

## Data protection: what you need to know

There could be serious financial, commercial and reputational implications for your business, including possible criminal penalties and fines, if personal data is not handled properly.

Personal data is any information about an individual, actual or potential employee, held on computer or in organised filing systems that could identify the individual, either on its own or together with other information your business or a third party holds. It needs to be protected and kept secure. This information includes:

- name;
- e-mail address;
- telephone numbers;
- date of birth; and
- notes written about someone such as an annual performance review.

You must take particular care with sensitive personal data, for example medical records, as more restrictive requirements apply to this type of data.

Your business can only collect personal data if it has a legitimate reason for doing so such as because a new employee is coming to work for you.

Your business should only collect information it requires at the particular time. For example, a job applicant should not be asked for their bank details. This type of data should only be collected once the applicant has started to work for your business.

If you want a third party to manage data, such as carrying out payroll services, you should take legal advice. Your business will still be responsible for protecting the data and will need to enter into a written contract with the third party. You should also take legal advice if you are considering transferring any data outside the countries in the European Economic Area. It is very easy to transfer data outside of your own country, for example by sending an e-mail to an office outside of the UK.

All data must be accurate and up-to-date. Databases should be regularly cleaned and out-of-date information must be deleted. Data should only be held for as long as it is required and for the reason it was collected.



Personal data must be kept secure at all times. For example:

- computers and files should be password protected;
- personal data on laptops and other portable devices should be kept to a minimum;
- manual filing cabinets containing personal data should be locked and only accessible to authorised personnel;
- confidential documents should not be left unattended on desks; and
- personal data should be removed promptly from fax machines, printers and photocopiers.

When your business sends personal data, it must be done in a secure way. For example, confidential information should not be sent in the internal mail. Personal data must be disposed of securely by methods such as shredding, placing in confidential waste bags, destroying or securely deleting electronic files. Confidential papers should not be put in the recycling bin.

When working away from the office or in public areas ensure personal data stored on portable devices such as laptops, Blackberries, CD-ROMs or memory sticks is encrypted and kept secure at all times; avoid leaving papers or electronic devices lying around; make sure members of the public cannot see confidential documents or computer screens; and avoid talking about confidential matters when the public can hear.



### DO YOU WANT TO GIVE YOUR EMPLOYEES SHARES IN THE BUSINESS?

Many will have seen the headlines from the Conservative Party Conference suggesting allowing businesses to remove employment rights in exchange for shares in the business.

The "employee-owner" scheme will allow these shares worth £2,000 to £50,000 to be exempt from tax if employees give up certain work rights, such as the right to claim unfair dismissal.

The Chancellor's plan as explained so far, would allow businesses hiring staff to insist they forfeit employment rights in two broad areas in exchange for the shares. Existing employees would have the right to refuse the offer.

The devil will, as always, be in the detail of any such plan. Whilst not suiting every employer it may be a means of removing an element of risk from the employment relationship. It is likely that the "rewards" will have to be substantial for employees to take such a risk. Although statutory redundancy pay is not huge, successful unfair dismissal claims can include financial loss of up to £72,300. When more detail is released we will revisit this topic in future Employment Briefs.

# Discrimination in the provision of goods and services

Since 1 October 2010, businesses owe duties to members of the public when they provide them with goods, services or facilities. This applies whether or not for payment. A service provider is responsible for the acts of their employees and agents.

The meaning of the words “services, goods or facilities” are not defined by the Equality Act 2010 and are likely to be interpreted widely by the courts. They can include:

- Access to any place members of the public are permitted to enter (for example, pubs or restaurants)
- Accommodation in a hotel, boarding house or other similar establishment
- Facilities for education (including privately run nursery schools or pre-schools)
- Facilities for entertainment, recreation or refreshment (for example, cinemas or theatres)
- The services of any profession or trade.

Members of the public who access your goods, services or facilities are protected on the basis of certain characteristics. They are protected both when requesting and during the course of being provided with it. The protected characteristics are currently:

- sex;
- race;
- gender reassignment;
- disability;
- sexual orientation;
- pregnancy and maternity
- religion or belief; and
- age.

There are various types of discriminatory act.

**Direct discrimination.** You must not treat a person worse than someone else on the basis of a protected characteristic. For example, a nightclub charges a higher price of entry to a man where the service provided to a woman is otherwise exactly the same.



