

NEWS FROM THE HR TEAM



Do you have stressed employees?



Do you have stressed employees, or is their health anxiety heightened due to the current pandemic? What steps could your business consider to help reduce sickness absence related to stress and to help provide and maintain a supportive working environment?

In this very difficult and uncertain period you may find employees are struggling with working from home, feeling isolated, home schooling due to self-isolating children whilst managing their work, managing additional workloads due to furloughed colleagues, or streamlining of the business to save costs, or simply just adjusting to the current way of life which has been caused by the pandemic.

Where employees may still be working on site, they may need to self-isolate and consider being placed on sickness pay or working from home over the coming months. Alternatively, some employees may be unable to work from home due to personal domestic issues.

Whatever the employee's individual struggles are, open confidential communication can help to identify an agreeable way forward and providing re-assurance and flexibility may also benefit employee engagement and performance.

Where an employee advises they have stress or anxiety related to work, colleagues, travelling to work, or any issues relating to their employment, we would recommend regular minuted communications with them and working with them to find solutions which comply with current health and safety

requirements and meet business needs, as well as addressing the employee's concerns.









Where an employee may feel they cannot work from home, working with health and safety to ensure a COVID safe work environment has been implemented, and carrying out the relevant risk assessments could enable them to continue to work on site. It is also beneficial to have such requests from the employee confirmed in writing.

If employees raise complaints of unfair treatment or working practices, implementing an informal grievance procedure in the first instance would be recommended, and keeping written records of all discussions and agreed actions is also recommended.

Where an employee is signed off sick from work due to work related stress, they would be contacted and efforts should be made to resolve their issues informally or by inviting them to attend a remote grievance meeting to resolve matters and have them return to work as soon as possible.

Where employees are having difficulty with non-work related issues, talking to them to provide a supportive work environment can be beneficial, and where they may need further support, they should contact their GP/Doctor in the first instance, and they could also seek support via;

- Mind:** www.mind.org.uk
- Rethink:** www.rethink.org
- Samaritans:** www.samaritans.org

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Updates

National Living Wage rates due to increase

As of May 2021, the National Living Wage (NLW), also known as the real Living Wage, will increase from £9.30 per hour to £9.50 per hour, the London Wage will increase from £10.75 to £10.85. The NLW reflect the wage workers need for day to day costs, this differs to the National Minimum Wage which is set by the government.

There is no mandatory requirement for employers to pay the NLW, and the new National Minimum Wage rates for 2021 are expected to be confirmed in the Winter Budget.



Tax relief for homeworking employees

Employees who may work from home on a regular basis as part of their normal working pattern or due to the current pandemic, may be able to claim tax relief for additional household costs.

Employees who choose to work from home would be exempt from this relief.

If eligible, the tax relief would be based on the level of tax which the employee currently pays.

For further information and to check eligibility, employees should visit the below link; <https://www.gov.uk/tax-relief-for-employees/working-at-home>



Test and Trace support payment

Employees who have to self-isolate due to a positive test or due to being advised to do so by NHS Test and Trace, but cannot work from home, could be eligible for a one off £500.00 payment.

Individuals who are self-employed or on a low income may also be eligible.

These applications can be made via the below link through their local council; <https://www.gov.uk/test-and-trace-support-payment?priority-taxon=774cee22-d896-44c1-a611-e3109cce8eae>



Does your business need to get ready for Brexit as of 1st January 2021?

Most businesses will be affected by the changes which Brexit will bring. Whilst managers may be juggling their supply chains, transportation and other business preparations, they should remember to ensure their employees are also prepared.

Foreign employees who currently work in the UK from the EU should ensure they have applied for their 'Settled Status'. As of 9am on 1st December 2020 Tier 2 will be replaced with The Skilled Worker Route and this will be the main route for employers to recruit foreign nationals.

This will apply to those entering the UK for skilled jobs and who have an approved sponsor.

Key features of The Skilled Worker Route are;

The prospective employee will need to obtain 70 points to be eligible to apply for;

- a job offer from an approved sponsor (the applicant must have a valid Certificate of Sponsorship) = 20 points
- the job being at an appropriate skill level of RQF Level 3 or above (A-level or equivalent) = 20 points
- the worker having English language skills at level B1 = 10 points
- the other 20 points will generally come from the job being on a base salary of £25,600 or above (or the appropriate "going rate" for the type of job, if higher)

- however, workers will be able to trade points on specific characteristics against their salary:
 - they can gain 20 points for the job being in a listed shortage occupation (as designated by the Migration Advisory Committee) - must earn at least the higher of £20,480 or 80% of the appropriate going rate
 - they can gain 20 points for having a PhD in a STEM subject in a listed occupation which is relevant to the role - must earn at least the higher of £20,480 or 80% of the appropriate going rate
 - they can gain 10 points for otherwise having a PhD in a listed occupation and which is relevant to the role - must earn at least the higher of £23,040 or 90% of the appropriate going rate (this level of salary will be the other 10 points)
- £20,480 will be the absolute minimum salary
- "new entrants" to the labour market must earn at least the higher of £20,480 or 70% of the appropriate going rate
- the annual cap on the number of workers able to enter the UK under the Skilled Worker route will be suspended
- the resident labour market test will be abolished.

