



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

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WELCOME TO THE THIRD NEWSLETTER FOR 2011

Our newsletter is issued to you quarterly to ensure that you can be kept up to date with employment issues. We will offer helpful hints on how to handle situations within the workplace, but never be afraid to give us a call for both guidance and support. All newsletters are on our website ensuring easy access to current information just click on the newsletter you wish to view.

This Quarter the focus is on the changes in law which may affect your business.

- National Minimum Wage changes in October 2011
- Possible changes to parental leave and flexible working
- Questions on Health when can you ask them
- Clarification on a TUPE issue

Our helpful tip this month is giving you information about using social networking sites in the working environment.

We think you'll find the articles very interesting. Please call us on 01442 870742 to discuss any of these articles and see how we can help you and your business more effectively in the field of Human Resources. Alternatively have a look at our website www.workmattersshr.co.uk and email us from there or on info@workmattersshr.co.uk.

If you would prefer not to receive any future newsletters from Work Matters (HR) Ltd, please reply to this email with 'unsubscribe' in the title and we will remove you from our list - thank you.

In This Issue

Changes in the Law:

- National Minimum Wage Increase in October
- Possible Changes to Parental Leave and Flexible Working
- Questions on Health When You Can and Can't Ask Them
- TUPE for Companies in Administration

page 2

Helpful Point:

Social Networking Sites in the Workplace

page 3 & 4





CHANGES IN THE LAW

National Minimum Wage Increase in October

The National Minimum Wage will again increase again on the 1st October 2011.

- Adults hourly rate will increase from £5.93 to £6.08
- 18 – 20 year olds hourly rate will increase from £4.92 to £4.98.
- 16 – 17 year olds hourly rate will increase from £3.64 to £3.68.
- Apprentices hourly rate will increase from £2.50 to £2.60.

The Government are considering ways to give businesses greater clarity on future levels on the minimum wage, including consideration of two year recommendations; it is believed that this could give businesses more opportunity to plan future employment and investment decisions.

Possible changes to Parental Leave and Flexible Working

The Government is in consultation regarding Parental Leave and Flexible Working and has published a new system of shared parental leave and the extending of flexible working requests to nearly all employees.

Under the proposed system of parental leave a brief outline of the plan is as follows:

The mother will continue to have the initial portion of leave, however, much of the leave can be shared between the parents as they see fit.

For example:- A female who is due to give birth is entitled to 18 weeks maternity leave around the time of the birth, while the remainder of the maternity leave would be reclassified as parental leave. Each parent would have 4 weeks paid leave exclusive to them, with the remaining weeks available for either parent on an equal basis.

The Consultation also considers the extension of the right to request flexible working to all employees who have been employed for at least 26 consecutive weeks and would allow – but not require employers to prioritise competing requests to take account of the employees' personal circumstances.

Questions on Health When You Can and Can't Ask Them

Under the Equality Act 2010 an employer MUST not ask about an applicant's health, this includes any disability before offering work. Questions can be asked AFTER a job offer is made in order to make reasonable adjustments if necessary, and assess whether the health condition would render that person unsuitable for the position when there is no reasonable adjustments that could be made.

It is therefore recommended that any health questions be removed from any application forms

So whilst if you ask an applicant about their health it is not active disability discrimination, if you rely on the information given by the applicant, you can be taken to an Employment Tribunal who could conclude you have committed a discriminatory act.

Along the same lines if you ask someone how many days absence they have had in their previous role and you choose to rely on the information given this may prove problematic and you could again see yourselves in front of a Tribunal.

TUPE For Companies in Administration

There has been confusion about the TUPE situation if a company goes into administration, especially when it is then sold off under a pre-packed administration deal. Employers have often been uncertain as to whether the employees transfer or not. The previous position was that decided by the case of *Oakland v Wellswood (Yorkshire) Ltd*. Under the case the EAT had ruled (controversially) that administrations generally fell within Section 8(7) of the TUPE regulations, meaning that employees would not automatically transfer to the transferee upon administration. The EAT has now decided that the case was wrongly decided and that all administrations (including pre-package administrations) fall within Section 8(6) of the TUPE Regulations. This means that if the transferor is the subject of "relevant insolvency proceedings" but "not with a view to the liquidation of the assets of the transferor", then the employees WILL transfer and will receive unfair dismissal protection.