**Indirect discrimination.** You must not apply a policy or procedure to everyone which would particularly disadvantage a group of people with a protected characteristic. For example, a shop decides to apply a “no hats or headwear” rule to customers. If this rule is applied in exactly the same way to every customer, Sikhs, Jews and Rastafarians who may cover their heads as part of their religion will not be able to use the shop. Unless the shop can objectively justify using the rule, this will be indirect discrimination.

**Harassment.** You must not harass a member of the public. Harassment is any unwanted conduct relating to a protected characteristic or of a sexual nature that has the purpose or effect of violating a member of the public’s dignity or creates a hostile, degrading, humiliating or offensive environment for that individual.

**Victimisation.** You must not treat someone badly or victimise them because they have:

- complained about discrimination;
- helped someone else complain; or
- done anything to uphold their own or someone else’s rights under discrimination law.

The anti-discrimination rules vary according to the protected characteristic. However, there

are a number of key exceptions to this new rule where it will remain lawful to treat people differently on the basis of age. You must not treat a disabled person unfavourably because of something arising from or in consequence of their disability, where you cannot show that what you were doing is objectively justified. You have a duty to make reasonable adjustments for all disabled people, whether you have disabled customers or not. You should review how accessible your services are to disabled people, rather than waiting for a disabled person to encounter a problem. Examples of steps it may be reasonable to take include:

- a solicitors’ firm lending a tape recorder to a disabled client who cannot communicate in writing or travel to the firm’s office, so they can dictate their instructions and witness statement; or
- a utility company providing a quarterly bill in alternative formats (such as Braille or large print).

Many claims will be limited to claims for injury to feelings as no other financial losses are likely to have been caused by the discriminatory acts complained of. Under the old legislation, levels of damages were divided into three brackets, and ranged from £750 to £30,000. These are likely to still be relevant under the Equality Act 2010.

# The Fit Note - is it really any different?

Helen Valls-Russell, OT Work Solutions Ltd

I was recently at a conference organised by the College of Occupational Therapists where Bill Gunnyeon, Chief Medical Adviser at the Department for Work and Pensions, gave the keynote address on the topic of the Fit Note.

He informed us that over 3,500 GPs have attended half day workshops aimed at training them in how to use the fit note effectively. I don't know about you, but I have not seen much evidence of this in my practice. I see a lot of "fit notes" in my job and most bear more resemblance to the old "sick note". Phrases such as "light duties" with no clarification are in abundance. My personal favourite is "orthopaedic surgery" with no further explanation, not even a hint at the part of the body affected.

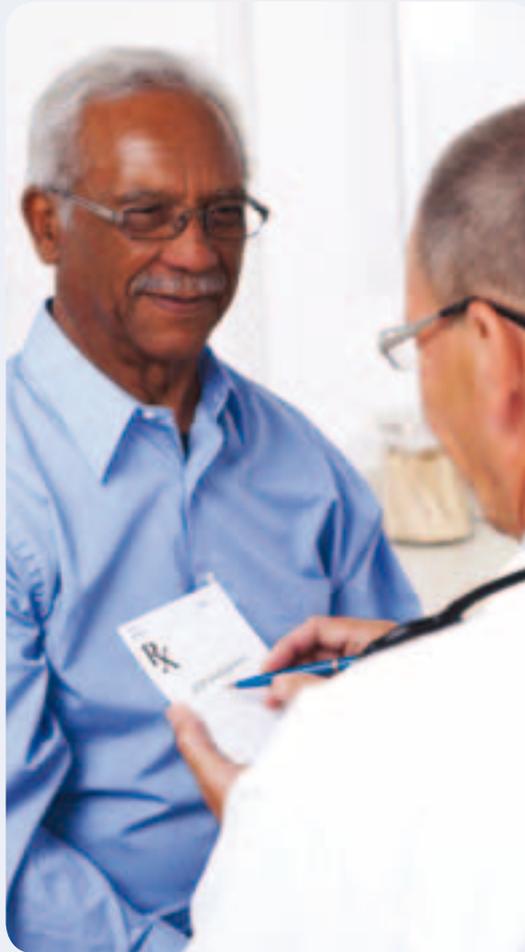
The aim of the Fit Note is to improve the quality of advice to the individual and the employer, and to improve the communication, culture, and behaviour between the GP and the employer. Don't get me wrong, there are many good GPs out there and many are trying to use the Fit Note correctly. However, they are not trained in analysing occupations and they have a limited amount of time with each patient.

