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SFB Consulting : Supporting your Business

Group News - February 2016

NEWS FROM THE HR TEAM

The Motivating Factor

Nearly two-thirds of UK workers (61%) have told a business survey that they feel that their employers are failing to supply enough incentives to keep them motivated at work.

Commissioned by facilities and building maintenance specialists Direct365, the research findings seem to back up a study, conducted last year by the Institute of Leadership and Management (ILM), which suggested that one in three people plan to leave their jobs in 2016.

More specifically, 17% of the 2000 people surveyed said they will move on because they feel under-appreciated in their current roles.

When it comes to the type of incentive that would encourage workers to stay put, more than one in three (35%) of 750 respondents to the latest poll voted for flexible working.

A quarter (27%) voted for a company car, a healthy 14% wanted corporate gym membership and just 6% chose childcare vouchers.

Emma Gilroy, Brand Development Manager at Direct365, said that employers needed to reassess the way they show their appreciation for their employees.

"If employers spent more time focusing on rewarding their staff and showing gratitude," she suggested, "they would not only see increased productivity, reduced absenteeism and improved customer service (happy staff always come across more positively to customers), but more importantly they would drastically reduce the amount of staff looking to move on."

National Living Wage

In December 2015 the National Minimum Wage (Amendment) Regulations 2016 were laid before Parliament. As well as specifying previously unknown details about the new national living wage (NLW), they state how those employers who flout their legal obligations will be dealt with by the authorities. When they come into force all workers who are aged 25 and over must be paid at least the NLW which is currently set at £7.20 p.h.

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Director banned for employing illegal immigrants

Ms Guat Gor Goh, a director of Golden Paragon Ltd (a restaurant), was found in May 2013 to be employing three workers who were not eligible to work in the UK.

The business went into liquidation in September 2013, owing £184,187 to creditors, including £15,000 for a fine imposed by Home Office Immigration and Enforcement for employing the illegal workers.

Following an investigation by the Insolvency Service, working with the Home Office, District Judge Looma, sitting at the County Court in Newcastle-Upon-Tyne, has now made a Disqualification Order against Ms Goh banning her from acting as a company director or from managing or in any way controlling a limited company until 2023.

Do employers have the green light to snoop?

The ECHR European Court of Human Rights (ECHR) ruled in Barbelescu v Romania 2016] ECHR 61 in January 2016 that a company that read an employee's Yahoo Messenger chats that he sent while he was at work was within its rights to monitor.

Mr Barbelescu sent private messages to his fiancée and brother on an email account the employer had expressly stated was only to be used for work purposes. He denied that he was using the account for personal purposes so the employer examined all his messages. He was dismissed for contravening company policy.

After unsuccessful battles in the Romanian courts Mr Barbelescu took his claim to the European Court of Human Rights, alleging that, by accessing his personal messages, his employer had breached his right to privacy under Article 8 of the European Convention on Human Rights. Article 8 provides a "qualified" right to private and family life, the house and communications.

The "qualified" right means that restrictions on the right to privacy may be justified in order to protect the rights and freedoms of others (including employers).

The Court found that Mr Barbelescu's private life and correspondence had been engaged but that his employer's monitoring of these communications had been reasonable in the context of disciplinary proceedings. Article 8 had not been violated. The judges said that the employer had a right to check the employee was completing his work and that he had breached the company's rules by sending messages on its time.

Contrary to widespread press speculation (and misleading conclusions) on this decision, it does not mean that bosses now have the 'green light' to 'snoop' unrestrictedly on employees' private emails.

Further, the right to privacy remains. The employer has obligations under the Data Protection Act and its accompanying Employment Practices Code (see below).

Employers may not unilaterally access employees' private mobile phones or email accounts that are used outside work. The position might be different, however, if the employee accesses private emails during working hours. The law does allow employee communications to be monitored or intercepted in certain circumstances, including an employer's checking that an employee is not breaching company policies on social media (eg email) use in the workplace.

Employers should ensure that they have in place a policy that forbids the use of company communications systems for private use and make clear that monitoring of these communications may take place if an employee appears to be in breach of this company policy.

