sfb Group News

SFB Consulting : Supporting your Business

Group News - June 2021

NEWS FROM THE HR TEAM

CASE LAW;

Government guidance for employers to provide a Covid-19 safe workspace relevant at Tribunal

Rodgers V Leeds Laser Cutting Limited

A pandemic related case where an employee was dismissed for refusing to attend work due to safety concerns.

Mr D Rodgers claimed he had significant concerns about the Covid-19 pandemic and felt there was no place safer than his home. However, during the course of proceedings it transpired that Mr D Rodgers had on one occasion transported his friend to hospital, despite his being required to self-isolate at that time.

The ET did not rule in favour of the claimant, it considered that Government guidance at the time was followed by the employer. Namely, that the required measures were implemented within the workplace, therefore making it a Covid safe workspace for the employee. Further, the employer had taken steps to notify staff, and place notices around the workplace, regarding the need to socially distance and wash their hands whilst providing the relevant facilities to enable this.

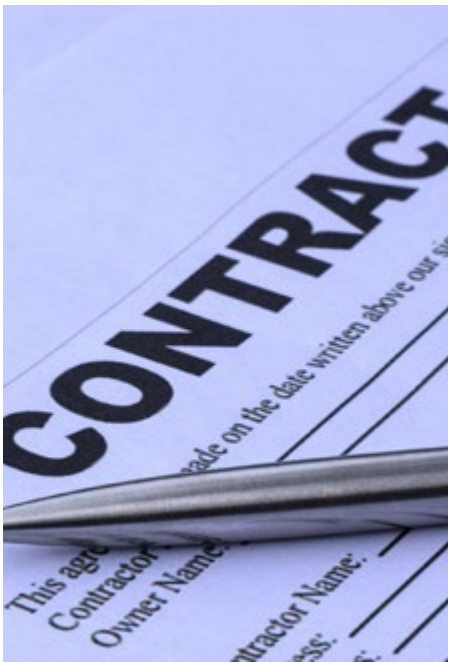
The ET did not find the claimant had an objectively reasonable belief that there was serious imminent danger at his place of work. The ET also considered that there was a large workspace, a small number of employees and that it was not difficult for employees to socially distance in line with the Government guidance at the time.

This case demonstrates the need for employers to ensure the Government guidance for a Covid safe workspace is followed and the relevant Health and Safety risk assessments are carried out. It also outlines, that whilst specific employment law did not change during the pandemic, the relevant Government guidance will be considered and referenced for Employment Tribunal cases.

sfb Group News

Unit H, 1st Floor, Suite 23
Peek Business Centre
Woodside, Dunmow Road
Bishops Stortford CM23 5RG

Telephone: 01279 874 676
Email: info@sfb-consulting.com
www.sfb-consulting.com



The importance for employers to retain signed & dated employment contracts.

Mr Z Hyder v XPO Supply Chain UK Limited

Mr Hyder had initially worked for the respondent via an agency called PMP, after which he was employed directly as an employee by the respondent. The claimant's case was one of unfair dismissal and redundancy payment following his dismissal in September 2020.

Mr Hyder claimed he had commenced employment with the respondent in May 2018, but the solicitor for the respondent referred him to his contract of employment, which he had signed in April 2019 and which confirmed his start date of employment with XPO as 1st May 2019. Further, the claimant received payslips and payments from PMP until May 2019 and the claimant was also given the respondent's employee handbook in April 2019.

The ET found that there was sufficient documented evidence to confirm the claimant commenced employment with the respondent in May 2019, and not May 2018, and therefore the employee had not completed two years of continuous employment service to enable him to claim for unfair dismissal, and this was not a case where automatic unfair dismissal categories were relevant.

Employers are reminded for the need to obtain and retain signed copies of employment contracts and accurate records of when the employee has received the employee handbook and any further contractual addendums, in line with their GDPR policy.

Dismissal for misconduct deemed fair where an employee refused to wear a face mask whilst on a client site.

Kubilius v Kent Foods Limited

Mr Kubilius was employed by the respondent from 25th July 2016 until he was dismissed on 25th June 2020, via a letter.

Tate & Lyle were the respondent's main client, amounting to 90% of their business. Following an incident when the claimant refused to wear a face mask on the client site because he was in the cab of his vehicle, resulted in his being banned by Tate & Lye from their sites.

Tate & Lyle had a requirement for all drivers to wear a face mask when on the client site and in the respondent's driver handbook it stipulated;

'...customer instruction regarding PPE requirements must be followed. '

Although it was not a legal requirement for the claimant to wear a face mask whilst in the cab of his vehicle, it was a requirement for the main client of the respondent, and the claimant's refusal to comply with this requirement when asked on site, resulted in his dismissal for misconduct in addition to being banned from the client's sites.

The ET Judge ruled that the main reason for dismissal by the respondent was for misconduct and not following company policy and client rules. The incident of misconduct resulted in his ban from Tate & Lyle sites, and therefore the relevant overall circumstances had to be considered when deciding if the respondent had acted reasonably in all circumstances.

