



Hello, and welcome to HR Support for Business's first Newsletter for 2015.

I'm Carole Thomson. I founded HR Support for Business (HRSfB) to give small and micro businesses access to HR and health and safety advice, support and resources that they can trust when they need it. With so many changes in the world of Employment Law, I have tried to provide you with a 'short and sweet' overview. The idea is to give you an insight of what's new, what is to come, and how it will affect you and your business.

New family friendly legislation changes for 2015



The biggest recent change to family friendly legislation has been the new Shared Parental Leave Regulations. In brief, this will now allow parents of babies born/placed after 5th April 2015 to share 50 of the 52 weeks statutory leave and 37 of the 39 weeks statutory pay.

It has been reported as possibly the most complex employment law in a decade, so far too complex for a Newsletter. Therefore I have provided a free **HR Micro-Guide** to help you, which you can access here:

<http://hrsupportforbusiness.co.uk/the-new-shared-parental-leave-top-10-questions-answered/>

But the Government has also been busy making many other 'Family Friendly' changes, and from 5th April 2015:

- The current Parental Leave Entitlement will be extended to parents of children aged between 5-18
- Paternity and Adoption Leave Regulations will now extend rights to individuals who are fostering a child under the 'Fostering for Adoption' scheme
- Partners intending to adopt will have the right to attend appointments to meet the child. One partner is entitled to paid leave for up to 5 appointments, the other is entitled unpaid leave for 2 appointments (*both capped at 6.5 hours*)
- Three sets of regulations have been amended to include couples who are adopting a child from outside the UK to the right to Shared Parental Leave and pay.

And since October 2014:

- A mother who is an agency worker is now entitled to paid time off (*normal hourly rate averaged over 12 weeks*) to attend ante-natal appointments. And if overtime is compulsory, then it is part of normal pay and must be included in the calculation.
- Partners of expectant mothers became entitled to unpaid leave to accompany their partner to anti-natal

appointments. However the time has been capped at 2 appointments of no more than 6.5 hours each.

These are all Statutory Rights, so any unreasonable refusal may see you being taken to a Tribunal.



What to watch out for in 2015

So much has been discussed about Zero Hour contracts (ZHC) (*see our previous newsletters*). Some arguing it is a 'flexible way of working for all' and some 'an exploitation tool used by employers'.

In response the Small Business Enterprise and Employment Bill 2014-15 is due to come into force sometime during 2015. A key aim is to make exclusivity clauses in ZHC unenforceable. How it will be enforced has not yet been decided, but fixed penalties and the ability for employees to seek compensation through tribunals has been discussed. It will also look at the employment status of ZHC. Basically are they workers or employees?

At present this is just proposed law, but it will be wise for us to all keep an eye on developments, particularly if you currently rely on ZHC, as something will be implemented.

Holiday pay



Case law decisions across 2014 have now changed how holiday pay must be calculated. Most notably: *Bear Scotland Ltd and others v Fulton and others and Hertel (UK) Ltd v Woods and others and Amec Group Ltd v Law and others*.

The outcome is overtime (*employee is obliged to work if required*) and other allowances should be included when calculating holiday pay. If you would like more information then please follow this link:

<http://hrsupportforbusiness.co.uk/increased-holiday-pay-in-the-uk/>

A key fear for employers was Tribunal claims would get backdated seeking years of shortfall payment claims.

As it would be considered an 'unlawful deduction' EAT suggested that the 3 month limit for such claims be applied. This potentially could break continuity if there was a 3 month gap between holidays taken. But what if there wasn't, leaving potential claims going back years?

In response the Government has brought in the Deduction from Wages (Limitation) Regulations 2014. These regulations will limit such claims to 2 years (excluding Statutory Maternity, Paternity or guaranteed payments). Unfortunately this limitation will not apply until claims made on or after 1st July 2015.

Yet to be agreed is the reference period for calculating this additional holiday pay. Historically variable pay has been calculated over 12 weeks, but many feel 12 months would be a fairer reference period. This would allow for variable working periods throughout the year. When the decision is made, I will let you know.



Legal Right to be accompanied

ACAS has published (for parliamentary approval) its revised Code of Practice on disciplinary and Grievance procedures relating to the 'Right to be Accompanied'. It followed case law decision in *Toal v GB Oils Limited* where two employees were refused their companion of choice.

The Code now makes it clear that employers must agree to a worker's choice of companion if within one of the statutory categories, and the request was made in a reasonable manner. Previously employers only had to accept 'reasonable requests'. Not a legal requirement, but a matter of good practice, the code also states a person should choose a willing and available companion locally rather than a remote location.



