

NEWS FROM THE HR TEAM



## Can an employer amend employment contracts and force employees to have the Covid vaccine?



**In short, no. The option to have any vaccine is for each individual to decide upon and trying to force this would be an infringement on their Human Rights.**

Employers could consider participating in the Government programme to encourage employees (who cannot work from home) to be tested twice a week to help reduce the spread of the Coronavirus.

Further details can be obtained [www.gov.uk](http://www.gov.uk)

*If you have any queries regarding employees and the Covid requirements whilst at work or working from home, do get in touch with one of our employment law specialists.*

## Bank Holidays during Flexible Furlough

With the extension of the Furlough Scheme and many employees remaining on Flexible Furlough over the Easter period, employers may wish to start clarifying with their employees how Bank Holidays will be managed.









By law, employers can enforce annual leave by providing double the notice of the leave they wish for the employee to take. For example, if you would like an employee to take 3 days leave, this would have to be notified to them in writing giving at least 6 days notice.

For the Bank Holidays, the same would apply and the employees would receive their



full salary for any day taken as holiday. If an employee is on Flexible Furlough and takes leave for a day they are due to work, this can be claimed on the Furlough Scheme and the employer will need to top up payment to ensure the employee receives their full salary payment for that day.

*Do get in touch for a copy of our letter to notify employees to take annual leave.*

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## Employer obligations towards employees suffering with Long Covid

**Long Covid symptoms vary significantly from person to person, but can continue for many months from when the individual initially contracted the illness. This compounded with any pre-existing medical conditions may prolong any potential full recovery and resumption of full-time duties at work.**

Although this illness is still very new, employers should apply the same approach and caution as they would to any long-term illness. Ensuring that medical advice and guidance is sought, with the consent of the employee, and giving consideration to any recommended reasonable adjustments.

Depending on the nature of the individual's symptoms and impact on their day to day life, their Long Covid may class them as disabled and protected, as per the Equality Act 2010.

We recommend thorough notes of all meetings should be made and retained, and if necessary, consideration may need to be given to a formal process to assess the likelihood of the employee resuming their duties in the short to medium term.

*Our Consultants can guide you through long term sickness absence management matters.*

## 90% of Homeworkers admit to drinking alcohol during working hours

**An astonishing finding from a survey of 1,300 employees found that most admitted to drinking during working hours. The below is also concerning for many employers as workplace policies may cover that alcohol consumption is prohibited, but this should be explicitly clear for those employees who also work from home**

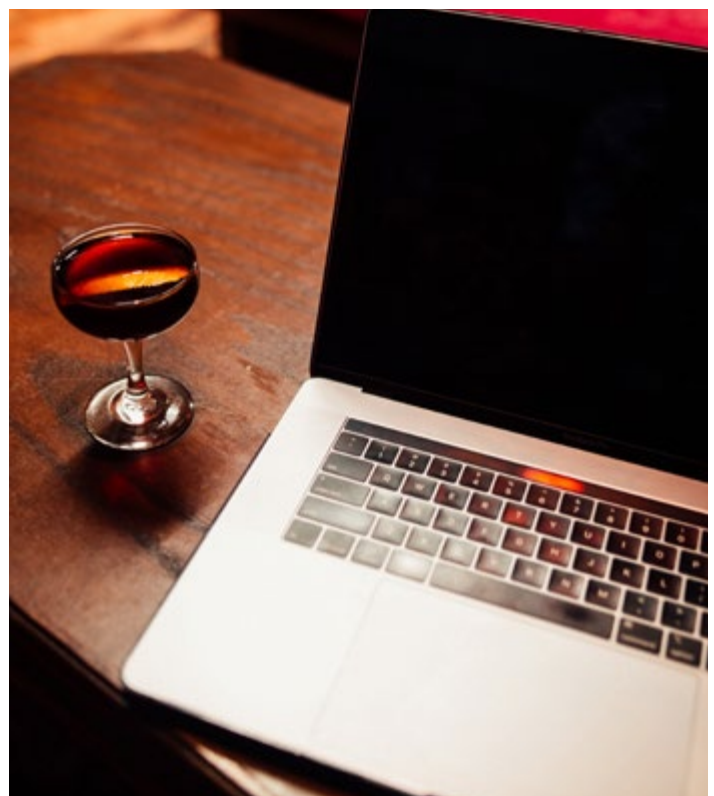
- 90% have consumed alcohol during working hours
- 83% consume alcohol whilst working from home at least twice a week
- 58% had got drunk during working hours
- Homeworking drinking habits range from a glass of wine at lunchtime to a bottle of something alcoholic to get through the working day.

(source Indicator)

Employers should encourage clear communication about the unhealthy risks associated with consuming alcohol and request that alcohol is not consumed during their working hours, breaks and lunch times also.

