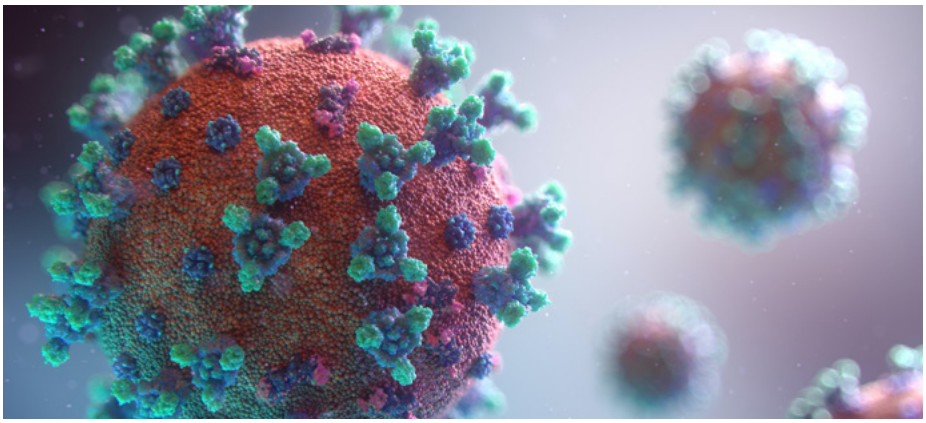
sfb Group News

SFB Consulting : Supporting your Business

Group News - March 2022

NEWS FROM THE HR TEAM

How should employers manage employees suffering from Long Covid?



If employees are suffering from Long Covid and experience symptoms which could be considered a disability as stated within the Equality Act 2010, then employers would be best advised to seek medical reports and consider any reasonable adjustments which may be recommended.

Disabilities are defined as conditions which may last 12 months or longer, which may impact the employee's day to day life and may be recurring.

If a claim of disability discrimination is made by an employee, the tribunal would consider the assessment of a disability at the time of the alleged discrimination, and not whilst the matter is being heard at tribunal.

For any questions you may have regarding absence management or supporting employees with medical conditions, do not hesitate to contact our team today.

Covid positive testing and attending work

As the Government has now removed the need for self-isolating where anyone has tested positive for Covid, many employers still feel hesitant to have employees, who have tested positive, attending work as a duty of care to their other staff.

If an employer decides they do not wish for any positive testing employee to attend work, they could in the first instance, request for the employee to work from home and ask for proof of the positive test result. Where working from home is not possible, the employer may wish to agree to provide paid leave for the recommended 5-6 days of isolation and ask for proof of all positive and negative results.

Where an employee feels unwell and unable to attend work, they would take sick leave and receive sick pay in line with their contractual sick pay terms.

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

PPE at Work Regulations due to come into force on 6th April 2022

Employers will need to conduct a risk assessment to determine if their workers require any PPE to carry out their work.

Currently, employers are to provide all PPE and clothing to their employees at no cost, and this will extend to workers or workers who work via a 'contract for service', as of 6th April.

April 2022 payment rate changes

Weekly pay rate

As of 6th April 2022, the week's pay threshold will increase from £544 to £571, this will apply to redundancy and basic and compensatory awards for unfair dismissal.

Maximum award rate

Maximum awards for successful unfair dismissal claims will change to;

- basic award in an unfair dismissal claim will be £17,130 (up from £16,320); and
- compensatory award in an unfair dismissal claim will be £93,878 (up from £89,493).

Statutory redundancy pay cap

The maximum statutory redundancy payment an employee can receive will be capped at £17,130.

Family leave pay rates

Statutory maternity/paternity/adoption/parental bereavement pay will increase to £156.66 as of 3rd April 2022.

National Minimum Wage - These rates apply from 1 April 2020. *(source: www.gov.uk)*

Category of worker	Hourly rate
Aged 23 and above (national living wage rate)	£9.50
Aged 21 to 22 inclusive	£9.18
Aged 18 to 20 inclusive	£6.83
Aged under 18 (but above compulsory school leaving age)	£4.81
Apprentices aged under 19	£4.81
Apprentices aged 19 and over, but in the first year of their apprenticeship	£4.81

Case law;

Photographic evidence contradicting claims of health issues assists employer in defending a case of disability discrimination

Mrs U Pearson v Voyage 1 Ltd

The Court of Appeal has ruled that in cases where an employee is dismissed and not offered the right to appeal the dismissal, no critical impact would be reflected on the fairness of the decision to dismiss.

A tribunal has dismissed a claim for disability discrimination where the employee, Pearson, had informed her employer that she had visual impairments due to an injury from a snowball and ongoing back issues.

Pearson had under 2 years of service when she was dismissed on the grounds of capability, and whilst she was unable to make a claim of unfair dismissal due to her length of service, she made a claim for disability discrimination.