This recent case, therefore, makes the situation clearer.
[OTG V Barke [2011]]

For further advice and support in changing your company policy on any of the above click on the link www.workmattershr.co.uk or call 01442 870742.

Helpful Point



SOCIAL NETWORKING SITES IN THE WORKPLACE

The use of social networking sites such as Facebook, Twitter, MySpace, Bebo, Friendster or information from YouTube has become a problem for many employers. On-line media has become a forum for some to express how they feel about someone without having to look the person in the eye and vocalise it.

One of the areas in discussion in organisations in relation to on-line media at the moment is of the social networking sites listed above and the danger of them. In the last two months or so articles have stated:

- An employee posting disparaging comments about his boss on Facebook. The employee faced disciplinary action as a result.
- A line manager using Facebook to say how his new direct reports in a department he was about to take over wouldn't last more than 3 months before he sacked them. His job offer was subsequently withdrawn.
- An employee who had recently joined a new company had posted on-line derogatory remarks about his former manager at his old company. However, much to his embarrassment, his former manager joined the same company 9 months later as a director in the same function.
- A team of 5 people who were informed of their redundancy by text
- Directory enquiries group 118 118 discovered workers were making comments about callers they had dealt with. The company investigated the workers who were involved and disciplinary proceedings followed.
- Virgin Atlantic dismissed 13 cabin crew after disciplinary proceedings concerning messages on Facebook referring to passengers as 'chavs' and making jokes about them.
- An employee was dismissed after less than a month in her job following her comments on a

networking site on how boring her job was.

- A prison officer was dismissed for gross misconduct after befriending former and current inmates on Facebook.

It is obvious that in 2012, communicating electronically has enormous benefits. It is hard to remember how we were able to work so effectively without electronic communications, email, intranet, internet and through their development the social networking sites. But the dangers are many. We can all get it wrong when, for example, sending an email. It is easy to miss-phrase a sentence which means that the receiver becomes offended at what they read, or a message meant for one person ends up being sent to 'all' in your in box.

All of us at some point are guilty of not having 'that conversation'. Though, that not everyone will choose to vent their feelings through on-line media. Dodging these difficult situations as we do rather than tackling them often has a derogatory effect on morale, personal health and the health of relationships. This can in turn lead to reduced productivity and output.

Back to Basics for Certain Issues

The pace and dynamic of the modern workplace has had a twofold effect on the presence of difficult conversations. They are required and avoided more than ever before. Help is needed for us all. A recent piece of research indicated that 72% of line managers struggle to have a difficult conversation and in most cases will decide not to have them at all or will deal with the issue in a different way. Reading this as you are now, you may be able to think of a difficult conversation that you have been avoiding for too long yourself.

There is one thing that those who tackle difficult conversations enjoy compared to those that dodge them. It is the joyous feeling of relief

when something that has been weighing them down has finally been resolved. A female client spoke to me recently about a situation where one of her team members suffered from bad body odour. She had avoided having the conversation with him for months, but following a comment from a customer, she had to tackle it. She didn't sleep the night before she had planned to discuss it with him.

To her surprise, when she told him, he was hugely grateful, despite the initial shock and embarrassment. In fact, he shared some personal information that he would have otherwise kept to himself. I remember her telling me how she felt a huge sense of relief after having the conversation. They can have a laugh and joke about it now and their working relationship has improved remarkably. He went to her office two weeks after the conversation. He had one item on his agenda. He wanted to thank her for doing what she did.

So, senior managers need to provide training and help for team members, but we must also not forget about ourselves. Finally, remember to encourage those you work with to stop and think the next time they may be tempted to use electronic communication for an unfavourable or disapproving message.

