

NEWS FROM THE HR TEAM



The GDPR reference exemption



Under the GDPR employees have rights to access personal data. However, the new Data Protection Act 2018 (DPA) carves out a specific exemption for references. What do you need to know?

New legislation. Amongst other things, the GDPR gives employees the right to access the personal data that their employer holds. The GDPR was enshrined into our domestic law by the Data Protection Act 2018 (DPA), which received Royal Assent on 23 May 2018. The previous Data Protection Act 1998 has now been repealed. However, whilst the new DPA gives the GDPR effect in the UK, it also specifies several exemptions.

Right to refuse. One of these exemptions relates to confidential employment references. This is set out in Schedule 2 which states that: "The listed GDPR provisions do not apply to personal data consisting of a reference given (or to be given) in confidence for the purposes of the education, training or employment (or prospective education, training or employment) of the data subject". This means that you can refuse to disclose a confidential employment reference to a data subject, regardless of whether you provided or received it.

Why the change? This provision has been included in the new DPA to correct an anomaly which existed under the old legislation. Although it contained a similar exemption, it only applied where the employee made a request to the employer that had provided the confidential employment reference; it didn't apply to the recipient. Therefore, the individual could get around the exemption by making a subject access request to the employer that had received the reference.

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New Guidance on dress codes and sex discrimination

The Government Equalities Office has now published long-awaited new guidance on dress codes and sex discrimination. What's its legal status and is it worth a read?

It is non-statutory and needn't be taken into account by employment tribunals; it's simply aimed at assisting with your understanding of the law.

Summary

- A workplace dress code is a set of standards that employers develop about what is appropriate for employees to wear to work.
- Dress codes can be a legitimate part of an employer's terms and conditions of employment.

- Dress policies for men and women do not have to be identical, but standards imposed should be equivalent. Dress codes must not be a source of harassment by colleagues or customers, for example women being expected to dress in a provocative manner.
- It is best to avoid gender specific prescriptive requirements, for example the requirement to wear high heels. Any requirement to wear make-up, skirts, have manicured nails, certain hairstyles or specific types of hosiery is likely to be unlawful.
- Consulting employees and trade unions over any proposed dress code or changes to an existing code will help ensure that the code is acceptable to both the organisation and its staff.

West Midlands haulage firm prosecuted after worker killed

A Worcestershire-based haulage firm has been sentenced following a fatal incident in which a driver was crushed by a reversing vehicle.

Worcester Crown Court heard how, on 11 December 2013, a Tooles Transport Limited employee, 60-year-old Kevin Scott, was assisting a colleague to reverse a vehicle when he became trapped between the reversing vehicle and his own causing fatal injuries.

An investigation by the Health and Safety Executive (HSE) found drivers were routinely labelling up their loads in the yard whilst other lorries were returning to the yard and reversing in close proximity. The investigation found there was no segregation of vehicles and pedestrians, lighting was inadequate and there was deep shadow between parked lorries.

Tooles Transport Limited of Rushock Trading Estate, Droitwich Spa, Worcestershire was found guilty of breaching Section 2(1) of the Health and Safety At Work Act 1974 and have been fined £150,000 and ordered to pay costs of £253,728.07.



An employee accused of stealing a soft drink and then dismissed has been awarded over £20,000 by the tribunal.

Miss Stokes (S) began working for Poundland (P) as an assistant manager in 2009. Within a year she was promoted to store manager and what followed was an unblemished disciplinary record. However, on 13 June 2017 the area sales manager, and another store manager entered S's office without warning and told her they were there to conduct a disciplinary investigation.

P's senior management had been notified that S had stolen a soft drink from stock. This allegation had been made at 4.30pm on 9 June 2017. On hearing the details, S stated that she believed the accusation was malicious and connected to capability proceedings which she had personally conducted that involved another member of staff. S felt it was "no coincidence" that those proceedings had been held at 2.30pm on 9 June 2017.

The manager ignored S's concerns and advised her that there was CCTV footage which showed her taking and consuming the drink. A formal investigation meeting was arranged. During this meeting S again raised the possibility that the allegation was malicious and unfounded, but the employee was never formally interviewed. All that existed from him was an e-mail which stated he had seen S "with a bottle of drink, one from the four-pack juice we sell" and had "put two and two together". J produced no investigatory report following the meeting with S.

Poor Investigation

Nevertheless, formal disciplinary proceedings were commenced. Throughout this process, S requested the full CCTV footage of the alleged theft. They only disclosed a few seconds of footage which showed her holding a soft drink. S explained this was out of date stock she was removing from the shop floor. In addition to the absence of CCTV footage, no other employees were interviewed, particularly those who would have been present at the time of the alleged incident.

Decision made

S was dismissed and claimed unfair dismissal. The tribunal noted that the disciplinary investigation - which should have been "very thorough" due to the nature of the allegation - was seriously "flawed" and biased. It found that S had been unfairly dismissed due to procedural errors on the company's part and awarded her £20,930 plus £2,000 towards her legal costs

This confirms the need for a full and thorough investigation. Anything less than this may land you in a sticky situation as Poundland found out.





Statutory Payments

Maximum week's pay for calculating redundancy and unfair dismissal basic award:

From 6 April 2018: £508

Maximum basic award for unfair dismissal and statutory redundancy payment:

From 6 April 2018: £15,240 (30 weeks' pay subject to the limit on a week's pay)

Maximum compensatory award for unfair dismissal (unlimited for certain automatically unfair dismissals, for example, health and safety or whistleblowing):

From 6 April 2018: £83,682

Additional award for failure to comply with reinstatement or re-engagement order:

From 6 April 2018: £13,208 - £26,416 (26-52 weeks' pay maximum)

Failure to allow right to be accompanied correctly:

From 6 April 2018: £1,016 (two weeks' pay capped at the statutory amount)

Failure to give written statement of particulars:

From 6 April 2018: £1,016 or £2,032 (two or four weeks' pay capped at the statutory amount)

Flexible working regulations:

From 6 April 2018: £4,064 (eight weeks' pay capped at the statutory amount)

National Living Wage and National Minimum Wage

From 1 April 2018:

Workers aged 25 and over: £7.83 an hour (National Living Wage)

Workers aged 21 and over: £7.38 an hour

Development rate for workers aged 18-20: £5.90 an hour

Young workers rate for workers aged 16-17: £4.20 an hour

Apprentice rate: £3.70 an hour