

Newsletter - Employment Law Update October 2023

- 1. 10 Things Employers should do, but a lot don't – The Checklist**
- 2. Don't get caught out for posting on Facebook**

1. 10 Things Employers should do, but a lot don't – The Checklist

1. Issue an Employment Contract on Day one. Since 2020, they need to be issued on day one. Ideally send it out with the offer letter.
2. Be registered with the Pension Regulator. Employees may not want a pension or be eligible for one. It makes no difference. An Employer needs to be registered as an Employer with the Regulator, regardless of how many Employees are enrolled onto a pension.
3. Similarly be registered with HMRC as an Employer. As above, even if your Employees pay doesn't exceed tax thresholds, the Employer still needs to be registered.
4. Conduct health and safety induction training as soon as possible after the Employee starts, and at least before the end of the Probation Period. Employers have a statutory obligation to conduct risk assessments of all work that is carried out, regardless of perceived dangers, and ensure staff are trained on the steps needed to remove or reduce those jobs.
5. Have evidence of all Employees eligibility to work in the UK. Usually this entails having a photocopy of every Employees' Birth Certificate or Passport. For Employees of EU origin this can also include having details of their Home Office Share Code so that their Settled Status can be checked on line.
6. Have up to date Grievance and Disciplinary Procedures. These are the documents which enable Employers to address conduct and performance issues in a fair and reasonable manner, and may be needed to defend the Management should the problem end up in an Employment Tribunal. They don't need to be excessive or elaborate, sometimes the more basic and straightforward procedures work best for an Employer.
7. Tell staff to take their holiday. Many Employers don't allow staff to carry holiday from one year to the next, and work on the principle of "use it or lose it". This has been challenged in case law, and the principle can only be used if staff have had regular reminders during the holiday year to get it booked. If the Employer can prove that they've issued regular/quarterly reminders, and been ignored, then Employees can forfeit their unused entitlement.
8. Pay the right holiday pay. Calculating how much holiday pay staff are entitled to needs to take into account what overtime, bonuses, or other performance/productivity related pay they have received in the 52 weeks leading up to their holiday. Check payroll software to get an average weekly earnings figure for the past 52 weeks, and base holiday calculations on that.
9. Keep records of holiday requests and approval. This can be very helpful for Employers to avoid rows and complaints from an Employee who doesn't think that they've had the right amount.
10. Have a simple and easily useable method for staff to bring their concerns to management attention. Most workplace issues can and should be resolved through prompt and constructive communication. Ensure staff know where they can take any concerns and are confident of a quick response. A simple notice either on the premises, or internal communications system to let people know who to talk to if they have a problem, and reassure them that they will be listened to, could take the heat out of a lot of potential issues.

2. Don't get caught out for posting on Facebook

Social media is now a common feature of the workplace. Whether on Facebook, Instagram, WhatsApp or any other form of communication, once something is posted, it is published and the sender can be liable for what they have done. Deleting a message may be of little use. If someone else has tagged it or copied it to someone else, the cat is out of the bag and cannot be withdrawn.

Similarly, people are liable for posts that they made years ago. The fact is that they are out there in "social media land" and if they are read, the person who wrote it is as much liable today as the day it was written.

Personnel Advice & Solutions Ltd

Unfortunately people still feel that venting their opinions on the internet is acceptable. Offensive, intimidating and insulting posts can get the author into a lot of trouble, regardless of when they were written.

The use of someone's own computer to publish offensive material about work outside of their working hours is as much a problem for the Employer, as if they were written by the person sitting at their desk. Such material can be addressed by Employers using their disciplinary procedures. However, this doesn't stop anyone who has been on the receiving end of this abuse going to the Police.

The following offences can be reported, and can result in a criminal conviction.

Malicious Communications Act 1988

Any person who sends to another person-

- (a) an electronic communication or article of any description] which conveys-
- (iii) information which is false and known or believed to be false by the sender,

is guilty of an offence if his purpose in sending it is that it should cause distress or anxiety to the recipient or to any other person.

A person guilty of an offence under this section is liable-

- (a) **imprisonment for a term not exceeding two years** or a fine (or both)

Protection from Harassment Act 1997

Offence of stalking

(2) a person's course of conduct amounts to stalking of another person if-

- (c) publishing any statement or other material-
 - (i) relating to a person, or
 - (ii) purporting to originate from a person,

(4) a person guilty of an offence under this section is liable on summary conviction to **imprisonment for a term not exceeding 51 weeks**, or a fine not exceeding level 5 on the standard scale.

Communications Act 2003

127 Improper use of public electronic communications network

- (1) A person is guilty of an offence if he-
 - (a) Sends by means of a public electronic communications network a message that is grossly offensive or menacing character.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to **imprisonment for a term not exceeding six months** or to a fine not exceeding level 5 on the standard scale, or to both.

Convictions are rare, but no one welcomes a criminal investigation into their social media posts.

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

Whilst every care has been taken in compiling these notes, Personnel Advice and Solutions Ltd cannot be held responsible for any errors or omissions. These notes are intended to provide general information. Guidance for specific legal problems should be sought separately.

FURTHER FACT SHEETS ARE AVAILABLE ON OUR WEBSITE: www.personneladviceandsolutions.co.uk

IMPORTANT: The information in this factsheet is for guidance only. Personnel Advice & Solutions Ltd cannot accept responsibility for the use of the information. It is not an authoritative statement of the law. You should always seek professional advice on a specific legal matter. Individual Personnel issues must always be addressed on their own merit.