

NEWS FROM THE HR TEAM



## Managing unauthorised leave



With seasonal festivities being a favourable time of the year for employees requesting time off from work, employers are reminded to follow their disciplinary procedures for employees taking unauthorised leave.

Disciplinary sanctions should be proportionate, as in the case of *Stott v Next Retail Ltd*, where the dismissal of employee who failed to attend work on Christmas Eve was considered as unfair and disproportionate. Whilst following the disciplinary process, reasonable and consistent sanctions would be best, to avoid unnecessary risks.

## Government to examine NDA's (non-Disclosure Agreements) where harassment or discrimination have been alleged

In between Brexit battles, Prime Minister Theresa May brought forward the planned examination of non-disclosure agreements in employment disputes. This followed from the naming of Sir Phillip Green, who has been accused of sexual harassment under the #MeToo movement in the case of *ABC and others v Telegraph Media Group*.

This move is to highlight how NDA's permit sexual harassment of women within the workplace to be silenced via pay outs, rather than sending a clear message that harassment and discrimination need to be dealt with.



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1



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1



Equal Pay Claims awaiting landmark ruling for Asda, which could pave the way for further claims for Tesco, Sainsbury's and Morrisons

2



Discrimination compensation guidelines reminder

2



Ethical Vegan vs Vegan - is one a potentially protected philosophical belief which Employers need to be aware of?

2



Worker v Self-employed... Addison Lee, Deliveroo and Uber drivers are employees, rules the Employment Appeals Tribunal

3



Right to work in the UK and 'Settled status' for employees under Brexit plans

3



A summary of changes to be expected in 2019

3

**sfb** Group News

Thremhall Park, Start Hill,  
Bishops Stortford CM22 7WE.

Telephone: 01279 874 676  
Email: [info@sfb-consulting.com](mailto:info@sfb-consulting.com)  
[www.sfb-consulting.com](http://www.sfb-consulting.com)



## Equal Pay Claims awaiting landmark ruling for Asda, which could pave the way for further claims for Tesco, Sainsbury's and Morrisons

Claims may go ahead on behalf of 80,000 Morrisons employees, who may be eligible for back pay in excess of £1 Billion. Leigh Day are currently representing 30,000 shop floor staff in claims against Tesco, Sainsbury's and Asda.

This claim is for discrepancy in pay for, predominantly female, shop floor workers and, predominantly male, workers in distribution centres, for work of equal value.

Asda concluded the 3-day hearing at the court of Appeal in October, and the final judgement will give guidance to the main supermarkets on whether the work and roles of shop floor employees and distributions employees are equally comparable in value, and therefore eligible for equal pay.



## Ethical Vegan vs Vegan - is one a potentially protected philosophical belief which Employers need to be aware of?

That is exactly what an Employment Tribunal will determine in March 2019 after an Employee was dismissed from his role at 'League Against Cruel Sports', having disclosed to colleagues that the firm would be investing pension funds into other firms involved in animal testing.

The Employee has made a claim that he was dismissed on the grounds of his Ethical Vegan belief, which is not just a dietary or lifestyle choice, but more about preserving the welfare of animals and the environment, and therefore is a potentially 'protected belief' under law.

The Equality Act 2010 states a 'belief should affect your life choices or the way you live, for it to be included in the definition', this does give scope to the claim being made, although it will be for the Employment Tribunal to determine if the dismissal was due to the Employee's beliefs or his disclosing of confidential information.

## Discrimination compensation guidelines reminder



The compensation bands of awards for injury to feelings, known as the Vento bands were updated in April and the below is a gentle reminder in respect of claims presented on or after 6 April 2018 - the Vento bands shall be as follows:

A lower band of **£900 to £8,600** (less serious cases);  
A middle band of **£8,600 to £25,700** (cases that do not merit an award in the upper band); and  
An upper band of **£25,700 to £42,900** (the most serious cases), with the most exceptional cases capable of exceeding £42,900. This guidance is not binding but tribunals must have regard to it when determining compensation sums.

**SFB Consulting can help guide employers through any potential grievances of discrimination and help reduce liability.**

## Worker v Self-employed... Addison Lee, Deliveroo and Uber drivers are employees, rules the Employment Appeals Tribunal

Addison Lee has been another recent case which highlights the need for contracts to meet the legal tests required, when establishing the working reality of employee vs self-employed.

In the case of Uber BV and others v Aslam and others, earlier in November, the EAT found the below characteristics had the hallmarks for Drivers being workers;

- Potential Drivers are interviewed, and successful drivers attend an induction
- Drivers can be dropped if their ratings fall
- Drivers can be dropped if they commit serious misconduct
- While Uber drivers can choose when they work, they are required to undertake to provide the work personally for Uber, which is one of the hallmarks for establishing an employment relationship

### The definition of 'Worker' is;

*Section 230(3)(b) Employment Rights Act 1996 ('ERA') - contains a definition of a 'worker' (essentially someone who has entered into or works under a contract of employment or any other contract whereby the person has to do the work personally, subject to a few carve outs).*

Employers would be wise to ensure the reality of the working practice reflects the nature of the established contractual working relationship.



### Right to work in the UK and 'Settled status' for employees under Brexit plans

European workers currently living in the UK will be eligible to apply for 'settled status' providing they complete their transition period and have proof of living in the UK for 5 years. If they have not resided in the UK for 5 years, they could be eligible to apply for 'pre-settled status'.

## A summary of changes to be expected in 2019



### Business Microchipping Employees

Not just Science fiction, BioTeq, the UK's largest provider of this service, has already fitted 150 companies with implants in the UK. These tiny chips are implanted in the flesh between the thumb and forefinger, which allows employees to access their office and data by the wave of their hand.

Whilst firms have taken this measure to help improve security and prevent sensitive data from being accessed, further scrutiny on this is anticipated in line with GDPR and Invasion of Privacy guidelines.

It is expected that Business Microchipping of Employees in the UK will increase in 2019.

### Reporting Gender Pay Gap

Organisations with 250 or more employees will again be required to publish their Gender Pay Gap figures by April 2019. Figures are expected to be scrutinised heavily due to ongoing social and legislative pressures, and to determine whether their efforts made to reduce significant pay disparities in 2018 have succeeded.

### CEO Pay Gap Reporting

Similar to Gender Pay Gap reporting, it is expected in 2019 that figures on Executive Pay Gaps will be required to be published by Organisations with 250 or more employees.

### Expected National Minimum Wage increase

As announced in the Government budget in October 2018 the NMW is set to increase in April 2019 as below;

Workers aged 25 and over -  
from £7.83 to £8.21 per hour

Workers aged 21 to 24 -  
from £7.38 to £7.70 per hour

Worker aged 18 to 20 -  
from £5.90 to £6.15 per hour

Workers aged 16 to 18 -  
from £4.20 to £4.35 per hour

Apprentices (under 19 years)  
from £3.70 to £3.90

### Settled status for European workers living in the UK