

## Think Christmas is over? Think again!



**So the decorations are down and the New Year stretches ahead, but what issues need to be resolved from the Christmas festivities?**

Here are a few common queries we receive at this time of year.

**An employee posted drunken photos online after the Christmas party, what should we do and is there any way of avoiding this?**

The only way to avoid this is to ban mobile phones and cameras but on the basis that is unrealistic, the best way to avoid this type of issue is to have a social media policy. This should make it clear that disciplinary action may follow if employees post comments or photos which bring the company into disrepute. If you have one in place, remind staff that it applies equally to the Christmas party as it does to the workplace. You can consider disciplinary action against the employee but a quiet word should ensure the photos are taken down quickly.

**An employee has accused one of our managers of inappropriate behaviour at the Christmas party, which took place in the evening at a local hotel. Does the Company have any responsibility for this?**

If you organised the party then the answer generally is yes. Employment law applies

even when the party takes place outside of the workplace or outside of working hours. This means that you are responsible for employee actions in exactly the same way as if they took place in the office or any other place of work.

Therefore when faced with an allegation arising from incidents at the Christmas party, you must investigate after the event as you would any other workplace grievance or disciplinary and follow up with a disciplinary procedure if necessary.

**Several employees called in sick in the break between Christmas and New Year with food poisoning. I strongly suspect that they were not ill, what can I do about this?**

This is very difficult as without evidence, it is difficult to impose sanctions on a suspicion. Most sick policies allow self certification for a few days so no doctor's note will be available. It might be worth a strongly worded email to all staff, reminding them that it has been noticed that there was a higher than usual level of absence during that period, which has put the business and its service levels at risk. At very least you may be able to shame someone into thinking twice in the future. Alternatively consider an annual shut down asking employees to reserve their holiday to cover the gap. At least then you will be prepared.

## NEWS IN BRIEF

### HR Involvement in disciplinary issues

Businesses will welcome helpful guidelines provided by the Employment Appeal Tribunal (EAT) on how much involvement and influence HR should have in disciplinary investigations. What is crucial is that HR limits advice to questions of law, procedure and process, and avoids straying into areas of culpability. In particular, HR should not advise on what an appropriate sanction should be, outside of addressing issues of consistency. Significant influence by HR in the outcome of an investigation could potentially compromise the fairness of the investigation process and result in an unfair dismissal.

In this recent case, the EAT allowed an appeal where the investigating officer's recommendations had been heavily influenced by input from HR. The investigating officer's report originally recommended a finding of misconduct and a sanction of a written warning, but after numerous comments and amendments by HR, the final report found the employee to have committed gross misconduct, and recommended immediate dismissal.

### Treating two employees differently on disciplinary sanctions

The EAT has revisited the guidance on when it is appropriate to consider disparity of treatment between employees in similar circumstances. In this case, two employees had been found guilty of gross misconduct for their involvement in the same incident, although one was dismissed and the other was not. The tribunal found that the difference in sanction was unreasonable and that the employer had applied a "defence of provocation" differently between the two employees. These differences rendered the dismissal unfair. The EAT clarified that in such cases, the relevant question is still whether the employer has acted reasonably towards the employee who has been dismissed, regardless of what sanction has been applied to the other. Disparity of treatment will occasionally be relevant to reasonableness, but the circumstances need to be "truly parallel". With respect to provocation, the EAT said that there is no such "defence" and that provocation would only be a mitigating factor, to be weighed by the employer.

# Health & Safety - Getting Started

## Time to look at Health & Safety Management

New sentencing guidelines contain four levels of culpability for health and safety offences. To illustrate, if there was a fatality in a medium sized company, the starting point fine in a "low culpability" case would be £130,000. For high culpability, it is £950,000 and in a "very high" culpability case, the starting point rockets to £1.6 million. This article looks at how to keep your business out of those top levels of culpability.

## Health & Safety Policy Statement

Having a health and safety policy is a legal requirement. However the HSE says it must be much more than a document – it should be an integral part of your organisation's culture, of its values and performance standards. One senior HSE inspector says what we want to see is a scruffy piece of paper with coffee stains and fingerprints all over it that's being used on the ground. A pile of neat paperwork won't save anyone. The *HSE guide Health & Safety Made Simple* (INDG449 rev1) emphasises a policy will only be effective if staff follow it and you review it regularly.