Whilst it would be challenging to enforce and monitor if employees are drinking alcohol whilst working at home, it should be made clear that if alcohol consumption is found to impact on the employee's performance it may be regarded as an act of gross misconduct in line with the Company's Alcohol and Drug Use Policy.

Furthermore, in the context of the current pandemic, employers may wish to encourage employees to discuss any concerns or issues they are experiencing and build on providing a culture of support.



# Employment Case Law Update



## Employer’s duty of care to support employees who raise a grievance

*Vaughan v Talbot Underwriting Services*

An ET has ruled in favour of the Claimant, Mr Vaughan, who brought a case of Constructive Unfair Dismissal against his employer relating to bullying and belittling.

The claimant had raised a grievance following an incident in February 2019, where he had been berated by his Line Manager in a ‘shocking manner’ in the middle of an open plan office. Following time off sick for work related stress, Mr Vaughn returned to work in April. The grievance was upheld, a final written warning was issued, but Mr Vaughn continued to experience hostility from senior managers upon his return to work. In August 2019 issues were raised regarding Mr Vaughn’s performance and he subsequently offered to resign as he felt he could not go through a formal process.

Employers are reminded to support a culture of respect by supporting the wellbeing of employees and ensuring employees are not victimised for raising grievances.

In our view, mediation following any grievance usually supports all parties involved with moving forwards constructively.



## The need for employers to follow the ACAS Code of Conduct for Disciplinary and limiting the opportunities for covert recordings

*Rawal v Royal Mail Group*

A former Royal Mail employee of 17 years has been awarded £37,720.00 due to unfair dismissal.

Mr Rawal had been disciplined and dismissed due to a complaint regarding him urinating in a public lay by whilst using a Royal Mail van. Subsequently, Mr Rawal claimed unfair dismissal, automatic unfair dismissal on the grounds of trade union membership and racial discrimination.

The Tribunal allowed for covert recordings and transcripts to be submitted by the claimant, despite the respondents, (Royal Mail), having applied for the exclusion of the same. These recordings were taken during a break in the Disciplinary process. During this time, it seems

a third party advised the decision maker to dismiss Mr Rawal and comments were also made relating to his Trade Union involvement.

The Tribunal found that the disciplinary process had been flawed, specifically a fair investigation which complies with the ACAS code of conduct, it also found that the claimant’s involvement with a Trade Union was a factor leading to his dismissal, making it automatically unfair.

*It may be best for employers to ensure no recordings or recording devices are permitted in formal meetings and to ensure all investigation and disciplinary meetings are carried out correctly. Our Consultants can help manage, guide and support your business through all matters relating to misconduct or grievances.*

## The importance of Restrictive covenants being relevant to specific roles

*The importance of Restrictive covenants being relevant to specific roles*

A High Court ruling has found the 12-month no-dealing and non-solicitation, and 9-month no-compete restriction clauses unenforceable for Ms Falconer, a Financial Advisor.

Ms falconer was unhappy in her role and left after 6-months of employment, still within her probation period and with a short 2-week notice period. She had joined and taken over the Client Book from a former employee, and upon leaving, she took the confidential Client Book with her to a competitor.

The High Court upheld that Ms Falconer’s misuse of confidential information was a breach of contract, but ruled the restrictive covenants were invalid due to;

- 1 - The same restrictive covenants applied to all employees, regardless of seniority
- 2 - The non-compete clause was UK wide, rather than restrictive within a certain area/ radius of the former employer, and she had only been employed for a short time with a very short notice period.
- 3 - The non-solicitation clause applied to anyone who had been a client of Quilter Private Client Advisers Limited within the past 18-months from the employee’s leave date, which meant that Ms Falconer was unable to have contact with clients she may not even have met, or would have had minimal contact with, due to her short length of employment.

Whilst restrictive covenants are vital to protect your business, they do need to be relevant and tailored to specific roles to be enforceable,

## Appeals provide the opportunity for employers to correct any errors which have occurred within a formal process

*M Austin v A1M Retro Classics Ltd*

The Claimant M Austin was employed by the Respondent from December 2014 to February 2020, when he was summarily dismissed in line with the Company's Social Media Policy, which was introduced in February 2020, although some other form of Company social media guidance was alleged to have been in existence previously.

The claimant was given feedback regarding his performance and this later resulted in a heated argument between the claimant and Mr Henry, the Managing Director of the Respondent. This led to the claimant making comments on Facebook that evening regarding how upset he had been made to feel by his boss.

The following Monday morning, the claimant was called into a meeting, which was in effect

a disciplinary meeting with no prior written notice, investigation or clear explanation of what issues of alleged misconduct were being considered. The claimant was also unaware of the nature of that meeting. Following the meeting, he was suspended and advised he would be called to a further meeting. However, this did not happen and he received a call the next day advising he had been dismissed.

