

In this edition Apex would like to welcome to the team

Nicola Waters.



This month we welcomed Nicola Waters to the team. She is our Business Development Manager. She has a wealth of business experience and developing companies through marketing strategies and bringing fresh and vibrant ideas to Apex.

Nicola will support Apex's development in growing the business and promoting our unique approach to HR Services and helping build effective cultures within organisations.

# 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!

## National Minimum Wage update

April has come and gone, and it's been another year of updated and new employment law changes as stated in our March HR Matters Edition. In particular the annual National Minimum wage increase was updated, it's hard to believe it has been 20 years since the National Minimum Wage was introduced and became law. This meant employers had a legal duty to pay their employees within certain age brackets a minimum wage for their work. Despite the 20 years of the National Minimum wage, almost half a million people, according to the Low Pay Commission (LPC) were paid below the legal minimum in the year 2017/2018. Statistics shown (from the LPC's non-compliance and enforcement of the NMW report) that women were more likely to be paid less, as well as the younger workers. Sectors such as childcare had the highest proportion of underpaid workers whilst other sectors such as hospitality, cleaning, retail and maintenance also fell into the statistics.

Fines for non-compliant employers has increased and more enforcement action has been taken on those who are failing to legally pay the right entitlement to workers. Employers who have been found to underpay the NMW are also publicly named and the statistic shows that 911 employers were exposed in 2017/2018, these included Bambinos Ltd, Wagamama's, Manor house Hotel to name but a few, full list can be found at [www.gov.uk](http://www.gov.uk) website in their News section, titled 'Largest List of NMW offenders'.

However, there are occasions where some underpayments can be legitimate, for example it could be because of accommodation offset; commission and bonuses; piece rates; or fail to identify workers as apprentices, this is a possibility of misinformed data presented.

As an employer it is important to identify your legal duty to pay the minimum wage to your employees. Not only is this a legal requirement but it is good practice to reward employees with the rightful pay for their hard work and commitment to your workplace.

The following increases happened this year (April 2019), check you are complaint and paying the correct rate for your hard-working staff.

Year 2019	
25 and over	£8.21
21 to 24	£7.70
18 to 20	£6.15
Under 18	£4.35
Apprentice	£3.90

Apprentice rates for 19 and over vary according to NMW rules, contact Apex for further guidance on this to ensure you are compliant.

If you require support on this contact us at Apex for advice and guidance.



## Health and Wellbeing of People in the Workplace

In this edition we are focussing on the health and wellbeing of employees in relation to 'Mental Awareness Week', (between 13<sup>th</sup> and 19<sup>th</sup> May). The Apex team are very passionate when it comes to the health and wellbeing of people and we strive to encourage good working cultures to have a positive impact on people lives, not only at work but at home too. There are many factors that present mental health such as hereditary, social and community networks, individual lifestyles and work related.

Work related stress, depression or anxiety is one of the largest contributors to mental health within UK organisations. Statistics published by the Health and Safety Executive (HSE) show that 595,000 workers suffered from work related stress, depression or anxiety and an eye opening 15.4 million working days were lost due to work related stress, depression or anxiety in 2017/2018, this accounted for 44% of all work-related ill health cases and 57% of all working days lost due to ill health.

The main causes for work related stress, depression or anxiety were common factors such as workloads, lack of managerial support, organisational change, role uncertainty and bullying and harassment. The statistics suggest that it is more prevalent within large companies, however this is happening in all organisations and it is costing organisations huge amounts every year.

So how can organisations avoid work related mental health occurrences? Organisations who have a positive and encouraging workplace culture have a significantly lower rate of work-related stress, depression and anxiety because there is a leadership with strong support and strong challenge. The leaders work with the staff to ensure clear communication of expectations and places emphasis on accountability and ownership on the employee to perform well in their roles. There is always support by the manager but always the element of challenge towards the employee to develop and flourish within the role. Contrary to this you will have the employees who experience mental health for different reasons, and therefore how does the organisation support this?

People's well-being whilst at work is important just as much as it is whilst away from work. If you're an employer who needs support on how to manage work related illnesses talk to us at Apex HR.



Apex will be at the Devon Business show on **Wednesday 12<sup>th</sup> June 2019**, being held at **Plymouth Pavilions**. We are based in in the **Well-Being Zone**, we are keen to speak to you about you HR, Coaching and Leadership, Data Protection, Workplace Cultures and how we can support your business with Employment Law come and talk to us.



