively monitoring employers who use the off payroll working contractors to reduce their Tax and National Insurance bill. This comes after the high-profile TV personality Lorraine Kelly won her case against HMRC. They issued her with a tax and NI contributions bill, claiming she was an employee of ITV, however she protested she actually works freelance. The judge ruled that Kelly's relationship between ITV and Kelly was a contract for services and not that of an employer-employee relationship. Kelly didn't receive staff benefits; any type of statutory pay or holiday pay and she was allowed to carry out other work. The Tax office emphasised that the employment status is key into how much tax and NI contribution are paid between an employed status to a self-employed status.

Measures were implemented in the public sector to prevent this from happening and now the government are extending this to the private sector. Extending this to the private sector is proving complex and there are plans to implement in 2020, however employers are encouraged to look at their own workforce and engagements now to ensure they are following current IR35 rules.



So, what do we mean by IR35 rules and why is it such a big issue?

IR35 rules apply in relation to an employer engaging with a self-employed, freelance or subcontractor on a contract for services. The IR35 rules are open to interpretation, however, in recent case law tribunals it is very much based around the element of control on that individual. In the eyes of the law if an employer engages in a contract for services the employer has very limited control over that individuals' services being provided, the employer cannot be seen to control their hours, pay, what they wear, providing them with equipment and engaging with them long term and only providing services for that employer. If this is the case, the government and HMRC can argue that this individual should be an employee and therefore should have employee rights and the employer should be paying the correct employer contributions of pay. There are many employers who engage in this type of agreement and do not realise they could breach IR35 rules.

If you are an employer who feels you are in a similar situation as described and are not sure whether you are operating within HMRC rules or Employment Law, contact Apex and we can talk you through this and discuss your options.

Apex Advice

- ✓ Have appropriate checks in place regarding employment status
- ✓ Regularly review to ensure checks are consistently applied
- ✓ Ensure written agreements accurately reflect the circumstances of a person's engagement.
- ✓ Take appropriate specialist advice if unsure.

Apex are experts on worker rights and employment law to be able to support your organisations. We mitigate business risk to ensure the best and fairest outcome for both business and people in business.

How employers can operate a fair disciplinary process

All too often we come across problems in the workplace where there are disputes or situations that require disciplinary action. How that disciplinary is approached and delivered differs from company to company. Following a fair procedure and process in line with ACAS code of practice is essential to defend any potential claimant at employment tribunals irrespective of size of the company.

What Should employers do?

Medium/smaller organisations can avoid such tribunal claims by approaching and delivering the process in a fair way, in accordance to the ACAS code of practice.

Employers can make some basic errors for example; by not setting out clear expectations to their people, the communication about what is expected of them and how to conduct themselves whilst at work must be set out clearly in the company handbook. This would also include absence management and the capabilities expected to perform their jobs.

All organisations will experience challenges with employees from time to time and therefore will need to monitor behaviour, capabilities or attendance. In doing so this should be demonstrated in a fair and consistent way across the organisation and standards or procedures should be followed by managers.

If the organisation decides it needs to take action, it is always best in most circumstances (depending of course on the severity of the situation) to have a discussion with the employee to determine the circumstances of their behaviour, performance or poor attendance. This is always a good way to be aware of any underlining issues that have occurred and to decide how to support and challenge the employee where necessary. It is always a good idea to listen to any concerns raised by the employee and take this into account as part of a fair and balanced view.

According to a recent article in www.personneltoday.com the most areas employers tend to get wrong are:

- Not warning employees of the possible consequences of disciplinary action
- Not setting out the nature of the accusation clearly enough
- Not giving the employee the relevant evidence against them
- Not operating a system of warnings where appropriate
- Not allowing the employee to be accompanied
- Relying on evidence from only one source
- No adequate appeal stages
- Failure to keep a clear record of the whole disciplinary process
- Delaying dealing with disciplinary issues
- Having the same person deal with the whole disciplinary process.

These are the common areas where organisations can go wrong, when claims end in employment tribunals 'ACAS code of practice on disciplinary and grievance procedures are fully taken into account, in some instances where this has not been followed fairly tribunals may increase the award of compensation by 25%. So, by adhering to the ACAS code of practice, not only are you doing the right thing ,you strengthen your position and reduce the potential for financial risk in the event of an Employment Tribunal.

Apex are experienced and knowledgeable in the right way to deal with such tricky situations, and most of all we are able to mitigate business risk to avoid it getting as far as an employment tribunal. If you think we could help contact us at Apex HR Ltd for support.





Employment Law

Employment Law is debated within parliament frequently. 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.