By not providing notice of the meeting, the employee was also not given their statutory right to be represented by a Trade Union Representative, instead the claimant was advised a fellow colleague would be present at the meeting. This removed the claimant's choice and right to potentially have a Trade Union Representative present.

The Company did have a Disciplinary Policy in place, but this was not followed.

The claimant appealed, and the appeal was taken by Mr Henry, who upheld the decision to summarily dismiss the claimant and did not consider reinvestigating the matter or ensuring the Disciplinary Policy was followed as part of the appeal.

The Tribunal found that the employer had not acted reasonably within the band of reasonable responses available to them, nor had they complied with the ACAS Code of Conduct or allowed the employee the statutory right to be accompanied by a Trade Union Representative.

It further noted that the Respondent had failed to ask the claimant to remove the post, which would have resulted in it being posted for a short time, and the Respondent had also failed to consider the group and size of the Facebook group to reasonably determine if the post had impacted on the Respondent as set out in the Social Media Policy.

The Tribunal ruled in favour of the claimant and awarded him £28,560, also taking into consideration the impact of the current pandemic and the difficulty for the claimant to find employment.

*Our Consultants are not only experts in managing cases of misconduct correctly but can also ensure errors are rectified at the appeal stage to help remedy employer and employee disputes.*



## Employer Rates and Thresholds from April 2021

The new National Minimum Wage (applicable for employees under 25 years of age) and National Living Wage (applicable for employees over 25 years of age) rates will be;

	23 & over	21 to 22	18 to 20	Under 18	Apprentice
April 2021 (new rate)	£8.91	£8.36	£6.56	£4.62	£4.30
(source .gov.uk)					

Statutory Sick Pay will increase from £95.85 to £96.35 per week as of 4th April 2021.

Statutory Maternity Pay/Statutory Paternity Pay/Statutory Adoption Pay/Statutory Shared Parental Pay/ Statutory Parental Bereavement Pay, will all increase to the weekly rate of £151.97 as of April 4th 2021.



## Government Roadmap to Recovery and employee removal from the Furlough Scheme

Employees will need to receive updated letters notifying them of their removal from Flexible Furlough when your business is able to operate fully in line with the announced Roadmap to Recovery below. Do contact us for a copy of the relevant letter.

### Step 1

8 March

- Schools and colleges are open for all students. Practical Higher Education Courses.
- Recreation or exercise outdoors with household or one other person. No household mixing indoors.
- Wraparound childcare.
- Stay at home.
- Funerals (30), wakes and weddings (6)

29 March

- Rule of 6 or two households outdoors. No household mixing indoors.
- Outdoor sport and leisure facilities.
- Organised outdoor sport allowed (children and adults).
- Minimal travel. No holidays.
- Outdoor parent & child groups (up to 15 parents).

### Step 2

At least five weeks after Step 1, no earlier than 12 April.

- Indoor leisure (including gyms) open for use individually or within household groups.
- Rule of 6 or two households outdoors. No household mixing indoors.
- Outdoor attractions such as zoos, theme parks and drive-in cinemas.
- Libraries and community centres.
- Personal care premises.
- All retail.
- Outdoor hospitality.
- All children's activities, indoor parent & child groups (up to 15 parents).
- Domestic overnight stays (household only).
- Self-contained accommodation (household only).
- Funerals (30), wakes, weddings and receptions (15).
- Minimal travel. No international holidays.
- Event pilots begin.

### Step 3

At least five weeks after Step 2, no earlier than 17 May.

- Indoor entertainment and attractions.
- 30-person limit outdoors. Rule of 6 or two households (subject to review).
- Domestic overnight stays.
- Organised indoor adult sport.
- Most significant life events (30).
- Remaining outdoor entertainment (including performances).
- Remaining accommodation.
- Some large events (expect for pilots) - capacity limits apply.
  - o Indoor events: 1,000 or 50%.
  - o Outdoor other events: 4,000 or 50%.
  - o Outdoor seated events: 10,000 or 25%.
- International travel - subject to review.

(Source .Gov.uk)

## Increase to statutory compensation limits from 6th April 2021

- The unfair dismissal maximum compensatory award will increase from £88,519 to £89,493 (with an additional cap of one year's salary on the unfair dismissal compensatory award)
- The minimum basic award for unfair dismissal will rise from £6,562 to £6,634. (Relating to dismissal for Trade Union membership, health and safety duties or acting as an employee representative or workforce representative)
- The limit on the daily statutory guarantee pay will remain at £30
- The weekly pay amount used to calculate statutory redundancy payments and specific unfair dismissal awards will rise from £538 to £544