The Management of Health & Safety at Work Regulations 1999 also require employers to give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of its preventative and protective measures. It also makes sense to have one. Clearly companies with poor health and safety management are more vulnerable to claims and prosecutions. They will also attract "high culpability" fines several times greater than companies in the "low culpability" bracket, which is only for those making significant efforts... to address risk.

## Guidance is available

HSE Guide INDG449 contains a template health and safety policy. It is only one page long but completing it is an exacting challenge. Persons responsible are to be named, including whoever has overall and final responsibility for health and safety. Arrangements for managing health and safety risks are to be set out. The template assumes there is already consultation with employees, equipment is being maintained, training is being provided and fire and evacuation procedures are in place. It also assumes a system of managing health and safety is already up and running. So writing a genuine health & safety policy requires you to address or revisit these issues.



Guidance for directors and senior managers on how to manage health & safety is to be found in Leading *Health & Safety At Work* (IND417 rev1) which promotes:

- Strong and active leadership from the top
- Engaging the workforce
- Effective communication systems and management structures

The guidance is based around a four point agenda:

- A living, breathing health and safety policy ("plan")
- Effective management system ("do")
- Monitoring and reporting ("check")
- Reviewing health and safety performance ("act") at least once a year

The guidance contains a four page checklist to test whether procedures are being followed on the ground. A company which tests its health and safety management system against this checklist and completes the policy template will be well on the way to embedding health and safety in its processes and developing a true health and safety culture.

## Options for Health & Safety Management and the benefits

*Leading Health & Safety* gives examples of health and safety management resulting in reduced sickness absence, better morale, increased productivity and reduced insurance premiums. Good health and safety management is about studying processes, so should increase efficiency as well as reducing risk.

The HSE publishes general guidance called *Managing Health & Safety, Five Steps to Success* (INDG275) to help organisations devising their own management systems. Organisations may wish to bring in external consultancies to help them - or go for a quality standard such as OHSAS18001/ISO45001. Some organisations have evolved health and safety management systems to work hand in hand with other systems such as quality control and to include other areas of risk, such as environmental, IT, fire and business continuity. (For more information say see PAS99 and the *IOSH guidance on Integrated Management Systems* available from [www.iosh.uk/freeguides](http://www.iosh.uk/freeguides)). However they choose to go about it, businesses who engage with reviewing their health & safety management will reduce their risks and see other benefits, not least that coffee stained piece of paper the HSE are looking for.

# Dealing with employee grievances



## How should grievances be handled?

A grievance can be any concern, problem or complaint an employee raises with the business.

If a grievance cannot be resolved informally, the employee should raise it in writing with a manager. If the grievance concerns their line manager, the grievance should be raised with another manager.

A failure to raise the grievance in writing does not prevent an employee bringing an employment tribunal claim. However, in these cases, less compensation may be awarded.

## The meeting and investigating the complaint

- A meeting should be held with the employee to enable them to explain their grievance and how they think it should be resolved.
- If the matter needs further investigation, the meeting should be adjourned and resumed after the investigation has taken place.
- When the meeting is concluded, the business should communicate its decision promptly in writing, including details of any action it intends to take to resolve the grievance.
- An employee has a legal right to bring a companion (a fellow worker or a trade union representative) to a grievance meeting.

## Right of appeal

- The business should inform the employee they have a right of appeal when the decision is communicated. If the employee is not satisfied with the outcome, any appeal must be made in writing and must specify the grounds of the appeal. If a tribunal claim is brought without first going through the appeal process, any compensation awarded may be reduced.
- The appeal should, if possible, be dealt with by a manager who has not been previously involved. The employee should be informed in advance of the time and place of the appeal hearing and may bring a companion. The business should communicate its decision promptly in writing.

## Handling grievances during a disciplinary procedure

Employees often submit grievances during disciplinary procedures, either regarding the procedure itself or the circumstances leading up to the initiation of that procedure. The business must decide whether to suspend the disciplinary procedure to fully investigate the grievance or, if the issues are related, deal with them both concurrently.