Foreign recruits from the EEA and Switzerland will also need 70 points from 1st January 2021 to apply for The Skilled Worker Route.

Employee made to pay costs for seeking to wrongly implicate their employer

In the case of Mr Tan v Copthorne Hotels, the claimant has been ordered to pay his employer £432,000.00 for 'duplicious' behaviours when he secretly recorded colleagues and meetings, which, it was found, undermined the trust and confidence of his colleagues and employer.

This is a change from the norm where costs are not usually awarded from the losing party. A costs order might be made if a claim is pursued (or defended) despite the claim/defence having no reasonable prospect of success, or where disruptive, abusive and otherwise unreasonable conduct and behaviours have contributed to the proceedings.

In this particular case, Mr Tan made a series of allegations when he was placed at risk of redundancy. The claimant alleged unlawful deduction of wages, discrimination, harassment, victimisation and whistleblowing detriment.

To build his case, he had covertly recorded private conversations with colleagues and numerous work meetings.

None of his claims were successful, and they were deemed to be spurious claims which had resulted in significant financial costs for the employer to defend.

Key points: This case demonstrates the need for an accurate and detailed redundancy process and the need to address any complaints raised by the employee in a speedy and thorough manner, as well as ensuring written records are kept of all related meetings and conversations.

In the current climate, employees may take all steps possible to retain and continue in their employment, and if they raise any gripes or moans, we recommend taking them seriously and addressing them thoroughly. This can be instigated by the employer inviting the employee to a Grievance meeting.

For further information or for a copy of our up to date Grievance policy, please get in touch.

Cycle couriers found to be considered 'workers' and therefore, would receive annual leave entitlements

Employment status can be a grey area in some sectors, and we have seen recent cases where individuals are classed as workers, for example in the case of Uber

In the case of O'Eachtiarna and others v CitySprint (UK). In an earlier decision at the start of 2017, a Tribunal found that a single courier engaged by CitySprint was considered a 'worker', and the employer then adjusted the clauses on their contracts with the cyclists in an attempt to demonstrate that the cyclist couriers were self-employed.

However, similar to the case of Uber BV, Uber London Limited and Uber Britannia v Mr Y Aslam and Ors, the significant factor for consideration was the individual's ability and right to substitute their personal service. In reality, the cyclist couriers would have to carry out the work themselves and therefore could not provide a substitute to do so. The cyclist couriers had to personally perform the tasks and this was a main aspect of the contract and therefore, couriers were still considered 'workers'.



Despite a contractual clause being implemented, the tribunal did consider the terms of the written contract, but had to assess the reality of the working relationship and circumstances, and ascertain whether they fall under the definition of self-employed or worker.

Contracts for services are vital, but the definition of self-employed vs worker must be closely and transparently examined to ensure the right status of employment is followed and implemented. Contracts should reflect the real-life working relationship to reflect the employment status of individuals.

Breach of Working Time Directive Regulations 1998 results in successful unfair constructive dismissal claim



Holloway v Aura Gas Ltd

Employee, Mr Holloway, worked for Aura Gas Limited and had disciplinary proceedings taken against him for, allegedly, dragging out work

hours, falsifying timesheets and refusing to work his contractual hours. Mr Holloway was an Engineer and his role involved travelling from job to job, at times six hours could be spent travelling per day. This travel time was included within his weekly working hours

In turn, Mr Holloway raised a grievance regarding unpaid overtime and excessive hours of work, he later resigned and claimed for constructive dismissal.

The Tribunal held that Mr Holloway was unfairly, constructively dismissed due to breaches of the 48 hours working week (averaged over 17-weeks) and the rest breaks requirement under the Working Times Regulations 1998, health and safety breaches, failure to pay wages, bullying and conducting a vindictive Disciplinary investigation, which in itself was found to be a fundamental breach of the implied term of trust and confidence.

The Tribunal also found that the employer had not taken the claimant's grievance seriously and the claimant had raised the issue of pay for additional hours previously.

The employee was contractually required to work 45 hours per week, but his travelling time often meant that those hours were exceeded. Although Mr Holloway had found alternative employment and then resigned, the Tribunal found that his finding alternative employment and resigning was likely a result of the ongoing dispute regarding payment for hours worked and his grievances not being taken seriously, and therefore the claim for unfair constructive dismissal was upheld.

This case highlights the importance to fully investigate and consider employee complaints and grievances, and to consider the regular average actual hours an employee is working in relation to their contractual working hours, and the relevant rest breaks which they should be taking.