sfb Group News

SFB Consulting : Supporting your Business

Group News - January 2020

NEWS FROM THE HR TEAM

Settlement Agreement and employer contributions towards legal fees

When employees are offered a settlement agreement it is common practice to provide up to £250.00 plus vat for them to seek independent legal advice on the proposal. In the case of Solomon v University of Hertfordshire, where £500.00 plus vat was provided for legal fees, the Judge stated that whilst this would cover advice regarding the terms and effects of the agreement, it would not likely cover the potential costs of advice regarding the merits of any potential claims or awards of compensation.

Whilst this does not legally require employers to contribute further for legal fees, it could be referred to in negotiating a higher contribution during the process. Should employers not wish to do so, they could advise employees that any further costs of advice would be at their own decision and expense, although the employer may wish to provide a higher contribution to expedite matters where a swift amicable end to the employment relationship is preferred to long drawn out negotiations.

SFB Consulting can provide guidance, correct documentation and help manage the Settlement agreement process to save the employer time, potential future claims and unnecessary headaches!

Employers reminded of the need to protect employees who whistleblow or make disclosures.

In the case of Royal Mail Group Ltd v Jhuti, the Supreme court has held that where an employee has made a protected disclosure or whistleblown, and this relates to their dismissal, the dismissal is automatically unfair. This applies even where the manager who dismisses the employee is unaware of the disclosure.

In this particular case, the real reason for the employee's dismissal was hidden from the employee, and false justifications were provided for her dismissal which related to poor performance.

Employers are reminded to ensure they have relevant Whistleblowing policies and training in place for their staff to protect any employee who makes a disclosure and to avoid unnecessary costs in the long run.


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CCTV evidenced choking of an employee at a Christmas party causing her resignation ruled as constructive unfair dismissal

Molly Phillips, a Bar Manager, was choked in a headlock by another colleague, Nathan Webb, which resulted in her collapsing and subsequently suffering facial palsy. After initially not wanting to pursue the matter, upon being advised that her injuries could be long term, Molly reported the matter to employers and CCTV footage of the incident was available which confirmed the details of the incident. However, her employers failed to conduct a thorough investigation and follow the correct disciplinary procedures, despite Molly raising her complaints and upset with them, stating she did not feel comfortable working within the same environment as Webb.

Molly resigned in May, and the EAT found, 'there was an inextricable link between the incident at the Christmas party and the workplace, even though it had happened off duty. It was a work's Christmas party held on site'

It was also noted that the CCTV footage clearly showed an incident of strangulation, and Molly was constructively unfairly dismissed.

Note; A full and thorough investigation would have ensured that as soon as Molly raised the incident, CCTV would have shown the events which occurred during the work party and the correct disciplinary procedure should have been followed. All relevant witnesses should have been interviewed and clear guidance should have been issued for all employees regarding expected conduct and behaviours at any work event.

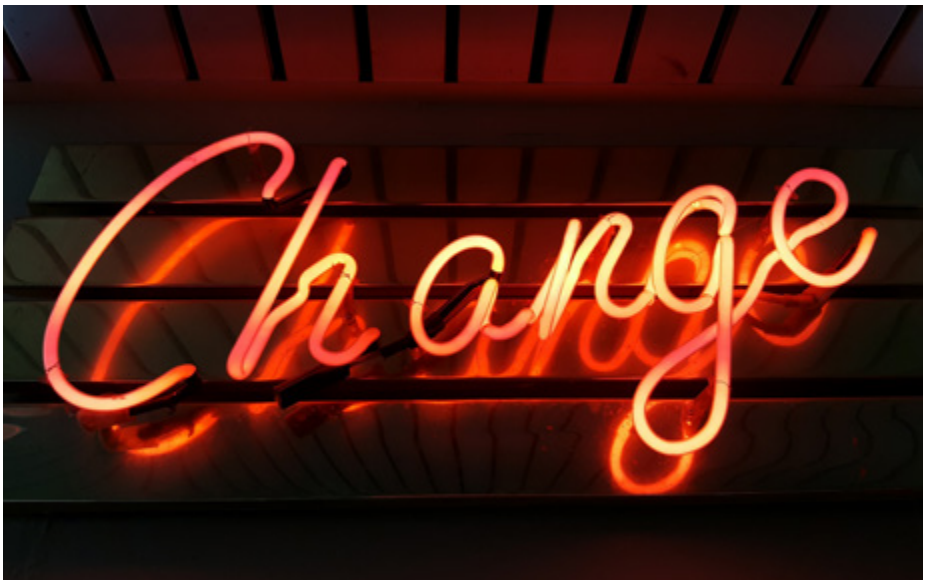
Where covert CCTV does not breach human rights

The European Court of Human Rights has ruled that covert CCTV recording of employees at a supermarket did not breach the employee's privacy rights because it was proportionate in balancing the loss of privacy against the need of obtaining such recordings.

In the case of Lopez Ribalda and Others V Spain, the claimants were dismissed for theft mounting to over £10,000.00. The claimants argued the covert recordings breached their privacy rights. The ECHR dismissed this claim stating that cameras were fitted above tills, and this was therefore necessary and justified. If the employees had been informed of the cameras it would have been counterproductive to the need to resolve the issue of theft.

Whilst this provides some guidance for employers for implementing covert recordings, Data Protection rules must be considered and the reasons for recording in this manner must be proportionate to the justification of such recordings.