The employer had obtained medical evidence which confirmed the eye injury was not likely to cause long term permanent issues, and her back issues did not require any walking aids. Further, a photo showing Pearson standing on a trampoline whilst holding up another person was presented by the employer at the hearing.

As the photo was taken in a public place, the evidence was admissible and assisted the employer in successfully defending the case brought against them.

Employers can use photos from social media and photos taken in public places, or where a private investigator has been instructed. To manage ongoing attendance issues or requests for reasonable adjustments, employers are minded to seek professional medical evidence upon which to base any decisions.

An employer has been found to have fairly dismissed an employee where the employer had insisted that being vaccinated was a condition of the employee's ongoing employment

Allette v. Scarsdale Grange Nursing Home

A tribunal has found that the employer had given a reasonable management instruction for the claimant, Allette, to be vaccinated to protect the health and safety of the residents of a care home where Allette would visit.

The claimant had been employed with the nursing home since December 2007, until her dismissal on 1st February 2021. At the disciplinary hearing for failing to follow reasonable management instruction, the employer explained that their insurance company would not insure them if staff were not vaccinated in case there were any issues due to the risk of Covid-19 being spread by a member of staff. The claimant refused to have the vaccine as she was concerned how the vaccine had been rushed through and its safety.

Although the tribunal noted that the claimant's fears and scepticism about the vaccines were genuine, it did not consider this to be a reasonable basis for her to refuse the vaccine and not to follow the reasonable management request which resulted in her summary dismissal.

Employers are reminded to consider the employee's views and concerns in line with business needs and safety needs.

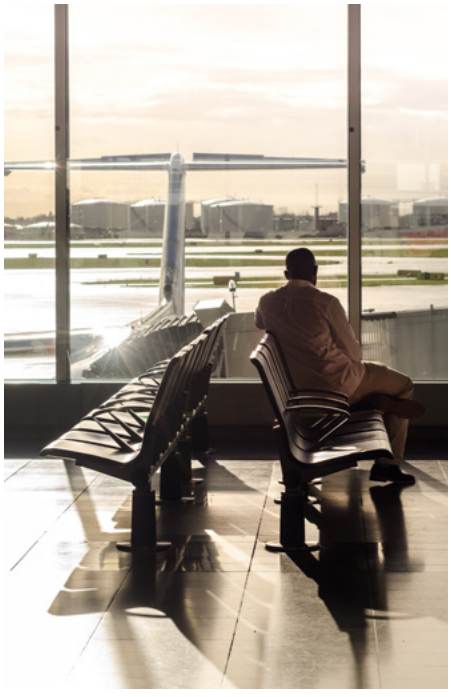
Manager went home alleging sickness and was photographed, within hours, having a pint of beer and a burger at an airport in advance of catching a holiday flight

Collins v Steris IMS Ltd

The claimant, Mr Collins, advised his employer that he needed to go home early as he had a stomach upset and was concerned about his partner who was 3 months' pregnant. The employer discovered that three hours later, Mr Collins was photographed at Gatwick Airport enjoying a meal prior to taking his flight that same day to holiday in Cyprus.

Collins was disciplined upon his return and subsequently dismissed. Collins made a claim of unfair dismissal, he admitted he should have let his employers know that he was due to fly out that same day, and not the next day as he had previously advised.

However, the tribunal was satisfied that the claimant had been dismissed as he had lied to his employer about the reason as to why he left work early that day.



Pregnant employee fairly dismissed for gross misconduct

One Call Insurance Ltd v Mowatt

The claimant, Mowatt, had been an employee of One Call since 2012 and in March 2020 she advised her employer that she was pregnant.

In June 2020, the employer became aware that a client of the claimant had been uninsured for 6 weeks due to the claimant not actioning any cover for the client. The employer then conducted an investigation into the claimant's IT activities and discovered that she had repeatedly accessed the inboxes of different colleagues at all levels of seniority. Further, she was found to have used the internet for personal activities and the selling of personal items during working hours.

When questioned about her activities, the claimant stated she had used the internet for personal use during break times, however she stated she had browsed and read personal confidential emails of other colleagues to find evidence to show that she was being bullied.

One Call subsequently dismissed the claimant for failing to arrange insurance cover for a client, excessively using the internet for personal use and accessing the emails of colleagues without permission.

Mowatt brought a claim of unfair dismissal against One Call. Her claims were dismissed as the tribunal found that the actions of her employer were reasonable in the circumstances. The tribunal stated that the claimant's browsing of colleague's emails was 'calculated, sustained and extremely wide ranging', as she had read private emails.

This case highlights that pregnant employees are not untouchable and the importance of thorough investigations during the disciplinary process