Health and safety

Due to the potential risk to small businesses and those who work within them, I felt it was important to include that the Sentencing Council (November 2014) opened a public consultation of the draft guidelines for corporate manslaughter and health and safety offences. It will also cover food safety and hygiene offences.

We have seen significant changes already with the first few cases of criminal convictions and imprisonment for corporate manslaughter being reported.

The guidelines want to classify organisations by turnover. Micro = £2m, Small = £2-10m, medium up to £50m and large over £50m. It envisages that fines will then reflect: **Turnover + level of culpability + harm caused.**

As an example of where the proposed fines may start:

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- A micro business, assessed as having high culpability and category 1 harm caused: = £250,000 fine,

It also states that the extent of an individual employee's culpability and their financial means (*measured by weekly income*) should be taken into account.

It is proposed that an individual offender, who has through their negligence, caused a serious injury should be fined up to 7 times their weekly salary. If death or a serious injury has occurred through a deliberate breach of the law the custodial sentence should be 18 months or more – with 6 months as a minimum. We await the final outcome to be published sometime later this year.

For anyone in construction, subject to parliamentary approval, the new Construction (Design & Management) Regulations 2015 (CDM 2105) will come into force on 6th April 2015. There are three key changes, but I will update you more on these in our 2nd Quarter Newsletter.

HMRC fuel rate amendment



The HMRC has published new advisory fuel rates for company cars. If of interest to you here is the link: <https://www.gov.uk/government/publications/advisory-fuel-rates/current-rates>

Discrimination



It has been announced that the Equality Act is to be amended so caste will be an aspect of race.

The case *Chandhok v Tirkey* EAT had to decide whether the existing scope of the statutory definition of race covered caste discrimination. EAT found 'ethnic origins' posed wide questions in relation to descent and less favourable treatment due to ethnic origins so could amount to race discrimination.



Fit for work The new Government scheme

With sickness reported to be exceeding 130 million days per year, the Government has established a state funded service to help people get back to work. The aim is to provide expert and impartial advice.

It is still being rolled out on a phased regional basis, but available now is a web and phone based support service. There is also a library of information available to you.

Eventually there will be access to a Referral Service where an independent Occupational Health professional will devise a step-by-step Return to Work plan.

When available, the first route to access the Referral Service will be via the employee's GP following 4 weeks of sickness absence. Although it can be earlier if the absence is expected to be for a longer period. Or if an earlier referral, in the view of the GP, is likely to help the employee to get back to work earlier.

If the GP does not make the referral then you, as the employer, will then have access this service (*but all this can only happen with your employee's consent anyway*).

It will also not provide advice on whether a condition may be classified as a disability under the Equality Act or not. Not really very helpful to employers.

From information provided so far it would also seem they will not provide detailed advice on a medical condition. Instead they will adopt a more broad holistic assessment and look to reducing any barriers to the individual returning to work.

Will it be of any real help to SMEs in reducing absence? Only time will tell. However it is free and may at least be a good first free step when dealing with a sickness related absence within your business.

Research does support that a strong Attendance and Capability procedures and structured Back to Work interviews are, when combined, be the most effective way of reducing overall absences.

We can help you implement both of these. Why not call for a **free 30 minute consultation** on how we can help.

In the meantime, if you want to see what is on offer so far here is the link: <http://fitforwork.org/>



Pensions Auto enrolment

I cannot do an Employers Newsletter without a quick reminder that the Staging Dates, for small and micro employers, are here.

Staging dates were based on the size of an employer's PAYE scheme on 1 April 2012. Most large and medium employers have already complied, but from 2015 across to 2017 it is the turn of the small and micro businesses.

With penalties for non-compliance ranging from £50-£10,000 per day, if you have not done so already, it is time to take action. I have posted a free HR Micro-Guide overview on Auto enrolment which you are welcome to access.

<http://hrsupportforbusiness.co.uk/your-guide-to-auto-enrolment/>

If you want more specific pension advice, then one of my fellow partners, Adam Herbert, in Partner-in-Business (*set*

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up to help SMEs with professional support) will be happy to help you.

<http://www.partner-in-business.co.uk/about-us/partners-listing.html>

Government Funding



It is always hard to find Government funding that, you are eligible for, and is actually useful to your business.

Stuart, at Partner-in-Business, has posted a free useful guide to some of the funding currently available. Although some is focused on the Oxfordshire area where HRSfB is based, there are also some national schemes. Here is the link if you want to see if there is anything you can use.