Note; where CCTV cameras are openly visible and recording, a notice should be displayed advising employees and visitors that such cameras are in place and recordings will be used for monitoring and security purposes. Where covert recordings are required, employers are urged to seek further advice and check their GDPR guidance for employees to justify the use of any such recordings for disciplinary sanctions.



Changes to expect this year

Whilst we still await confirmation of the Brexit date and the implications it will have for employment law, we can provide you with a summary of some changes to expect this year.

Changes to employment contracts

As part of the Government's vision for the future of the UK labour market, as published in the 'Good Work Plan' 2018, changes to employment contracts will come into force in April this year.

Written statement of particulars for new employees

Currently, Employers have 8 weeks to issue a new employee with a written statement of particulars, however as of 6th April 2020, Employers will be required to provide this to employees on day one of their employment.

If as a Company, the employee is sent their offer letter in advance which states the written particulars of their employment, then this practice would comply with the changes which will come into effect. However, for other employers, they should ensure the following is provided to any new starter on the first day of their employment;

- the normal working hours, the days of the week the worker is required to work, and whether or not such hours or days may be variable, and if they may be, how they vary or how that variation is to be determined
- all remuneration (not just pay) e.g. vouchers, lunch, health insurance
- the duration and conditions of any probationary period
- details of eligibility for sick leave and pay
- how much notice the employer and worker are required to give to terminate the agreement
- details of other types of paid leave e.g. maternity leave and paternity leave
- any training entitlement provided by the employer, any part of that training entitlement which the employer requires the worker to complete, and any other training which the employer requires the worker to complete and which the employer will not bear the cost.
- how long a job is expected to last, or the end date of a fixed-term contract

As an employer, it is recommended that you review your employment contracts / offer letters and recruitment practices to ensure the above required information is provided to all new employees either in advance or by the first day of their employment.

Annual Leave

Currently the average reference period of 12-weeks is used to calculate the average weekly hours of work and pay for employees with irregular working hours / seasonal workers. This will now change to 52-weeks. If the employee has not been employed for 52-weeks, then the total amount of weeks they have worked will be used to calculate their average weekly working hours and pay, and therefore provide the framework for calculating their leave entitlement.

Employers are urged to ensure accurate records are being kept for hours worked and pay received for those employees who work irregular hours.

Changes to employee payslip content

From 6th April 2020 Employers are required to include the below in employee payslips;

1. The total number of hours worked by the employee, and for those who work zero hours or irregular working hour contracts, it should show where the pay varies for hours worked.
2. Payslips must be given to 'workers' as well as 'employees'

Bereavement leave for parents

Parents who suffer the loss of a child under 18 years of age or experience a still birth from 24 weeks of pregnancy, will be entitled to 2 weeks paid leave. Employees are eligible to this right from the first day of their employment.

Please contact SFB Consulting for further guidance regarding this new legislative change.

Changes to Agency Worker pay and basic working conditions

From 6th April 2020 Agency workers will be entitled to equal pay compared with directly recruited employees of the Company, once the Agency worker has completed 12-weeks of continuous service with their employing agency.

This change is due to the current 'Swedish derogation' clause being removed from 6th April 2020.

By 30th April 2020, Agency workers who have the 'Swedish derogation' clause in their contracts would need to be provided with written notification from their employing agency that this clause will no longer be applicable.

Changes to IR35 rules

As of 6th April, all public authorities and large and medium sized companies (end user client) will be responsible for assessing and deciding the employment status of workers. As the end user / client, these changes would apply to you if your Company meets 2 or more of the below criteria;

- you have an annual turnover of more than £10.2 million
- you have a balance sheet total of more than £5.1 million
- you have more than 50 employees

You would need to assess the actual working relationship with the service providing individual, are they deemed to be self-employed based on the actual working relationship? The below criteria should apply for the service provider (worker)

- not paid via PAYE, no employment rights or responsibilities apply
- they can have someone else attend and do the work for them
- they can accept or refuse work being offered
- they provide and use their own tools / equipment
- they can work for other clients
- they have freedom in deciding how the work is carried out and when
- they manage the profit and loss of their own business

If these criteria do not apply, the nature of the employment in practice could be deemed as similar to that of an employee and IR35 would then apply.

What should you do as the client?

It will be up to you to decide the employment status of the worker. This should be done for every contract you agree with either an agency or worker.

You should then give reasons for your determination to the worker and the person or company you contract with. You should ensure that you keep good records of your determinations, this will include the reasons for the determination and fees paid. Finally, you should ensure you have a process in place to deal with any disagreements that arise from your determination.

Small-sized clients in the private sector will not have to decide the employment status of their workers. This will remain the responsibility of the worker's intermediary.

It is imperative that companies of a certain size start assessing all contractors / self-employed service providers as soon as possible to prepare for the changes.

If an employee is involved in a criminal activity or misconduct outside of work, what action should employers take?

According to the ACAS code of practice, unless the employee was involved in an act which would impact their suitability to continue with their job / work, or if it impacted their relations with their colleagues, employer or clients, any misconduct outside of work would not affect their employment.

This is of course referring to misconduct outside of working hours, events and away from the work premises.

Depending on the nature of offense, an employer would need to assess the level of significant impact the employee's actions may have. For example, theft and fraud would impact those working in an industry where a high level of integrity and honesty is required. Violent or sexual offences could impact employment with children and vulnerable adults/ young adults. Negative media / social media actions by a senior member of the organisation which brings the Company into disrepute.

Where such a situation arises, a thorough investigation is imperative prior to considering any disciplinary sanctions. This is where SFB Consulting can conduct or guide employers through complex issues to help limit their liabilities.