



Winter employment issues

This season brings its own set of challenges like snow days and winter coughs and colds. Here is a roundup of the key things to look out for and what employers need to do to be prepared.

Ice and Snow

Be prepared for travel disruption. Get your policies and rules straight and publicise them to staff in advance of the bad weather coming.

Whether employees are entitled to be paid during bad weather depends on your contract. Consider your options, can employees work from home? Could employees come in later or leave early? Apply any policies consistently to all staff.

Winter Bugs

This time of year sees more employees taking sick leave. Remind staff of your workplace rules around calling in sick. It is best practice to hold return to work interviews when staff return from sick leave. These can act as a deterrent for less than genuine cases and are a good way of monitoring sickness and keeping channels of communication open with staff so as to head off problems at an early stage.

Holidays

January and February are often busy times for holiday requests for the coming year as staff book their summer holidays to try and beat the January blues. We have included our holiday Q&A on page 3. Make sure your holiday policies are in order and remind staff about your annual leave rules before the busy holiday season is upon us. If you intend to shut shop and enforce a period of annual leave across your workforce over the



summer or Easter for example, then unless your employment contracts say otherwise, you need to give staff notice which is at least twice the length of the period of leave that you intend to enforce.

Remember it is acceptable to reject holiday requests. It is a good idea to remind staff to request the time off before booking in case the request is turned down, particularly if they are booking holiday over busy school holidays. Make clear to staff that if they take time off after a request has been refused, they may face disciplinary action.

Christmas Party Hangover

Hopefully your Christmas party went off without any drama, but Christmas parties are a common feature in Employment Tribunal claims in the New Year. Keep in mind that employment law applies to off site social events as it does to the office. If you were met with a complaint in January, then investigate as you would any other workplace complaint or grievance.

Social media policy

Social networking sites can be a minefield for employers. There have been countless examples in the press of employees facing disciplinary action for use of social networking sites such as Facebook. Whilst it is often important for staff to be well connected for marketing purposes, it is more important than ever to have policies in place to deal with matters as they arise. Employers need a strategy in place to deal with social media and to set out what is acceptable.

Employees need to be made aware that comments posted on social media are in the public domain and that employers often check these websites, particularly at the recruitment stage. Though employers are entitled to monitor the sites being visited on their equipment both during and outside of work hours, close monitoring of personal emails, postings and internet activity could infringe privacy laws. It is best practice to have a policy which confirms that emails will be monitored.

A well drafted social media policy should cover the key issues, including for example, the consequences of posting information or photos which may harm the employer. The policy should also look at whether the employer or employee will own any contacts gained during the period of employment and what is to happen at the conclusion of employment. For example, is the employee required to delete the contacts? A safeguard for employers is to require employees to share any contact details gained during employment, for example by adding them to the main database, so that the employer has the contacts stored centrally.

Individual employment contracts can also be drafted to include post-employment restrictions to try to protect the business' contacts after the employee leaves the business.



Amanda Finn praised in latest Chambers and Partners UK

Chambers and Partners UK 2015 ranked Amanda Finn as an 'up and coming' partner in the Kent Employment section. The legal guide describes Amanda as, "a 'very nice and very competent lawyer' with 'extensive experience in employment' according to clients. She is experienced in TUPE issues, settlement agreements, redundancy and restructuring matters."



Interview essentials

Hiring an employee: Part two

This second part of a two part business briefing continues to highlight the key legal issues a business needs to consider when recruiting a new employee. Part one featured in the October issue of Employment Brief and covered advertising the job, the application and pre-employment health questions.

The interview

- Think when and where the interview should take place. For example:
 - check whether the interview venue has access for disabled candidates;
 - holding an interview during a religious holiday could discriminate against applicants from that particular religion; or
 - candidates with children may require the interview to be conducted at a particular time.
- Ideally, all shortlisted candidates should be asked the same or similar questions to allow answers to be compared and to avoid the possibility of a discrimination claim.
- Avoid asking questions about a candidate's personal life unless they are directly relevant to the requirements of the job.

