

**NEWSLETTER - EMPLOYMENT LAW UPDATE
JULY 2022**

- 1. Managing Clinically Vulnerable Employees (CEV) in a Post-Covid Era**
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1. Managing Clinically Vulnerable Employees (CEV) in a Post-Covid Era

The most up to date government Covid guidance for people previously considered CEV, states that they are no longer at greater risk than the general population, given that they should have received their recommended vaccinations.

Formally then, there are no unique exemptions for CEV individuals; its therefore likely to be difficult for these individuals to show there is a greater risk to their health resulting from a return to face-to-face work.

However, Employers should ensure their risk assessments are up to date for all vulnerable Employees, including those with disabilities which could be compromised by the Covid infection. CEV staff with disabilities may require individual specific risk assessments to demonstrate that they are safe at work.

However, CEV individuals can still refuse to work if they believe they are genuinely at risk. This is particularly the case if an Employer hasn't followed, or updated their risk assessment recommendations, and is therefore putting the Employee at risk of harm.

In these instances, Employees may raise a grievance which, if unresolved, could result in resignation by the Employee and a claim for Constructive / Unfair dismissal.

2. The Move to Home Working

The pandemic has had a significant impact on the number of people asking to work from home. One benefit to Employers is home working has the benefit of widening the scope of people who can be employed. Many Employers are suffering skill shortages while at the same time, people who could fill the vacancies may be struggling to accommodate caring responsibilities for relatives/children, or disabilities which restrict their mobility. These hurdles can be addressed to an extent, by providing a home working option.

However, there are hurdles to overcome:

- Effective communication technology is essential. Employers must have access to their Employees during their normal working hours, regardless of where they are; office based or at home.
- The Employer has to make sure that IT, Social Media and traditional means of communication can be used.
- For many Employees the need to separate the home and work cultures is essential. They can struggle with the intrusive nature of having to deal with colleagues, and customer from the 'sanctuary' of their home.
- Home working Employees need equipment to do the job, such as laptops, printers, mobile phones. There is also the concern that these expensive assets can be held hostage if the Employment relationship breaks down, and not returned. The contract of Employment needs to be very specific about allowing the Employer to have access to these assets.
- Confidentiality is also an issue for Employers to consider. How confident is the Employer that sensitive personal data is being securely stores at an Employee's home? Again, if the employment relationship breaks down, is the Employer confident this information will be returned? An option could be for all data an information to be stored on an encrypted memory cloud, to which only key people such relevant Managers and the Employees.

What is becoming more apparent is that traditional office based 9-5 working is coming to an end, and more hybridised forms of working are gradually becoming the norm.

3. Food Factory Worker Unfairly Dismissed for not removing Crucifix

A Christian/Russian Orthodox worker was Unfairly Dismissed, according to the Employment Appeal Tribunal, when he refused to remove his Crucifix (*Kovalkova v Hook 2 Sisters*)

The Employee worked in a food production factory where health and safety rules, as well as food contamination procedures, required all staff to remove jewellery in production areas.

However, EAT Judge Cowen ruled that the Company's "Foreign Body Control Policy" placed Kovalkova at a disadvantage on grounds of his religious beliefs, and his dismissal was the result of discrimination by the Employer.

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The principle that health and safety law overrides civil legislation because it is criminal law, could not be applied in this case. That was because the Employer's Foreign Body Policy required managers to conduct a Risk Assessment, to find out if the jewellery could still be worn, with appropriate measures to reduce or remove the risk. This assessment was only conducted after the Employee had been in post for two months, and didn't include a discussion with the Employee about options to reduce these risks.

Instead, the Line Manager simply conducted their own assessment, and concluded that the links in the chain created an unacceptable risk of contamination. Also, there was a risk of the crucifix getting entangled in machinery.

The Employee's continuing refusal to comply with the requirement to remove his cross, resulted in his dismissal.

The Employee subsequently won a claim for Indirect Discrimination on religious beliefs. This was because the Company's policies (Jewellery at Work and also Foreign Body Control) treated Employees with religious beliefs less favourably than other staff. As a result, Kovalkova won £22,074.68.

Normally such claims could be defended by an Employer on the grounds that:

- Both Employee Safety, and also Food Safety, were legitimate aims for its Managers to pursue.
- To ensure that happened staff had to remove all jewellery, which would be a justifiable course of action.

Where Hook2Sisters failed was in not conducting a proper risk assessment, as required by its procedures. If the Line Manager had conducted a discussion with the Employee to find out how the risk could be reduced or removed, they may well have been able to defend the claim.

4. New Statutory Payment Rates

5.

From April 2022

Shared Parental Pay (ShPP)

Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.

Maternity Pay (SMP)

6 weeks at 90% of average weekly earnings. Then statutory rate of £156.66 or 90% of employee's weekly earnings if lower.

Adoption Pay (SAP)

6 weeks at 90% of average weekly earnings. Then statutory rate of £156.66 or 90% of employee's weekly earnings if lower.

Paternity Pay (SPP)

Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.

Parental Bereavement Pay (SPBP)

Statutory rate of £156.66 or 90% of employee's weekly earnings if lower.

From 6th April

Statutory Sick Pay

£99.35 pw for 28 weeks subject to earnings (average £120 per week)

Minimum Wage from 1 April 2022

Workers aged 23 and over (National Living Wage)	£9.50 an hour
Workers aged 21-22	£9.18 an hour
Workers aged 18-20	£6.83 an hour
Apprentices under 19, or over 19 and in first year	£4.81 an hour

Cap on Weekly Pay for Calculating Redundancy Compensation £571 per week

PROFILE

Chris Moses LLM Chartered FCIPD is Managing Director of Personnel Advice & Solutions Ltd. He is a Chartered Fellow of the Chartered Institute of Personnel and Development, and has a Master's Degree in Employment Law. If you have any questions regarding these issues please feel free to contact him on (01529) 305056 or email p.d.solutions@zen.co.uk

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