I believe the way forward is for employers to be more proactive. Many employers feel unable to question the information they are given. However, they are entitled to ask for further information such as clarification of what is meant by "light duties". It is important to remember that the GP may have very little understanding of the job their patient does, so a brief list of duties and a brief description of the working environment may be useful to them in order for them to provide more clarity regarding these "light duties".

The main message, as with any issue in absence management, is to maintain effective communication. Through keeping channels of communication open between employers and employees most situations can be managed effectively with positive results. The problems arise when communication breaks down, often because the employer or manager is concerned that they will cause an individual further anxiety or distress.

Bill Gunnyeon also informed us that the Royal Council of General Practitioners is now running courses in partnership with employers. Let us hope that this will facilitate positive changes for the future.

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## 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 2012)

16 – 17	£3.68
18 – 20	£4.98
21+	£6.19
Apprentices	£2.65

### Statutory Sick Pay

(from April 2012)

£85.85 per week

### Statutory Maternity/Paternity/Adoption Pay

(basic rate) (from April 2012)

£135.45

### 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.

The calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme at £430. This is due to increase to £450 for dismissals on or after the 1 February 2013.



# What to do when the weather outside is frightful

Having already had snow in December in some parts of the county, employers should be considering developing a strategy for dealing with major travel disruptions. They will need to consider how best to ensure business continuity and resilience if a significant proportion of staff are absent. They should also consider staff management issues such as whether to pay those who are absent, whether to allow staff to work at home or instruct them to attend an alternative workplace, and how to keep in contact with them.

Of those issues the most frequently asked question is "Do I have to pay employees who do not turn up to work because of bad weather?" As with most employment questions the answer is far from simple. It is unlawful to make a deduction from a worker's wages (which is in effect not paying them for a day) unless the deduction is authorised by statute, by a contractual term that has been notified to the worker in writing, or by the worker having given their prior written consent. The key issue is therefore to decide whether there is a contractual right to be paid if the employee cannot attend work.



The prevailing and oft-repeated view appears to be that employees who cannot get to work are not "ready" to work and are therefore not entitled to be paid, regardless of the reason for absence, but employers should consider how the employees, in particular those who are salaried rather than task based, have been treated on previous occasions.

In short, the answer lies in managing expectations. Have a policy in place which makes it clear what will happen in such an event.

## NEWS IN BRIEF



### Surrogate parents not entitled to maternity or adoption leave

Maternity leave is a right which attaches to the birth mother, regardless of whether she intends to keep the child. Although the intended mother can claim parental leave if she has the requisite service, she will not be entitled to adoption or maternity leave. Claims have been lodged by Surrogacy UK and a woman affected by the lack of protection to clarify this hole in the legislation. It is reported that the Government is considering extending such rights to surrogate parents but no firm decision has been made yet.

### Annual employment statistics

The Ministry of Justice has published its annual employment tribunal and EAT statistics. The number of claims fell in most jurisdictions; as did representation of claimants by trade unions or lawyers which showed a 50% drop from the previous year.

### Social Media

Cases through the tribunals continue to set out clear commentary to employers. Failure to set clear guidelines to staff on social media use will make any attempt to dismiss employees for seemingly inappropriate online behaviour open to question. Furthermore for a policy to be effective the employees must be informed and educated on its content.

## Clients report that Sentinel service provides peace of mind

Gullands Sentinel has now been up and running for 6 months so what are clients saying to us about this new product?

The most positive feedback relates to the fact that it is manned by us, not a faceless helpline, with consistent local named advisors. It also has no lengthy tie in just renew, or don't, on an annual basis.

We have already done a number of health audits of policies and handbooks which have identified and rectified some key issues for employers which would have caused problems for them at some point in the future.

Last but not least the peace of mind of having cover in the event you end up at the tribunal not only for any award but also to cover the legal fees of having your side of the story represented.

Improved employer/employee relations as a result of both parties being clear about what is the correct approach to employment matters can only help improve the health and happiness of the company in what continue to be difficult trading conditions.



If you want to know more about Gullands Sentinel and how it can be tailored to your business simply call Amanda Finn or Laura Claridge and they will be happy to have a free no obligation chat with you.

### 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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