<http://www.partner-in-business.co.uk/news-events/business-news-advice-oxfordshire/entry/grants-and-funding-opportunities-available-now.html>



E-cigarettes

Is it me, or do we suddenly seem to have been taken over by people using, or stalls selling, e-cigarettes?

Whatever your personal view on e-cigarettes there has now been a first tribunal case dealing with e-cigarettes at work.

The case was *Insley v Accent Catering*. Basically a school catering assistant resigned, prior to a disciplinary hearing, for bringing the company into disrepute by smoking an e-cigarette on school premises in front of students. They resigned and placed a claim at a tribunal for constructive dismissal - which was lost.

This in itself is not of great interest, but the Employment Judge went on to say that if the employee had not resigned, but had been dismissed, the dismissal may well have been judged unfair. One of the key reasons given was that there was not a policy/procedure directing the use of use of e-cigarettes at work.

Whilst the decision is not binding on other courts or Tribunals, it is a timely reminder to employers that it would be wise to have a good policy in place.

If we can help you amend your current policy, or supply a smoking and e-cigarette policy for you, then please just let us know.



Finally 'To tweet or not to tweet?'

That is the question. Or rather the ongoing question of exactly how much control do you, as an employer, have over an employees' ever rising social media activity.

A recent case shed a little light. An employee was dismissed after posting offensive and derogatory tweets on their private Twitter account outside of work time.

Mr Law worked for Game Retail Ltd. An important factor in this case was he did allow around 65 Game stores to follow his private account and made no attempt to restrict visibility to his tweets.

After posting the offensive tweets he was reported by a fellow worker and, following an investigation, it was felt 28 tweets were offensive. Mr Law was suspended and ultimately dismissed for Gross Misconduct. Mr Law brought a claim for unfair dismissal - and won.

The Tribunal agreed Mr Law had been unfairly dismissed. They felt although offensive, it was in his time and colleagues, suppliers and customers would not have necessarily seen the tweets.

On appeal the EAT disagreed. They felt it was wrong to assume who had seen the tweets, particularly as he had allowed Game stores to follow him - who could have seen the offensive material. Also, the nature of twitter is that it is freely accessible to all unless restricted. A key fact as Mr Law had made no attempt to use the restriction setting available and chose to use one account for work and private use.

Cases can often be won or lost on specific facts. A key reoccurring factor though, is whether an employer has a strong clear policy directing its employees on the use of social media.

A recent survey stated employees spend an average of 39 minutes per working day on social media (*excluding private use*). Therefore a policy that clearly states what is, or is not, acceptable, and if a certain action(s) could result in disciplinary action is prudent.

Not for this newsletter, but another risk of social media is who owns valuable social media data when the employee leaves. Again, having a clear policy will help your position as an employer to retain and protect key contacts and information.

We can work with you to identify any risks to your business and devise a Social Media policy and procedure to help manage these risks for you. Call us for a free consultation on how we could help you.

HR Newsroom

If you have found this Newsletter useful I regularly post free employer

Resources and law updates, to help you keep ahead of the game. Why not have a look:

[HR Newsroom](#) | [HR Support for Business](#)

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I hope you have found this newsletter useful and I am happy for you to share with others who would also find it useful. If you have any feedback or suggestions for future content please e-mail me at: Carole@hrsfb.co.uk

About HR Support for Business

Working freelance I provide HR and health and safety support and advice, as needed, to small businesses. If it is an employment issue I can help you.

I have also developed a specific range of HR and H&S solutions to meet the bespoke needs of small businesses.

All designed to deliver a professional quality service and product, but at a price affordable to small and micro businesses. Why not take a look:

<http://hrsupportforbusiness.co.uk/>

The most popular employee resources are:

HR Compliance in a Box



A flexible and affordable route to employee contracts, handbook. And the template documents/letters to manage the lifecycle of your Employees, and ensure legal compliance within your business.

HR-Micro Compliance in a Box



The aim to ensure your business is legally compliant with Section 1 of the Employment Rights Act. Providing contracts and, key information needed. Designed so more can be added later when you are ready.

Health & Safety Compliance in a Box



An essential Health and Safety Handbook and key documents. All designed by a Technician Member of IOSH with over 18 years' experience.

The HR Annual Retainer Service



Keeping you legally compliant to ever changing employment and health and safety law and best practice. Also, there to help your resolve workforce issues as they happen.

Or why not contact us:

I offer a free 30 minute, no obligation HR Consultation so we can discuss your business needs – and see how I may help you.

HR Support for Business

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