Changes to how Payslips are produced for workers from 6th April 19

From **6th April 2019** changes to how payslips are produced become legislation. The change includes itemised payslips now extended to workers and not just employees. The itemised payslips must show the number of hours worked. HMRC guidance states, any other hours do not need to be shown, for example, where a worker has a fixed salary each month and works variable overtime with additional pay at an hourly rate, only the hours of overtime need to be shown. The guidance also outlines, the hours can be shown either as a single total of all such hours in the paid period. Alternatively, they can be broken down into separate figures for different types of work or different rates of pay. However, it should be clear which pay period they were worked in. This should be the case for period which begin on or after **6th April 2019**.

Changes to Pension Contributions

From **6th April 2019** employers' pensions will be required to be adjusted. The auto- enrolment contributions will increase where employers will put in 3% and employees will put in 5% of the employee's pre-tax salary each month. Employers and their payroll function will need to ensure this is happening to comply with the pension's regulator.

Tribunal Pay-Outs are Increasing

From **6th April 2019**, the amount of money employees could receive for a successful tribunal claim will increase. Any successful unfair dismissal claims could result in a maximum pay out of **£102,194**.

It is important that employers follow a fair and appropriate code of practice in the disciplinary process to avoid such tribunal claims, as highlighted in this edition of HR Matters. Employers can find themselves in unnecessary tribunals, when if they had followed a fair process it could quite easily have been avoided. This is ever more important for employers now, as tribunal claim deposits have been scrapped and the number of claims against employers are rising.

Apex are successful at supporting employers in following a fair and appropriate process. Talk to us if you think you need HR support in this area.

The content and opinions within these updates 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.

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.

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

Typical Tribunal Cases Put Forward

Two examples of tribunal cases:

Beattie v Condorrat War Memorial and Social Club and others UKEATS/0019/17/JW

This case saw that the claimant claiming unfair dismissal on the basis that she didn't receive a fair process of disciplinary. The claimant was given a written warning in respect of a misconduct and was told this would remain on her file for 12 months and if another incident should occur, she would be dismissed. Within a period of time another incident did occur and therefore led to her dismissal. The ET held that the respondent did not follow a fair process when dismissing the claimant, however the appeal against the ET claim found that even if the respondent had followed a fair process, due to the incident there was a 100% chance that it would have led to her dismissal regardless. The appeal by the claimant was dismissed.

What can we learn from this?

The employer could have avoided the ET if a fair process was followed in the first place. This highlights the need for employers to follow the correct process in line with the ACAS code of practice. Fortunately for the employer the misconduct and second incident were enough evidence to suggest that a dismissal was the right decision for the employer at the time.

Exmoor Ales Ltd and another v Herriot UKEAT/0075/18/RN

This case saw the claimant bringing an unfair dismissal claim, including age discrimination, holiday pay, failure to provide a statement of particulars of employment, harassment and victimisation. This claim was brought after the relationship between the claimant and the respondent had deteriorated and came to an end in 2017. The claimant was an accountant for the respondent and had a long work relationship. The ET heard that in April 2011 an arrangement was agreed whereby the claimant began to receive quarterly payments for working exclusively for the respondent. This was on a verbal contract basis. The Employment appeals tribunal (EAT) held that the ET did not make a mistake in law in approaching the task of weighing up the factors for and against whether the claimant was in fact employed or self-employed. The appeal by the claimant was dismissed.

What can we learn from this?

This case could have been avoided by being clear about employment status from the outset, agreeing if the relationship will be on a self-employed basis or employed. Once this has been decided and agreed it is best practice to set out clear expectations in either a contract for services agreement for self-employed or an employment contract for employed status. Verbal contracts can be enforceable, however if relationships break down and deteriorate as did in this case there is no recorded evidence of agreements in place to refer to if there are discrepancies.

Top Tip this Month

'Humanising Your Workplace'

The language we use in HR is important. Too often, we can rely on traditional terms or use a narrative that might not feel applicable in 2019. It can all feel a bit tired and dated. So, Apex is helping many organisations modernise outdated HR approaches and inject some fresh thinking.

Within each HR Matters, we'll focus on a specific HR term or policy and suggest a more human alternative. We find that humanising workplace cultures happens when lots of small, regular steps are taken which focus on building a positive, more human employee experience. The language and communication we use is a key element in this.

Probation Periods. These are typically used within the early stages of someone's employment. It is very common for people to be placed on an initial probation period where the employer makes an assessment as to the suitability of the person doing the job.

Instead of using a 'Probation period' try '**Settling In**' period instead.

We believe this approach feels much more human and is more welcoming. It sets a positive tone and intention during the early stages of someone's employment.

Please contact the Apex team for more inspiring ideas on how to humanise your workplace culture!

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.

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