



Managing stress checklist

An employer who does not take action to manage the effects of stress on its employees will not get the best out of those employees and will also run an increased risk of stress-related claims. Employers should consider, and be seen to consider, the impact of stress in the workplace. This might include:

- Carrying out a stress audit. Ask employees to list their concerns in respect of stress.
- Using return-to-work interviews after sickness absence, performance appraisals and employee surveys to identify any underlying stress-related reason for absence or poor performance.
- Training managers to recognise situations likely to cause stress and to identify the symptoms.
- Implementing a stress at work policy, which should make it clear that the employer takes the issue seriously. The policy should also set out guidance on how employees should deal with the effects of stress and how they can raise concerns.
- Consulting employees, employee representatives or unions on organisational changes.
- Avoiding unreasonable demands being made of employees by prioritising workloads and

appropriate delegation of duties.

- Providing support through an employee assistance programme or occupational health service, or providing independent confidential counselling.

Anti-stress policies

A stress policy is a statement explaining an employer's attitude to stress (whether resulting from acts inside or outside the workplace). It should also set out the action it is taking to protect the mental well-being of its staff and how it will prevent stress and mental health problems at work arising and explain how it will deal with any problems that may arise.

An effective anti-stress policy should provide advice on the measures that will be taken to monitor and, where necessary, eradicate the effects of stress at work. This may take the form of:

- Including stress in risk assessments. If so, it must be clear about how stress risks are going to be assessed, how they will be carried out and who will be responsible.
- Explaining the role and expectations of managers and supervisors. For a policy to be effective, managers need to be trained to assess and manage the risks of stress on an ongoing basis. Employers need to be clear about what they require managers to do and how they will be enabled to do it.

- Training for managers (who will implement the policy) and for staff (to raise awareness and develop skills).

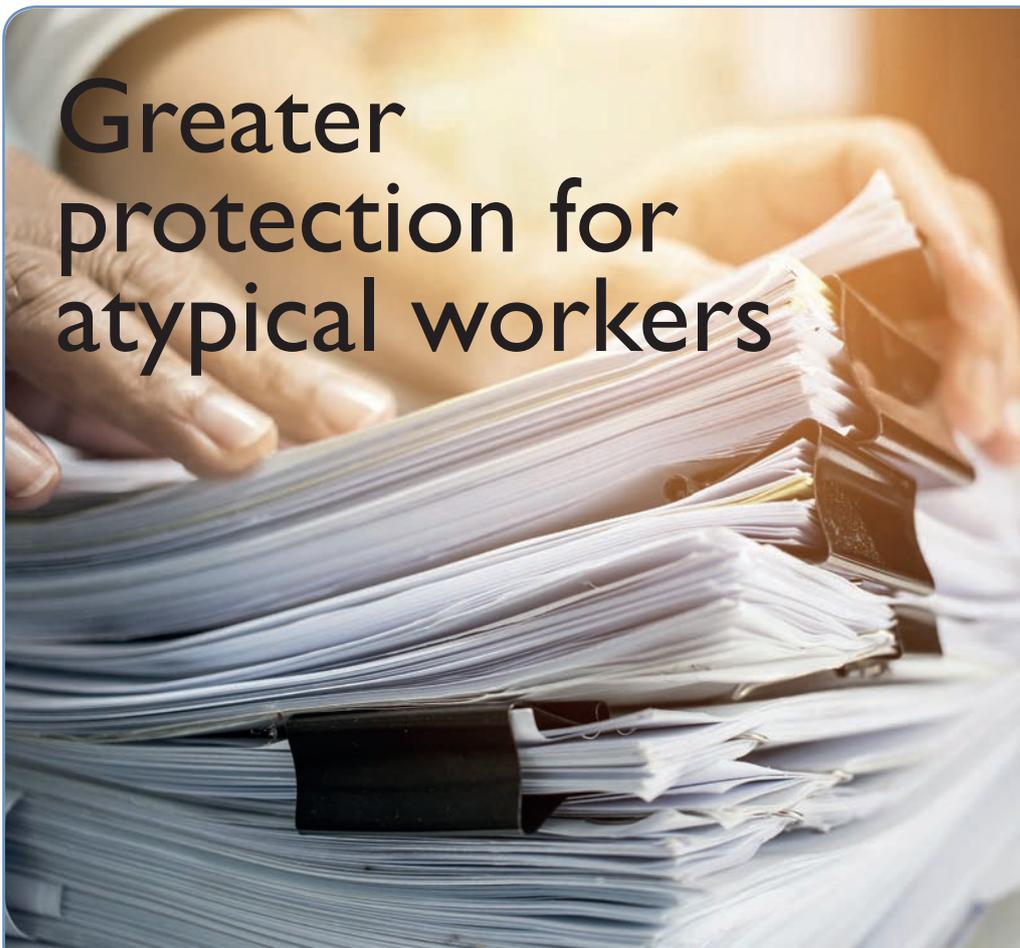
It is important that any policy covers clear and open channels of communication and effective methods of investigating reported workplace incidents or behaviour giving rise to stress both with internal and external sources of support for employees suffering from stress.

