



## Welcome to the RBA Spring 2018 Newsletter.

Now that the “Beast from the East” has passed over the UK leaving many of us scratching around for that “Bad Weather Policy” we are close to moving the clocks back for the joys of Spring and British Summertime.

For many businesses we are in challenging times. Spending is subdued by the immediate uncertainty; the latest unemployment figures show a 6 year high and this is at a time when it is reported that wages are be subjected to upward pressure.

Every day the email inbox is showing us yet another reason to attend a GDPR workshop before it's too late and on 24<sup>th</sup> May all data will turn into worms and the information police will fine us more than the £500,000 that they could before. Now, there are some things employers will need to do to review their use of data, however the 1998 Data Protection Act already required employers to secure, collect, delete and erase data following key principles. Again, I would refer clients to my [December article on GDPR](#). The 2018 version of the employee handbook will have a modified section, the main statement of terms and conditions of employment will have a minor amendment and it's time to think about who in your organisation has the overall the responsibility for this topic. There will already be a named individual given to the ICO in your existing registration. If you have any queries, please contact your friendly and cheerful consultant!

## NEWS AND VIEWS

### PILON Clauses

A new HMRC rule coming into force in April of this year is that both contractual and non-contractual payments in lieu of notice (PILONs) will be taxable and subject to Class 1 NICs. Currently, non-contractual PILON's can be tax and NI free if they fall within the standard exemption threshold of £30,000.

There is no set rule governing whether a contract of employment should contain a PILON clause. Some contracts give employers the opportunity to make an employee a payment equal to what they would have earned in their notice period and require them to cease working immediately. Others will stipulate a notice period but not give the employer the alternative of making a payment instead.

Until April, if there is no PILON clause in the contract and the parties agree to terminate the employment immediately, and there is a payment in compensation for the breach of contract and for not allowing the employee to work their notice period, this is generally regarded as a damages payment in connection with the breach.

## **EMPLOYMENT UPDATE – March 2018**

The amount subject to tax and NI after April 2018 is the amount the employee would contractually have been entitled to had they worked their notice period – even if there is no PILON clause in the contract. This will include any bonus, commission, incentive payments or other sums that would have accrued during the notice period. The amount calculated will be treated as earnings and will not be eligible for to the £30,000 income tax exemption.

### **Gender Pay Gap**

From April this year, all UK companies with 250 staff or more will be required to publish the gap between what they pay men and what they pay women. This will certainly provide data to further highlight the gender pay gap.

Smaller businesses may also find they have a significant gender pay gap and many clients will benefit from seeking advice on how to implement processes that encourage equality and reduce bias. For example, one positive step would be to create wage bands that are applied equally across the genders. If you need any assistance with this type of project in your business, please get in touch.

### **Fit for Work Scheme**

The UK government has announced that referrals and assessments under its Fit for Work scheme will come to an end in England and Wales in March 2018, and in Scotland in May 2018 due to a low take-up.

The scheme was designed to provide free occupational health, and support to employers on sickness absence. Provisions will be in place before the referral service ends and its helpline, website and online chat service will still be accessible.

### **Employment Tribunals Increase After Abolition of Fees**

There has been a 66% rise in the overall number of employment tribunal claims in England and Wales in the three months after the mandatory claimant fees were abolished. The claims increased from 549 in July 2017 to 2,926 in August and 2,027 in September. The figures were published by the Courts Service.

Between the years 2013 and 2017, employees had to pay up to £1,200 to take their claims to an employment tribunal. But now that staff can take their employers to court for free, the number of cases of small businesses ending up in court are expected to continue to skyrocket.

A lot of small businesses don't end up at tribunal because they are bad employers. They end up there due to not having expert HR advice and support to guide them through complex employment law. Our retained clients already benefit from HR support to help them keep on the right side of the law. If you know anyone who you feel may benefit from

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our services please pass our details on or let us know and we will happily contact them for a no obligation chat.