- Keep a paper trail throughout the process to demonstrate how the business reached its decision to select the successful candidate. This should include:
 - selection criteria;
 - notes on the shortlisting process;
 - interview questions; and
 - notes of panellists' assessments of the interviewees.

The offer

- Make a written offer to the successful candidate. Consider whether to set a time limit for acceptance and specify that acceptance should be in writing.
- A business can make the offer conditional on a range of criteria, provided they are not discriminatory. For example:
 - providing satisfactory references; or
 - confirmation that the employee is free to work in the UK or has an appropriate work permit or immigration approval to work.
- Before making a job offer, ensure the applicant confirms they are not bound by any restrictive covenants from their previous job; otherwise the business could be sued by their former employer. Restrictive covenants are used in

employment contracts to protect an employer's business by restricting the activities of an employee, generally after employment has ended.

The contract

- Consider whether the contract should be permanent or for a fixed term. If a business decides that a fixed-term contract is appropriate, it may need to justify why it reached that decision. Remember that an employee on a fixed-term or part-time contract should not be treated any less favourably than a permanent employee (for example, they should be allowed access to a company bonus scheme or instead receive an equivalent benefit).

Probationary periods

- A probationary period can be included in the contract. This will enable the business to assess the employee and vice versa. It also gives it the flexibility to dismiss someone using a shorter notice period of at least one week.
- Probationary periods typically last between three to six months and can be extended with the consent of the employee at the end of the term (for example, if the employee was sick and the business was unable to adequately assess their performance, it may want to extend the period).

Q&As on holidays

1. How much holiday are employees entitled to?

Full time workers who work a five day week are entitled to 5.6 weeks' or 28 days' paid holiday leave each year.

2. What about part time workers?

The full time rate of 28 days is reduced on a pro rata basis according to how many days worked each week. The easiest way of making the calculation is to take the number of days worked each week and multiply by 5.6, so for a two day week, the calculation is two days x 5.6 = 11.2 days' leave each year.

The same does not apply to those working more than a five day week, for those workers the statutory minimum holiday entitlement remains the same.

3. Do I need to pay staff on bank holidays?

Bank holidays can be included in the 5.6 weeks' statutory leave and it often comes as a surprise that there is no statutory right to be paid for bank holidays.

This is subject to the wording of the employment contract. Some contracts may say that the holiday allowance is in addition to public holidays and others that the allowance includes public holidays, either approach is fine as long as the employee receives at least 28 days holiday per annum.

4. Do I need to pay employees for time spent attending doctors and dental appointments?

It depends. There is no general right to be paid for time off for appointments, so if employees expect to be paid you can require them to take time off for appointments as holiday.

This is subject to whether your employment contract says something different. Additionally, employers need to be consistent in the application of any rules, so if you usually allow employees paid time off to attend appointments there is a risk that to do otherwise would be inconsistent but there is no general right to be paid for these appointments.

5. Can I shut the office for 2 weeks at Easter and ask employees to take this out of their holiday allowance?

Again, it depends on the employment contract, but the short answer generally is yes. Your contract may well have a clause which allows you to enforce a period of holiday. Otherwise, the Working Time Regulations do allow an employer to give notice ordering a worker to take statutory holiday on specified dates. The notice period must be at least twice the length of the period of leave that the worker is being ordered to take.

Time for a holiday



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 2014

16 – 17 £3.79

18 – 20 £5.13

21+ £6.50

Apprentices £2.73

Statutory Sick Pay

from April 2014

£87.55 per week

Statutory Maternity/Paternity/Adoption Pay

Basic rate from April 2014

£138.18

Statutory Holiday

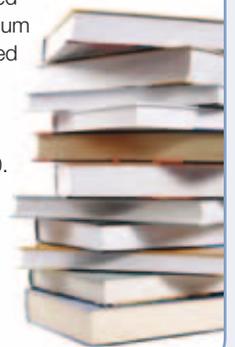
5.6 weeks for a full time employee.