Reasonable adjustments to job roles and working conditions to accommodate disabled employees or reduce causes of stress, where possible and necessary.

It should also include references to other work place policies which an employer should therefore have in operation such as anti-bullying and grievance.

A policy alone is not enough, it can only be part of an approach to dealing with workplace stress. It is important to ensure that an employer who introduces an anti-stress policy has effective means of supporting any commitments made in the policy. In particular, are the employer's commitments reflected in the employer's practice? Training, training, training is key to identifying the signs of stress and dealing with cases of stress. This training could be provided to all staff, but will be particularly relevant for managers.

Greater protection for atypical workers



The Government has confirmed that it intends to introduce a number of legislative changes designed to improve protection for agency workers, zero hours workers and others with atypical working arrangements.

Among other things, the Government has confirmed that it will repeal the 'Swedish derogation' in the Agency Workers Regulations 2010, which excludes agency workers from the right to the same pay as directly recruited workers if they have a contract of employment with the agency.

It will also:

- increase from one week to four weeks the period required to break continuity of employment for the purpose of accruing employment rights;
- give all workers the right to a 'day one' written statement of rights; and
- legislate to prevent employers making deductions from staff tips.

The Government has not, however, committed to a timetable for most of these reforms.

The reforms are set out in the 'Good Work Plan', the Government's latest response to the recommendations made by the Taylor Review, published in July 2017. The Good Work Plan also sets out proposals for improving the enforcement of worker rights.

Among other things, the Government will:

- quadruple the maximum employment tribunal fine for employers who are demonstrated to have shown malice, spite or gross oversight in breaching employment rights from £5,000 to £20,000;
- bring forward proposals in early 2019 for a single enforcement body to ensure vulnerable workers are better protected;
- create new powers to impose penalties on employers who breach employment agency legislation like non-payment of wages; and
- bring forward legislation to enforce holiday pay for vulnerable workers.

The Good Work Plan also confirms the Government's intention to legislate to clarify the test of employment status on which eligibility for worker rights depends. It accepts the Taylor Review's recommendation that the differences between the employment status tests that govern entitlement to employment rights and tax liability should be reduced to an absolute minimum.



News in brief

Unpaid work trial may attract minimum wage

The Department for Business, Energy and Industrial Strategy (BEIS) has updated its guidance on calculating the minimum wage to include unpaid work trials.

The updated wording sets out guidance for employers who, as part of their recruitment process, may use unpaid trial periods to establish whether the candidate has the skills required for the job. It notes that often such a practice will be a legitimate means of carrying out a recruitment process. However, in some instances the candidate will be asked to perform tasks for which the national minimum wage (NMW) or national living wage (NLW) should be paid.

The guidance highlights that current legislation does not define a "trial work period" and sets out factors that may be taken into account when considering whether a person should be paid. These include: whether the trial is genuinely for recruitment purposes; whether the trial length exceeds a reasonable amount of time that an employer would need to assess the individual's ability in the role; whether the tasks carried out add value to the employer beyond testing the candidate; and the extent to which the individual is observed during the trial. A key consideration, it says, is that the longer a trial period continues, the more likely it is that it will result in a contract to provide work meaning that the NMW/NLW is due.

Checking emails out of hours, is the firm's data secure?

Employees who check their work emails on personal devices outside of office hours could be breaching GDPR. Research carried out by Insurance2go found that many participants used their personal devices to conduct tasks such as answering work emails while on their commute, on holiday or at the weekend. While 14 million employees use a second phone for work-related activities, 18% use their own device because it is better than their work device and 14% consistently use their personal device for ease and familiarity.

Despite the number of people using their personal devices, the report notes that such activity could be breaching GDPR legislation. In particular, the GDPR requires businesses to ensure that any work-related data stored on its employees' personal devices is as secure as the information kept within its own servers.



Preparing for employment law changes

Looking ahead employment law is likely to change in several ways this year. Here is our guide to help steer you and your business through those changes:

1. Increase to National Minimum and Living Wage

Both the National Living Wage (NLW) and National Minimum Wage (NMW) rates increase in April 2019. Under the NLW, the minimum hourly rate that workers aged 25 and over are entitled to will increase from £7.83 to £8.21.

The NMW rate for workers aged between 21-24 increases from £7.38 to £7.70 an hour; the rate for 18-20 year olds will increase from £5.90 to £6.15 an hour and those over compulsory school age, but not yet 18 will experience an hourly increase from £4.20 to £4.35.

The minimum rate for apprentices will also increase from £3.70 an hour to £3.90 an hour, providing the apprentice is under the age of 19, or 19 and over but in the first year of their current apprenticeship.