### Payslips

The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 is coming into force on 6 April 2018. This requires payslips to state the number of hours being paid where wages vary according to time worked, either as an aggregate number of hours or as separate figures for different types of work (or rates of pay).

### LEGISLATION UPDATE

Please note the following increases in red below effective from April 2018

#### CURRENT RATES

Statutory Sick Pay	£89.35 p.w. <b>£92.05 pw</b>
Statutory Maternity and Adoption Pay	6 weeks at 90% of average earnings then 33 weeks at £140.98 <b>£145.18 pw</b>
Statutory Paternity Pay	2 weeks at £140.98 p.w. <b>£145.18 pw</b>
Shared Parental Pay	£140.98 p.w. <b>£145.18 pw</b>
Week's pay for statutory redundancy	£489 p.w. <b>£508 pw</b>
NI Contributions Lower Earnings Limit	£113 p.w. <b>£116 pw</b>
Minimum annual paid holiday	5.6 weeks (28 days for 5 day week)
Guarantee Pay	£27.00 per day <b>£28 per day</b> £135 for 5 workless days <b>£140</b>
Minimum Wage	Age 21 – 24 £7.05 per hour <b>£7.38</b> Age 18 – 20 £5.60 per hour <b>£5.90</b> Age 16 – 17 £4.05 per hour <b>£4.20</b> Apprentices £3.50 per hour <b>£3.70</b>
National Living Wage	Aged 25+ £7.50 per hour <b>£7.83</b>

## **RECENT CASES OF INTEREST**

### **Primark in Transgender Discrimination Case**

Primark has been ordered to pay almost £50,000 to a former employee who claimed she was discriminated against and harassed for being transgender.

The case involves a former retail assistant who told the employment tribunal she had been humiliated by colleagues on several occasions at the brand's Oxford Street store before being constructively dismissed.

The employment tribunal said Primark had failed to investigate the matter and to deal with it appropriately; and ordered it to pay the victim £47,433 in compensation to cover injury to feelings and loss of pay and pension contributions.

It also recommended Primark adopt new measures to protect the confidentiality of transgender employees, such as creating a new policy on how to deal with new or existing staff who are transgender and updating its equality and harassment policies.

The employment tribunal recommended that Primark should adopt a policy on how to deal with transgender staff and include the following:

- adopt a written policy on how to deal with new or existing staff who are transgender or who wish to undergo gender reassignment
- include a reference to the existence of a policy of confidentiality in regard to transgender new starters in training materials for managers
- amend the materials used for equality training of staff, management and HR to include, if not already there, references to transgender discrimination
- ensure that transgender discrimination and harassment is referred to in all of its equality and harassment policies, along with any other protected characteristics under the Equality Act 2010
- add into the training materials for management on handling grievances.

This case is a reminder that any grievances and issues raised by an employee must be investigated properly and dealt with effectively. If you would like to discuss this issue further or have a requirement for management training on handling grievances, then please speak to your consultant.

### **The Importance of Communicating Policies**

An employee was dismissed for wearing headphones in a Sainsbury's supermarket delivery yard. Whilst agreeing with the employer that it was a serious health and safety issue, a tribunal deemed it unfair dismissal.

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This was because the employer failed to make it clear that not wearing headphones was part of the health and safety policy and amounted to gross misconduct under the disciplinary policy.

The tribunal also felt that Sainsbury's had "jumped the gun" with the disciplinary sanction in this case and should have "given more weight to the fact the employee had a significant amount of service and no previous disciplinary record. Consideration should have then been given to alternative actions, such as a formal warning."

It's vital to conduct risk assessments and have clear policies in place. But it's just as important to make sure they're communicated and understood by staff. As this case shows, you can't dismiss someone for breaking a rule they were not aware of. Employers need to regularly review their policies and examples of behaviour considered gross misconduct should be clearly set out in the disciplinary policy.

If you need help writing company employment policies and communicating them effectively to your workforce, please speak to us.

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