



Welcome to the RBA Summer 2018 Newsletter.

Summer has arrived! Just as seasonal weather has become blurred around the edges, it appears that world leaders have a new way of negotiating. Donald Trump is placed on the G7 'naughty step' and North and South Korea seem to have found a way of talking to each other and agreeing to put the toys back in the cupboard. At the time of writing, the UK Parliament is testing out its sovereign power for the right to 'self-determine' how the UK exits Europe. Boris goes off script at dinner, but there is a recording device in a guest's pocket; there are resignations, strong views are expressed, whilst the government's control hangs on a thread.

Whether international, domestic or within the workplace, it's best to get views out in the open and conflict issues resolved by negotiation and if possible agreement. We hope your summer doesn't get 'overheated' – if it does, as ever, you know where we are!

NEWS AND VIEWS

Managing Workplace Matters During the Summer Months

The good weather helps put a smile on people's faces, but it can also raise a number of workplace issues.

Here are some tips to help you:

- You may hear from employees, "it's too hot to work, you have to send us home." However, the Workplace Health, Safety and Welfare Regulations 1992 state a reasonable temperature must be maintained at work. There is no mention of a maximum! In very hot weather you need to carry out a risk assessment. This should look at the environment, type of work being carried out and the impact on any staff with particular needs, such as a pregnant employee. You should then address any issues. For example, could outside workers start earlier or later to avoid the midday sun?
- Faced with employees arguing that wearing a low-cut dress or shorts and flip flops will keep them cool when it's 'too hot'? Perhaps it's time to relax the dress code a little, but standards of decency must be maintained. So, no very short skirts or shorts. Casual, smart, loose-fitting clothing, and a temporary relaxing of suits and ties so that the company image is maintained may be more appropriate. If staff work outside, watch out for them failing to wear protective clothing to keep cool. High-factor sun cream for those working outdoors would also be a sensible approach.
- Use fans and try keeping blinds closed. Have plenty of cold water available so staff remain hydrated.

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- The warm weather can increase the risk of sickness. However, don't jump to conclusions regarding an employee's sickness absence on a hot sunny day as they may have sunstroke or hayfever. We always recommend that you should carry out a return-to-work interview.

Although some employees may believe a bit of sun relaxes the workplace rules, you need to manage consistently and fairly. If you need any further guidance please contact us.

Grandparental Leave

Shared parental leave is now going to be extended to grandparents, the Chancellor announced at his party's conference. When this new ruling comes into force, grandparents will be entitled to take paid leave from work to help the parents with childcare.

This may be seen as a good move for single parents, many of whom will not really benefit from Shared Parental Leave. It opens the opportunity for them to share 52 weeks of leave, even though they're without a partner to share the leave with. Aside from single parents, grandparental leave will make it easier for all parents to return to work sooner, as well as prevent grandparents from having to leave their jobs to fulfil their childcare duties.

The implementation of grandparental leave was originally expected in 2018, but there is no final implementation date as yet, so our view is that this may well not now happen this year. Our newsletter will keep you up to date with this as it develops, but if you have any questions about shared parental leave in the meantime, get in touch with us.

Payment In Lieu of Notice (PILON)

PILON rules have now changed. Once potentially payable free from income tax and National Insurance where it was not specified in the contract, all PILON payments will now attract these charges.

Since 6 April 2018 if an employee now leaves without working their full notice period and payment is made instead, you'll have to process the termination payment under these new rules. We would advise you check that your payroll software has been updated accordingly.

New Guidance on Dress Codes

The Government Equalities Office has published new guidance on [Dress Codes and Sex Discrimination](#).

It reminds employers that dress policies for men and women do not have to be identical, but standards imposed should be equivalent. It also warns that requiring any gender-specific items, such as high heels, make up or to have manicured nails, is likely to be unlawful.

It also warns against requiring both men and women to dress provocatively as, whilst that might not be direct sex discrimination, it raises the risk of harassment.

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The 2018 World Cup

The World Cup will take place in Russia between Thursday 14 June and Sunday 15 July. Football match times in the UK will vary between 1pm and 8pm.

The World Cup is a big sporting event for many employees who may want to follow their favourite football team and enjoy the event. Many staff may want to book some leave to attend the World Cup or attend special group events in the UK. Others may want to use the internet or their phones to stay updated on the match results.

Obviously from your perspective you want it to be “business as usual” but employers who are worried about staff productivity should start planning as soon as possible to reduce the impact that the World Cup could have on their business.

Acas have drawn up some guidance in how to help deal with this event with topics such as:

- Planning ahead
- Taking a flexible approach
- Time off
- Sickness absence
- Websites and social networking
- Drinking or being under the influence at work

For further details visit www.acas.org.uk/worldcup.

England's World Cup fixtures

England v Tunisia: Mon 18 Jun, 19:00

England v Panama: Sun 24 Jun, 13:00

England v Belgium: Thurs 28 Jun, 19:00

If England won their group and reached the final they would play:

Mon 2 Jul, 19:00

Fri 6 Jul, 19:00

Tue 10 Jul, 19:00

Sun 15 Jul, 16:00

If England came second in their group and reached the final they would play:

Tue 3 Jul, 19:00

Sat 7 Jul, 15:00

Wed 11 Jul, 19:00

Sun 15 Jul, 16:00

All times are BST.