## Increase in disability discrimination claims in Employment Tribunals



2018 seen a significant increase in disability discrimination claims in employment tribunal cases. The statistics suggest that a percentage of these cases were employees bringing claims related to mental health. Under the Equality Act 2019, stress is not technically a disability however it can be a factor that causes mental illnesses, such as depression and anxiety to develop. Typically, the increase in high disability claims is often related to where an employee has been absent through stress and then results in disciplinary or dismissal. For example, if an employee is absent because of stress, and are then dismissed through another form of disciplinary procedure they may bring a claim for disability discrimination if the stress has resulted in them developing mental illness. This is becoming a new area of friction between employer and employees, as employees are facing various increased pressures that affect their mental health and organisations should be managing these in the correct way to avoid this from happening.

There is a huge movement to improve business cultures and to have supportive leadership within organisations to ensure people are valued at work. There is also a huge emphasis on organisations taking responsibility for managing and supporting with stress in the workplace, and in the first instance recognising the signs, these are often changes in behaviour or performance and then what steps should be taken to identify what the issue is and how to change it.

There are many ways employers can manage stress in the workplace and even try to avoid it with a culture where people thrive in their work and are happy.



If you want to know more about how to support employees with mental health and manager stress in the workplace contact us at Apex for guidance.



LEADERSHIP  
TEAMWORK  
SHARED VALUES  
COMPANY CULTURE

## Does workplace culture really matter?

This is a question that is often asked by organisations. It is becoming increasingly evident that workplace culture does matter, and this impacts greatly on the workforce. We spend most of our time at work, and the culture in which we work impacts on our everyday life. Evidence suggests that when the culture of the workplace is an unhappy place or is persistently negative, it has a profound effect on people's mental health, which in turn effects their personal lives and their families.

So many organisations make the mistake when their understanding of workplace culture is providing physical benefits. All too often organisations will provide their people with good salaries, free health care, superficial perks such as free lunches, social events, ping pong or football tables, this all sounds great however if the workplace culture is not right these mean nothing to their people.

In a recent national survey, the results suggested 45% of staff said that respect and fairness were vital, 24% thought that trust and integrity was important and finally 8% said that teamwork were important attributes of strong cultured workplaces.

The team at Apex has a passion for positive and happy workplace cultures, all too often this is mistaken by senior leaders for superficial perks etc, and they lose sight of 'why' they are really in business, this is not solely to make money but 'why' they sell the products or services they went into business for in the first place. This 'why' would have started with company values, traditions, beliefs, behaviours and attitudes, and this can be lost as organisations expand and grow, people get immersed in everyday operations to ensure the business is successful. The growth can soon lead to changes in behaviour and attitudes within the culture that impact on the workforce. These changes are often due to lack of communication, trust, leadership and support and lack of appreciation and recognition.

There are many ways in which organisations can take their cultures back to what their initial values were and to create the positive culture most employees want. More and more people are looking for a great place to work and are more likely to be loyal to a company if they are treated fairly and trusted and are respected within their roles.



Does your business need help in restoring a positive workplace culture?

Do you know if your people are happy within your organisation?

If you feel you need support on your workplace culture or want to know how you can change this, contact us at Apex





## Employment Law

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.

# Typical Tribunal Cases Put Forward

## Three examples of tribunal cases:

### Martin V University of Exeter- Disability Discrimination

In this case, the employee (Martin) had symptoms of a stress-related condition in June 2015 and stopped attending work as a result from July 2015. There were 3 occupational health (OH) reports, the first report concluded that the employee was not disabled as the adverse effect had only been present for two months, however the employee was noted as suffering from post-traumatic stress disorder (PTSD) from September in that same year. The OH report which was dated in May the following year concluded the employee was now disabled because the adverse effect was likely to last 12 months. Soon after the employee claimed that he suffered disability discrimination from July 2015. The Employment Tribunal (ET) found the employee met the definition and was classed as disabled from April 2016. They found that there was no medical evidence prior to April 2016 which could have 'necessarily predicted' that the employee would have had a disability by that time, they highlighted that the symptoms had been having adverse effect on the employee for at least 9 months by April 2016. It was concluded that the adverse effect was 'likely' to last for 12 months satisfying the statutory requirement. The employee took the decision to Employment appeals tribunal (EAT) disagreeing that he was not discriminated against from the June of 2015, however the previous decision was reached based on the evidence that was available to the ET, EAT ruled at a balanced view the ET reached the correct decision.