Consideration was given to the dismissal being linked to third party pressure to dismiss and this causing impracticality for the claimant to continue with their contractual role, additionally, the claimant had not shown any remorse following the incident. The respondent had to maintain good working relationship with Tate & Lyle owing to the level of work they provide, and the decision to dismiss the claimant was deemed fair.

Where there is third party pressure to dismiss, employers should act reasonably and ensure employees have been provided with clear guidance and expectations when working with clients or on a client site.

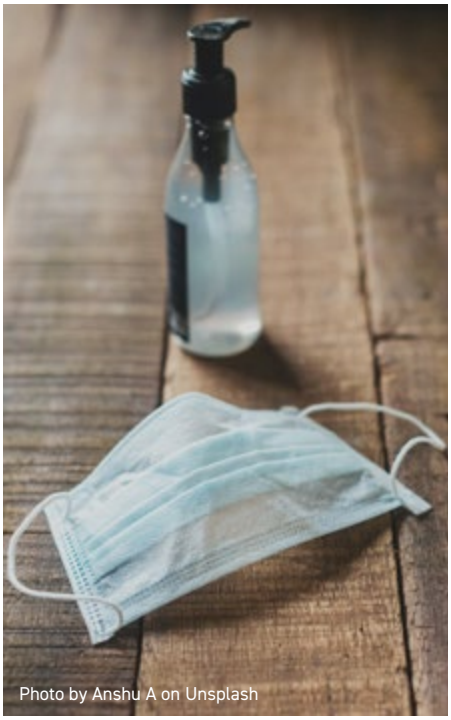


Photo by Anshu A on Unsplash

LAW UPDATE;

Records for National Minimum Wage payments to employees to be kept by employers for 6 years

As of 1st April 2021, employers are legally required to retain NMW records for their employees for a period of 6 years, and not 3 years as previously required.

Health and Safety protection extended to Workers

The law has been amended as of 31st May 2021 for all Workers to be protected from detrimental treatment if they refuse to work due to the reasonable belief that they are in serious and imminent danger, this will now include zero-hour workers, casual workers and certain contractors/consultants.

ADVICE;

Covid-19 vaccinations and Rapid Lateral Flow testing

Whilst employers can encourage their staff to participate with both weekly Rapid Lateral Flow testing and receiving the vaccination, there is no legal obligation for employees to do either.

Employers could outline why participating would benefit all colleagues and assist in ensuring a safer working environment for all. Where an employee may still refuse to participate it is important to maintain confidentiality inline with Data Protection law and not to discuss the individual employee's preferences with their colleagues.

Relevant Health and Safety risk assessments and providing a Covid safe workspace in line with Government guidance will provide the recommended working environment for all, and any employee who has concerns about a colleague not participating with weekly testing or the vaccination would be reminded of the employer's measures implemented to comply with the current Government legal requirements.

To order Rapid Lateral Flow Tests visit https://www.gov.uk/order-coronavirus-rapid-lateral-flow-tests

Please contact SFB Consulting for a copy of our **Social Distancing and Covid Response Whilst At Work policy.**

Mental Health awareness

With the last year being dominated by a global pandemic, lockdowns and changes to day-to-day life, you may have an increased number of employees struggling with their mental health.

It is always good to listen to and support any employee with difficulties they may be experiencing and providing them details of local mental health walk in centres, as well as encouraging them to seek further support via their GP.

The employee could also contact www.mind.org or https://www.samaritans.org.

If you are concerned about any imminent risk to life, we would recommend you contact 999 to report these concerns to the Police and request an ambulance.

You can contact SFB Consulting for a copy of our **Stress and Wellbeing At Work policy.**

Photo by Sharon McCutcheon on Unsplash

Employer duty to have relevant HR documents in place and accessible to employees from the first day of their employment

In line with legislative changes, employers should ensure that all new employees have their principle terms of employment/employment contract provided to them by their first day of employment.

Employees should also be able to access key HR policies, should they wish to, at any time during their employment. Key policies would include, but are not limited to:

- Anti-Bribery and Anti-Corruption
- Equality and Diversity
- Grievance
- Disciplinary
- Technology, Security and Electronic Communications
- Whistleblowing
- GDPR

It is also strongly advisable to ensure a form of Employee/Company handbook is in place to provide clear guidance on what is expected from all members of the Company and relevant third parties.

Having this guidance in place not only assists when assessing potential disciplinary or dismissal situations but will also carry weight should an employer need to defend their actions in compliance with their HR policies and procedures at an Employment Tribunal.

Flexible Furlough Scheme changes reminder

Additional employer contribution changes are due to begin from July 2021, please see below;

	June	July	August	September
Government contribution: wages for hours not worked	80% up to £2,500	70% up to £2,187.50	60% up to £1,875	60% up to £1,875
Employer contribution: employer National Insurance contributions and pension contributions	Yes	Yes	Yes	Yes
Employer contribution wages for hours not worked	No	10% up to £312.50	20% up to £625	20% up to £625
For hours not worked employee receives	80% up to £2,500pcm	80% up to £2,500pcm	80% up to £2,500pcm	80% up to £2,500pcm