Fit for work service

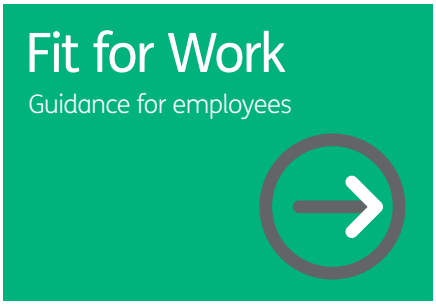
The Government estimates that there are currently 140 million working days lost per year in Great Britain due to sickness absence. Many organisations already invest in occupational health services to facilitate their absent employees in returning to work and to reduce unnecessary time off for sickness absence.

The Fit for Work scheme aims to work with employers to try to help them cut back on problematic employee sick leave, increasing the productivity and workload of the entire company. It is predicted that use of the new scheme may cut the cost of sick pay to employers by between £80 million and £165 million per year.

What is it?

If an employee has been or is likely to be off work for a period of more than four weeks, he or she can be referred for health advice and an occupational health assessment under the scheme. Employees must have given consent before a referral to the fit for work service is made through their GP or their employer.

A referred employee will be assigned a Case Manager, who will assess the employee and devise a return to work plan that can be shared with their employer (with the employee's prior consent). The plan will provide the employer with advice and information relating to the employees return to work.



For example, this could include a timeline for their return and anything that the employer may be able to do to help them to speed up their recovery, including recommending certain treatments.

A fit for work service plan has the same status as a fit note and should be accepted for SSP purposes.

NEWS FROM THE HEALTH & SAFETY TEAM

Breaking the law, not keeping your employees safe and healthy will cost you

Since the 1st February 2016 Crown Courts and Magistrates Courts in England and Wales have been bound by new, tougher guidelines for sentencing offenders who have been convicted of health and safety offences.

Courts in England and Wales will now be required to follow these comprehensive sentencing guidelines. Generally these new guidelines have been welcomed and in particular, that in future three factors will be key in determining the level of fines for health and safety offences namely:

- Turnover of the offending organisation
- Culpability of the offender
- Degree of harm caused

This change is well supported among safety professionals and will help ensure greater consistency in the sentencing practice of the courts and a level of fines that fit the crime.

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This change is long overdue especially in relation to the level of fines imposed and in certain cases the use of imprisonment as a sanction. In the past, courts have failed on occasion, to properly take into account the seriousness of the offence in weighing up the appropriate penalties.

This unenviable record in Great Britain for the largest fine imposed for a health and safety offence to date is £15 million, which was in 2005, will fall in the not-too-distant future.

As Lord Thomas, the Lord Chief Justice made clear in recent appeal court decision, the purpose of fines is to reduce criminal offences, reform and rehabilitate the offender and protect the public.

The objective must be to reduce the number of fatal and major injuries and occupational ill health – not as a revenue generation scheme where extra money gained through increased fines goes into Treasury coffers. This is not what it is about.

The approach of the courts in calculating the significant fines expected is awaited with interest.

Organisations will be required to submit detailed financial information including turnover figures, pre-tax profit, director remuneration, pension provision, assets and debt exposure for the past three years. Failure to produce required financial information or the production of insufficient or unreliable financial information is likely to attract an adverse reaction. The court will form its own conclusions from the circumstances and information available, including that the offender is able to pay any fine.

Some argue that this will inevitably lead to lengthy sentencing hearings in court as the stakes are so high. Those organisations facing substantial fines for such offences may also have to report such matters in their annual accounts with inevitable reputational damage as a consequence.

Of personal significance for directors and senior managers is the prospect of an unlimited fine or a custodial sentence if they are found guilty of the consent, connivance or neglect in the commission of the offence by the organisation. For the most serious breaches the thresholds for custodial sentences for individuals suggest a far greater likelihood of imprisonment.

The new guidelines, which will in some cases, result in far greater fines than courts are currently imposing, reflect a shift in public opinion and also address concerns held by certain members of the judiciary.

If these changes in sentencing practice do not help achieve these objectives – particularly in ensuring compliance and discouraging law breaking, then they count for nothing.

Clear evidence will need to be seen that the new guidelines have played their part in improving health and safety.