#### What can we learn from this?

*This case highlighted and employers should bear in mind that where an employee is showing signs of ill-health, it may be possible to establish that they meet the statutory definition of being 'disabled' at a later date. Additionally, although an employee may not have been showing signs that they have been adversely affected for a period of 12 months, they could still meet the definition if they can prove that the effect is likely to last this length of time. We encourage employers to explore ways to support employees who are struggling as a result of an ongoing condition. Making reasonable adjustments is considered even if this hasn't been triggered, where employers take proactive approaches to help the employee remain in work.*

### Mutombo-Mpania V Angard Staffing Solutions Ltd – Disability Discrimination

In this case the employee was dismissed due to his poor attendance at work, on 4 occasions he failed to attend work. The employee then brought an ET claim on the basis of disability discrimination. The ET found that the employee was not a disabled person and at any given opportunity the employer was not aware of the disability. On recruitment the employee failed to disclose that he was disabled, and on a health questionnaire he also failed to disclose any disability. If this was disclosed the employer, the employer could have arranged suitable support to have an OH assessment and made the reasonable adjustments he may have required. There were emails asking to change from nightshifts to late shifts due to his health condition, however the employee failed to show proof of his health condition. The employer went onto adjust his shift pattern based on his request. The employee's claims were dismissed on disability discrimination. The employee appealed. The Employment appeals tribunal dismissed the appeals on 2 bases: 1) the employee had failed to provide evidence of what particular day to day activities would be affected by his condition and 2) had the employee proved he was disabled, the tribunal's conclusion on constructive knowledge was one that it was entitled to reach.

**What can we learn from this?**

*It is evident that the employee was given an opportunity to disclose his disability or health condition at the start of his employment, of which he decided not to. If this was not the case at the beginning of his employment and it was a condition that had developed, if he had disclosed this information the employer could have arranged an occupation health assessment to obtain best practice to make reasonable adjustments and to support the employee. The fact this employer gave the employee an opportunity to disclose this information to aid support, the employer was unaware of any such health and conditions and therefore would not have known about these unless the employee had disclosed that information, leading to the ET being dismissed. Issuing such forms to new recruits and even an annual health assessment gives the employer an opportunity to update records and deal with any such issues facing employees and to be able to make the necessary arrangements to ensure a fair support system for the employee.*

**Bolton St Catherine's Academy V O'Brien- Dismissal Capability**

In this case a schoolteacher who was absent for over a year due to developing a mental health disorder of PTSD, after being assaulted by a pupil and made her feel unsafe and unsupported. During her absence the school tried to meet with her and they also managed to obtain two OH assessment reports and also contacted her GP, based on information obtained they decided to dismiss her due to medical incapacity, with the reason that there was no evidence that she would return to work in the near future. An internal appeal hearing was conducted on her dismissal where O'Brien had produced a 'fit note' from her GP stating she was fit for work and a report from her psychologist saying she was likely to make a full recovery following a course of treatment. The employer not expecting and surprised by this evidence, decided to reject the appeal and went ahead with the dismissal on the basis that O'Brien's return to work was still uncertain. O'Brien unhappy and disappointed with the outcome claimed disability discrimination and unfair dismissal at an employment tribunal. The employment tribunal found the dismissal was unfair and discriminatory on the grounds of disability, the court of appeal also agreed. The was upheld on the basis that the employer failed to provide evidence that the teacher's absence was having an adverse impact on the school.

**What can we learn from this?**

*It is good practice for organisations to decide how long it is reasonable to wait before dismissing an employee who has been absent through long-term sickness. Although each absence will be very different from each other this should be dealt with individually and on a reasonable basis. Employers should take steps to obtain proper medical advice, with the consent of the individual, including a prognosis and should take the employee's own views into account. No employer should ignore new and positive information regarding an employee's fitness for work. The legal test for employers is whether a reasonable employer would have waited longer before dismissing the employee. Employers are not expected to wait forever for an employee to recover from an illness and dismissal can be a valid step when a return to work is not imminent. Employers can justify their decision to dismiss by providing evidence of the impact the prolonged absence is having or will have on the organisation and keep a written record of any disruption caused as a result of continuing absence.*

**The content and opinions within these updates and stories are provided for information purposes only and are not intended to constitute legal advice and therefore should not be treated as a substitute for specific advice.**

## Contact Us

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*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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**Check out our HR Services on our website**