The Positives of Social Networking Sites

The positive aspects of social networking sites involve creating and developing work-related relationships. The sites can be a fast effective method helping employees to keep in touch with clients. However it is important to create the right balance with policies including guidance on what behaviour is acceptable and what is not. Personal access to the internet including networking sites can also boost staff morale and assist in the work life balance.

Helpful Point continued...

The Negatives of Social Networking Sites

These include risks of the following:

- employees time-wasting and lost productivity
- employers using information gained on such sites to make discriminatory decisions about vetting new employees or their promotion etc (see previous example)
- employees breaching the employer's confidentiality
- damaging the company's reputation by making defamatory statements about the employer, fellow employees or clients
- employees making known to the other millions of users what working for the organisation is really like in their opinion.

The outcome of the points listed above will fall into various categories within employment law and should be covered in your terms and conditions or your employee handbook/policy handbook and as employers if you have concerns you should act on them with caution. Areas which these risks may fall in, include:-

Breach of Contract

There is an implied term of mutual trust and confidence between employer and employee in all employment contracts. A very negative and damaging posting or communication about the employer may entitle the employer to state that this term has been broken and warrant the employee's dismissal after appropriate investigation and action in accordance with your organisation's disciplinary procedure.

Data Protection

As far as data protection is concerned merely looking at someone's information on a site is not a breach of data protection law. Although the Information Commissioner's Office has investigated certain networking sites and voiced concerns about the fact that it is difficult to take off all personal information from some of the sites.

Defamation

If defamatory material is posted on a social networking site, defamation claims may arise against the employee.

Discrimination

Difficulties arise if information from networking sites is used to make discriminatory decisions, for example to refuse a job on grounds of race, sexuality, religion or age. Employers must not make a decision on such a basis otherwise they are exposed to expensive discrimination claims. Also only a minority of candidates will have profiles on social networking sites and using information from this source can give an unfair advantage or disadvantage to certain candidates possible discriminating against younger people who use the sites more.

Other discrimination claims may arise if employees post discriminatory material about other employees which could amount to bullying or harassment. Employers may be vicariously liable for such acts unless they took such steps as were reasonably practicable to prevent the postings.

Health and Safety

In 2007 a UK based employer saw internet video clips of employees performing stunts wearing its uniform. An employer who discovers information like this should follow the company's disciplinary procedure to investigate the possibility of a breach of health and safety legislation on the part of the employee. If an employer is aware of this and fails to investigate there may be liability for personal injuries in the law of negligence.

Going Forward

Realistically, employers are going to continue to look at networking sites as part of the recruitment process and there is no restriction on them doing so. There is no substitute for a properly conducted interview and selection process which is focused on relevant information concerning the candidates' abilities to do the job and in line with our information on not asking health questions it is important to rely on facts that are gained during the interview. Much information on networking sites will not have any relevance for the position in question.

Similarly, an isolated comment about a bad day at work should be seen in context, as a highly interventionist approach to employees' personal lives can damage relations with the workforce.

Employers should bear in mind the following:

- Consider whether there is a real need to check social networking sites as part of the recruitment process of vetting job applicants

and if they do ignore any information which may lead to a discriminatory decision.

- Check staff handbooks and contracts of employment to ensure that employees are aware of the Internet and communications policy and that social networking sites are clearly covered by the policy.
- Specify in the policy and contracts of employment what internet and communications use will constitute gross misconduct sufficiently serious to justify summary dismissal.
- Check that the organisation's disciplinary policy co-ordinates with the policy on abuse of the internet.
- Specify clearly in the Internet and communications policy that private and business communications could be intercepted and warn employees in advance of the monitoring which will take place and why. Employers must ensure that such monitoring is reasonable and in accordance with data protection and human rights obligations.
- Depending on the nature of the business employers must decide whether to allow unlimited access, restricted access or a complete ban.

For further advice and to discuss a review of any policies in relation to social networking sites please contact us at Work Matters (HR) on info@workmatters.co.uk



Thank you for taking the time to read our Newsletter which I hope you found informative An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly.

In the meantime please contact us if we can be of service to you or your company.

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in the early part of October 2011.