## Why is it important to follow the Acas Code?

The Acas Code of Practice on Disciplinary and Grievance Procedures was introduced to help businesses and employees resolve grievances in the workplace. Dealing with a grievance effectively can avoid employment tribunal claims by allowing the issue to be resolved internally.

If an employee's claim is successful, but either the business or the employee has failed to follow the Acas Code, the level of compensation awarded can be affected:

- if the business unreasonably failed to follow the Code, the employment tribunal may increase the employee's compensation by up to 25%; or
- if the employee unreasonably failed to follow the Code, the employment tribunal may reduce their compensation by up to 25%.

## Practical steps

- Involve employees or their representatives in developing workplace procedures and make sure those procedures are transparent and accessible to employees.
- Train managers:
  - how to handle grievances effectively;
  - when to involve HR;
  - how to spot potential legal claims.
- Encourage managers to resolve issues quickly and informally before they get to a formal grievance stage.
- Allow employees to put their side of the story at a meeting before undertaking any necessary investigation and again before making a decision.
- Keep written records, including minutes of meetings.
- Communicate decisions effectively and promptly, setting out reasons.

## Quick reference section

**Statutory minimum notice periods**  
An employer must give at least:

- One week's notice to an employee who has been employed for one month or more but less than 2 years.
- One week's notice for each complete year of service for those employed for more than 2 years.
- Once an employee has more than 12 years' service the notice period does not extend beyond 12 weeks.

## National Minimum Wage

From October 2015	
16 – 17	£3.87
18 – 20	£5.30
21+	£6.70
Apprentices	£3.30

## Statutory Sick Pay

From April 2015  
£88.45 per week

## Shared Parental/Maternity/Paternity/Adoption Pay

Basic rate from April 2015  
£139.58

## Statutory Holiday

5.6 weeks for a full time employee.  
This can include bank and public holidays.

## Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 weeks' pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped for dismissals after 6th April 2015 under the Statutory Scheme at £475.00.



# Working Time Regulations: Employers' Obligations

## Obligations

A business must take all reasonable steps to ensure that workers' average working time (including overtime) does not exceed 48 hours each week. If the business fails to make sure these steps are complied with, criminal sanctions can be imposed on the business.

However, if workers have signed an opt-out agreement, the limit on average working hours will not apply. The business must keep records covering the last two years, showing which workers have opted out.

A business must provide its workers with adequate rest breaks, where their health and safety could be put at risk due to their pattern of work, (for example, where the work is particularly monotonous).

The business must keep and maintain records showing whether the limits on average working time, night work and provision of health and safety assessments are being complied with for each worker.

The business must allow all its workers the following rest periods unless they are exempt, in which case compensatory rest will usually have to be given:

- 11 hours' uninterrupted rest each day.
- 24 hours' uninterrupted rest each week (or 48 hours uninterrupted rest each fortnight).

- A rest break of 20 minutes when working more than six hours each day.

A business must allow its workers 5.6 weeks' paid holiday each year (this is equivalent to 28 days for a full-time worker).

## Penalties

There are a wide range of penalties that can be imposed on a business for breaching the Regulations, including:

- A fine of up to the statutory maximum (on summary conviction) or a potentially unlimited fine (on indictment).
- "Improvement" or "prohibition" notices issued by Health and Safety Executive or local authority inspectors. If the business fails to comply with the notice:
  - potentially unlimited fines and up to two years' imprisonment for directors on conviction on indictment can be imposed; or
  - a fine up to the statutory maximum and up to three months' in prison on summary conviction can be imposed.
- Compensation for workers in an employment tribunal.

## Practical steps

- Reach an agreement with workers about what "working time" actually means. Working time is defined as:

- any period during which a worker is working, carrying out his duties, and is at the business' disposal;
- any period during which the worker is receiving "relevant training"; or
- any additional period agreed in a relevant agreement to be "working time" (for example, in an employment contract).

Time that is not normally classed as "working time" includes:

- attending work-related social events;
- travelling to a fixed workplace; and
- attending evening classes that are not a requirement of the job.

- Identify which workers, if any, are likely to exceed the 48-hour average and try to enter into opt-out agreements with them to exclude the limit on their average working time.
- Ask any workers who have not opted out for details of other work they do for other employers and the hours they work each week.
- Keep a list of opted-out workers.

## CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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