2. Settled Status for EU nationals

European workers currently living in the UK will be able to apply for settled status in 2019, allowing them to remain indefinitely in the UK following the end of the Brexit transition period in 2021.

To be granted settled status individuals must be able to prove they have been living in the UK for five years by the date of application. Those who do not meet this requirement can apply for temporary status, allowing them to remain until they have accrued enough residency to be granted settled status.

3. Auto-enrolment for pension contributions

From April 2019 the minimum contributions for

auto-enrolment pension schemes will increase for both employers and employees. Currently, automatic enrolment requirements mean employers must contribute a minimum of 2% of an eligible worker's pre-tax salary to their pension pot, with the individual contributing 3% themselves. However, under the new requirements, employers and employees will now have to contribute a minimum of 3% and 5% respectively.

4. Payslip changes

Changes to the way employers issue payslips come into force on 6th April 2019, as the legal right to a payslip will be extended to include those who are recognised as 'workers'. Employers will also be obliged to include the total number of hours worked on payslips for employees whose wages vary depending on how much time they have worked.

5. National Minimum Wage for sleep-ins

Following the Court of Appeal decision on *Mencap v Tomlinson Blake*, a precedent was set that individuals working on sleep-in shifts, such as nurses and care workers, would not be entitled to the NMW for time spent asleep where they were 'available for work' and not 'actually working'. A request to appeal this decision was lodged with the Supreme Court by Unison and a decision is expected this year as to whether this case will be analysed further. Any ruling will be important in defining the rights of thousands of staff currently working sleep-in shifts.

6. Gender Pay Gap Reporting

Private organisations with 250 or more employees will again be required to publish their gender pay gap figures on the 4th April 2019. Figures are expected to be scrutinised to determine whether efforts to address any significant pay disparity highlighted in 2018 have been successful.

7. CEO pay gap reporting

New legislation will also come into force this year that requires companies with more than 250 employees to publish their executive pay gap. Although the first reports are not expected until 2020, businesses should be calculating the necessary figures throughout 2019 to show the gap between the total amount paid to their CEO and the average pay for an employee.

8. Non-disclosure agreement

The Government have brought forward a review into the use of non-disclosure agreements in the workplace, with a response expected this year. These agreements were originally used to protect intellectual property when employees moved from one company to another. However, recent media coverage has highlighted the fact that they are often used to silence claims of harassment and bullying. Whilst these agreements remain legal, the Government's response may go some way to deciding how they can be used in the future.

9. Supermarket Equal Pay claims

The decisions in separate tribunal cases on the issue of equal pay which involve Tesco, Asda, Morrisons and Sainsbury's is expected this year. This will provide more clarity on the issue of equal pay and may pave the way for further claims from staff working in other sectors

10. Brexit

We can be certain that there will continue to be more uncertainty around this issue. We are therefore urging clients to get in touch, to find out how Brexit may affect the arrangements for their employees and workers.

Amanda Finn can be contacted at a.finn@gullands.com



Podcasts

We are delighted to offer free Podcasts on a range of employment and family law issues. Visit <https://www.podbean.com/site/Search/index?v=gullands> to download the latest episode.

These bite-sized guides cover a range of interesting and topical issues and will be updated monthly.

Preparation for Brexit

As uncertainty continues surrounding Brexit and whether the withdrawal agreement will be supported by MP's, the Government has started to implement preparations within its own departments for Britain leaving the EU on 29 March with no deal in place.

If you haven't started to consider yet how either of these scenarios may affect your own business and especially the contracts you have in place with suppliers and customers, then please get in touch and we will be happy to review them with you.

You may also want to consider having contingency plans for dealing with disruption on Kent's roads with either scenario, which may affect the movement of staff and normal day to day operations.

CONTACT

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



Amanda Finn
Tel: 01622 689795
Email: a.finn@gullands.com
Twitter: @Gullands_HR_Law



Andrew Clarke
Tel: 01622 689733
Email: a.clarke@gullands.com



Sarah Astley
Tel: 01622 689727
Email: s.astley@gullands.com



Dudley Cramp
Tel: 01622 689734
Email: d.cramp@gullands.com



Jonathan Haines
Tel: 01622 689736
Email: j.haines@gullands.com

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 two years.
- One week's notice for each complete year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 2018	April 2019
Apprentices	£3.70	£3.90
16-17	£4.20	£4.35
18-20	£5.90	£6.15
21-24	£7.38	£7.70
25+	£7.83	£8.21

Statutory Sick Pay (from April 2018)

Per week £92.05

Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2018) £145.18

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 week's 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 under the Statutory Scheme for dismissals after 6th April 2018 at £508.00.



Gullands Solicitors are Authorised and Regulated by the Solicitors Regulation Authority. Number 50341

16 Mill Street
Maidstone
Kent ME15 6XT
01622 678341

18 Stone Street
Gravesend
Kent DA11 0NH
01474 887688

www.gullands.com
info@gullands.com



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