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 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 2014 under the Statutory Scheme at £464.00.



Laura Claridge moves into Gullands' new Gravesend office

At the end of last year Gullands was delighted to announce the expansion of its full range of services into North Kent with the opening of a new office in Gravesend.

Laura Claridge from the employment team will be joining the team based at the new office at 18 Stone Street in Gravesend town centre.

Laura comments: "18 Stone Street is a great site for the firm and the employment department. Our links with both employers and employees in the North Kent area has drastically increased over the years and having a presence in Gravesend will enable us to further develop connections and puts us closer to many existing clients. I am looking forward to strengthening the department's presence in this area in the coming months."

Coming Soon: Laura will be hosting a series of employment law clinics at the Gravesend office. To register your interest please email Laura at l.claridge@gullands.com.

Staff profile Legal eye on...

Name: Laura Claridge
Position: Solicitor
Department: Employment
Office: 18 Stone Street, Gravesend



Areas of expertise:

I act for and advise individuals, businesses and charities in all aspects of employment law. This includes both employment disputes and non-contentious work such as preparing and advising on employment contracts and policies.

Can you tell us about any recent cases you have worked on?

Negotiating a favourable settlement agreement with an outgoing director on behalf of an employer client.

What do you think the most important employment issues will be in 2015?

New shared parental leave and pay provisions are due after 5 April 2015, but much of the coming year will depend on the outcome of the election in May. The three main parties have all published employment proposals. There was much talk of zero hours contracts in 2014 and both parties have outlined policies.

When and why did you move to Gullands?

I joined after the Legal Practice Course and completed my training contract at Gullands.

What's been your biggest career lesson and why?

The devil is in the detail – attention to detail can make all the difference to the outcome of your client's case.

If you weren't doing this job what would you be doing? Vet.

Hobbies: In my spare time I enjoy cookery, literature and my local pub quiz.

Employment myths

I have received a letter from an employee, but it is not labelled 'grievance', so I do not need to treat it as such.

A grievance can be any concern, problem or complaint that an employee raises.

A failure to treat any letter in these terms as a grievance could result in the employee being allowed an uplift on any eventual Tribunal award. In extreme cases, failing to deal with a grievance can allow the employee to resign and claim constructive dismissal.

If an employee fails to raise the grievance, they could still bring a tribunal claim about the matter but may recover less compensation.

If an employee has less than 2 years' service, I can dismiss them for any reason and the employee will not be able to bring a claim for unfair dismissal.

No, if an employee wishes to bring a 'normal' unfair dismissal claim, for say a conduct or a redundancy dismissal, then they need to have completed at least 2 years' service.

However, some claims do not have a minimum period of employment, this includes dismissals linked to discrimination or as a result of the employee raising a health and safety concern. Discrimination claims can even be brought by potential employees if they faced discrimination during the recruitment process.

Following the increase in the minimum period of employment to bring a claim for unfair dismissal to two years, an employee's only recourse may be to claim that the dismissal was for one of these reasons. So, even where an employee has been employed for less than two years, it is safest to follow a basic procedure. Always have a paper trail to support the reason for dismissal (e.g. misconduct) in the event that an ex-employee alleges that the actual reason was for a discriminatory reason (e.g. she was pregnant).

If an employee is guilty of gross misconduct, I can sack them on the spot without going through a disciplinary procedure.

This is risky. Even if you catch an employee red-handed, for example taking money out of the till, you would be well advised to investigate and follow a disciplinary procedure to ascertain what happened and whether there are reasonable grounds to dismiss. For example, did another manager authorise money to be taken for some reason, or is there a mitigating factor?

Unless you investigate to get to the bottom of what happened, it may be difficult to show that you had reasonable grounds to dismiss if the decision is challenged. Following a procedure should also help demonstrate that misconduct was the reason for dismissal and not some other reason such as the employee being pregnant or disabled.

Failing to follow a disciplinary procedure can result in an uplift of up to 25% in an unfair dismissal claim.

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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