BBi Group News

NEWS FROM THE HR TEAM

FIT for Work Scheme

The Fit for Work Scheme which was launched in 2014 is now set to be scrapped with effect from 31 March 2018.

The scheme was set up to provide not only free advice and guidance to employers, employees and GPs on managing health, work and sickness absence but also offer a free occupational health assessment for employees on long term sickness absence.

GPs and employers were able to make referrals under the scheme for employees who had been off sick for four weeks or more. While the helpline and web service will still be available, the occupational assessment scheme will close on 31 March 2018.

Changes to National Minimum Wage and National Living Wage

From 1 April 2018, the NMW and NLW will increase as follows;

- National Living Wage for workers aged 25 and over - £7.83 per hour
- National Minimum Wage for workers aged 21 and over - £7.38 per hour
- For workers aged 18 to 20 - £5.90 per hour
- Workers aged 16 to 17 - £4.20 per hour
- Apprentice rate - £3.70 per hour

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General Data Protection Regulations (GDPR)

The GDPR is set to replace the current Data Protection Act 1998 (DPA) and will apply to all EU member states from 25 May 2018.

The GDPR is an improvement over the current DPA rules and includes data protection rights that are more relevant in today's context. GDPR applies to personal data processed and controlled by organisations and the regulations place specific legal obligations in case of a breach.

While the current Data Protection Act also applies to personal data, GDPR covers personal data in a broader sense, more specifically recognising the increasing use of technology such as online personal identifiers (for example IP address). Some of the other changes include increase in penalty for breach, ensuring employers provide legible and easy to understand forms when seeking consent from staff.

To ensure compliance with the GDPR, companies must have clear procedures to deal with data breaches including reporting to the Information Commissioner's Office and to concerned individuals, if required. Any failure to report a breach could result in a fine.

British Airways v Pinaud 2017

The Claimant worked for British Airways initially as a full-time employee since 1985. In 2005, she returned to work post her maternity leave on part-time hours, known as the "14/14" pattern. The contract was expressly defined as a 50% contract, meaning the annual basic salary would be 50% of a full-time crew member. Due to the nature of the role, on any available day, a crew member was required to bid for work and the bidding would be based on duration of flying time. Crew members would accordingly be remunerated with longer haul flight being compensated more than short haul flights. This essentially meant that the actual hours fluctuated.

As a part-timer, the Claimant was required to work 14 days on and 14 days off, though she was required to be available for 10 days within the 14 days.

The Claimant claimed that she was regularly required to be work more than her 50% hours of a full-time employee and was able to show the hours against full-time comparators. Simply put, a full-time employee was required to be available 243 days in a year, whereas a part-time employee was required to be available 130 days, which was more than 50% of the total days of a full-time staff.

British Airways argued on the basis that, if there was unfavourable treatment, the treatment was justified on objective grounds.

The ET held that the Claimant was treated less favourably with the pattern of work and further that the less favourable treatment was not justified on objective grounds. The EAT held that while the ET was right in its findings that the Claimant was treated less favourably, its findings of justification was not correct. The case has been referred back to a new tribunal, however, it highlights the importance of reviewing practices for part-time staff to ensure part-time staff are treated the same as their full-time counterparts.

Allowing representation to investigatory meetings

Martin John Stevens v University of Birmingham 2015

ACAS guidelines suggest that while there is no legal requirement for employers to allow employees to be accompanied, it is good practice to allow representation during investigatory meeting. In most cases not allowing representation would be acceptable, however, employers must bear in mind that in situations of gross misconduct, or where an employee's career may be on the line, they should consider allowing employees to be accompanied. Further due consideration should be given to the accompanying person, especially in cases where employees work off-site and do not know work colleagues within the company.

In the above case, the university's disciplinary policy clearly stated that the employee was entitled only to be accompanied by a trade union representative or another employee of the university. Prof Stevens requested that he be accompanied by a representative of Medical Protection Society (MPS), an organisation where he worked on his research programme involving clinical trials. Prof Stevens further argued that since he was based at the Trust, he would be subject to both the university's and the Trust's disciplinary procedure. And therefore, under the Trust's policy, he would be allowed to be accompanied to the investigation meeting by an MPS representative. The university was held to have breached the employee's contract of employment as the employee did not have any friends within the university.

The High Court held that the university's policy of allowing representation was intended to ensure that the investigation adhered to minimum standards of fairness and that in this specific instance it was not realistic for the employee to be accompanied by an employee from the university. Further, the MPS representative would have been better placed to help the employee give a fair account of the issues under investigation. The Court therefore held that the employer had breached its duty of trust and confidence.

This case brings home the importance of interpreting and meeting contractual obligations by employers. In ensuring fairness of procedure, employers must also ensure that they act reasonably; not just prima facie seem to be complying to the terms of an employment contract.

Feltham Management Ltd v Feltham & Ors 2017

This case highlights the importance of following employment practices in small family run businesses. Feltham Management Ltd was set up and run by four siblings and their father. The claimant, Mrs J Feltham, was a Director and employee of the company in which her brother was the Managing Director. Her brother's daughter was also an employee of the company and the claimant's husband worked as a contractor for the company. On 15 August 2013, the claimant's husband told her that he was leaving her as he had developed feelings for her brother's daughter. The day ended with the family members getting involved and some harsh words being said.

The Claimant walked out and subsequently fell ill as did her husband. Her pay was stopped at the end of August though her benefits continued. Once she was ready to return to work, she apologised to her niece for shouting at her and over the next several months, tried to make amends including an offer for mediation.

Her brother, the Managing Director, refused to let her return. Her P45 was issued in Dec 2014 and the company stated that as she walked out of the business on 15 August 2013 and did not return, this was taken as her resignation and therefore she was taken off the payroll. The company maintained that she was not entitled to any pay from August 2013.

The ET reached its conclusions in favour of the Claimant that the dismissal was unfair and that she has been discriminated upon because of her sex.

The company appealed on grounds of time, effective date of termination and sex discrimination. The EAT felt that the sex discrimination findings were not sufficiently addressed by the ET but upheld the ET's other findings. This case has been remitted back by the EAT to the Employment Tribunal for reconsideration of its sex discrimination findings and whether direct discrimination arising out of non-payment of Claimant's salary was because of sex.