If you have any queries or issues arise with regard to attendance, then please discuss it with us.

LEGISLATION UPDATE

Please note the following rates effective from April 2018

CURRENT RATES

Statutory Sick Pay	£92.05 p.w.
Statutory Maternity and Adoption Pay	6 weeks at 90% of average earnings then 33 weeks at £145.18 pw
Statutory Paternity Pay	2 weeks at £145.18 p.w.
Shared Parental Pay	£145.18 p.w.
Week's pay for statutory redundancy	£508 p.w.
NI Contributions Lower Earnings Limit	£116 p.w.
Minimum annual paid holiday	5.6 weeks (28 days for 5 day week)
Guarantee Pay	£28.00 per day £140 for 5 workless days
Minimum Wage	Age 21 – 24 £7.38 per hour Age 18 – 20 £5.90 per hour Age 16 – 17 £4.20 per hour Apprentices £3.70 per hour
National Living Wage	Aged 25+ £7.83 per hour

RECENT CASES OF INTEREST

Where an employer offers enhanced contractual maternity pay, does this have any implications on what Shared Parental Pay is offered?

Despite Government guidance stating from the outset in 2015 that there was no legal obligation to match enhanced levels of maternity pay with parents taking shared parental leave, there remains a possibility that failure to do so could result in a successful discrimination claim.

As a result, employers have been faced with the options of either enhancing SPL or reducing their maternity benefits. Many employers have been taking a 'wait and see' approach.

The recent cases of *Capita v Ali* and *Hextall v Chief Constable of Leicestershire Police* have considered this matter, and the judgments provide a degree of potentially helpful guidance.

In *Capita*, the company paid enhanced maternity pay for the first 14 weeks of leave, but only statutory SPL pay.

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The claimant asked to be paid during SPL at the same rate as a woman on maternity leave and, after his request was refused, issued proceedings claiming direct discrimination. However, the EAT has now rejected his claim, confirming that his employer's refusal to enhance SPL pay was not direct discrimination.

In the more recent case of *Hextall v Chief Constable of Leicestershire Police*, a male police officer claimed both direct and indirect discrimination. His claim was also based on the employer's policy of paying those on SPL the statutory minimum, while maternity pay was enhanced.

The tribunal again found that it was not direct discrimination to offer men on SPL a lower rate of pay than women on maternity leave, on the basis that the appropriate comparator for a man on SPL was a woman on SPL, and not a woman on maternity leave. The tribunal also used the same reasoning to reject the claimant's indirect discrimination claim.

As the law stands there is, therefore, no legal obligation for employers to enhance their SPL pay to the same extent that maternity pay is enhanced.

However, the decision in *Hextall* in relation to indirect discrimination was appealed to the EAT, which found that the tribunal had fallen into error in its application of the test for indirect discrimination. This aspect has been referred to a new tribunal to reconsider.

If the new tribunal finds that the *Hextall* case was indirectly discriminatory, any clients who have a similar policy may also find themselves facing similar claims. It will then be up to the employer to objectively justify the difference in treatment, and cost alone would be unlikely to satisfy this test.

Whilst there is still a level of uncertainty about the situation, on the brighter side, since the inception of Shared Parental Leave there has been a take up rate of less than 2% of eligible parents, so an enhanced level of entitlement would be unlikely to add a significant additional payroll cost. This is, of course, unless the enhanced payments themselves unexpectedly generated a greater take up rate.

Does being on-call count as 'working time'?

In *Ville de Nivelles v Matzak*, the claimant, Mr Matzak, was a volunteer firefighter based in Belgium. He was part of a standby rota. When on call he had to be contactable and remain within eight minutes of his workplace, which meant that he had to live near the fire station. The standby time was not paid.

However, Matzak believed that he should be paid when on call and brought a claim on that basis. When his claim reached the European Court of Justice (ECJ), one of the questions they had to determine was whether his standby time counted as 'working time'.

Working time is defined as any time when a worker is working, at his employer's disposal and carrying out his activity or duties.

The ECJ decided that the on-call time was working time. This was despite the absence of any work being done. It based this decision on the fact that Matzak didn't really get to decide where he spent his on-call time and could be required to be at work at short notice. It concluded that these restrictions limited his chance to pursue his own interests.

For clients who operate standby rotas, this decision will necessitate a review of the arrangements. Where there are restrictions on location and response time for on-call staff, the

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first question is whether those restrictions stop the worker using the standby time for their own purposes.

If they do, consider whether the restrictions are really necessary; sometimes these arrangements have arisen over time from custom and practice or convenience but do not reflect the current demands of either the role or the client.

If it's not possible to cover standby time without significantly restricting workers, then clients should ensure that, once standby time is included, staff are still getting the necessary rest breaks and not exceeding working limits unless the necessary opt-outs are in place.

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