



SmartHR provides a range of professional and cost effective HR management and training outsourcing solutions for businesses, including...

- **Strategic HR audits & planning**
- **HR health checks**
- **Recruitment assistance**
- **Contracts of employment**
- **Employee handbooks**
- **Induction processes**
- **Reviewing, updating and / or creating HR policies & procedures (IOM and UK)**
- **Employment documents e.g. letters, forms, checklists**
- **Training and development via 'Skills Workshops'**
- **Coaching e.g. managing absence, managing discipline and grievances**
- **Performance management / appraisal systems**
- **Adhoc / interim HR projects**
- **Succession planning**
- **Change management initiatives**
- **Redundancy management & outplacement services**

We can provide HR retained service packages for a fixed monthly fee, assist with projects on a fixed fee basis, or you can use our services on a 'pay as you go' basis.

You can also purchase template HR documents from our online 'E-HR Shop' at www.SmartHR.co.im

Welcome to SmartHR's April 2011 E-Newsletter

Our newsletter will be distributed on a monthly basis, providing articles of business interest, HR news / updates and information regarding SmartHR's business solutions. *We hope that you find this newsletter of interest and share it with your colleagues.*

Gail Yeowell Chartered FCIPD, FInstAM(Dip), FCMI
Managing Director, Smart HR Solutions Limited

April 2011 employment law changes

UK: Two workplace rights are to be relaxed in order to cut red tape. Employers with less than 250 staff will be exempt from having to give staff the right to request time off for training; and a measure to extend the right to request flexible working to parents of children aged up to 18 (an increase from age 16) will *not now go ahead* in order to avoid burdening small businesses.

UK: Equality Act 2010 – provisions to allow positive action in recruitment and promotion come into force this month. This will give organisations the option, *when faced with two or more candidates of equal merit*, to choose a candidate from a group that is under-represented in the workplace. If companies choose to use positive action, recruitment and promotion must still be based on *merit*. The Act does not mean introducing quotas or positively discriminating because someone is e.g. of an ethnic minority, disabled or a woman – as positive discrimination is still illegal. Companies should not routinely favour candidates with a protected characteristic. The provisions in the Act requiring mandatory gender pay reporting will not be implemented for the time being and the Government will instead develop a voluntary scheme to help tackle the gender pay gap.

UK: Additional Paternity Leave and Pay – up to 3 months' pay at the statutory rate and 3 months unpaid leave for parents of babies due (and adoptive parents notified of a match) on or after 3 April 2011. The new right applies where the mother ends her maternity leave early, which allows the father to take the remainder of the leave. The leave can be taken any time from 20 weeks after birth, or adoption match, but it must end by 12 months after the child's date of birth or placement; and it must be taken in one continuous block.

UK: Statutory rates for maternity, adoption and paternity pay increase this month from £124.88 per week to £128.73 per week (or 90% of the employee's average weekly earnings if that is less). SSP increases from £79.15 to £81.60 per week. **IOM:** Statutory maternity, adoption and paternity pay rates increase on 17th April 2011 from £172.75pw to £179.85pw and Incapacity Benefit increases from £68.95pw to £71.10pw.

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Other costs include...

management time in dealing with discipline and grievance procedures, potential Tribunal claims, plus any associated representation costs. Your Company's reputation, which may have taken years to build up, can be damaged in just one poorly managed situation. You could lose clients; morale and productivity of existing staff can be affected, and you may find it hard to attract and retain employees in the future.

What next? Review your equal opportunities, discipline and grievance policies, procedures and practices to ensure they are appropriate, as well as your performance management process. Assess your managers' skills in handling performance issues, disciplinary and grievance situations, and their awareness of discrimination legislation. Include 'up skilling' or 'refresher' training into your Company's Development Plan for the year ahead. **The costs of doing this could be far less than the potential costs of not taking action.** It will also show your Company's commitment to their CPD.

Good people management practices will help you to deal with concerns as and when they arise, either informally or formally, and have highly skilled and effective managers that operate fairly and consistently.

BOOK YOUR PLACE NOW
on our 1 day

'Managing Discipline & Grievances' workshop

7 April 2011

ONLY £225PP

Call Gail on 619619

or email

gail@SmartHR.co.im

SPECIAL FEATURE: DISCIPLINE & DISMISSAL – THE COSTS OF NOT MANAGING THEM WELL

It is important that underperformance or disciplinary situations are handled fairly, reasonably, objectively and consistently within your organisation. Where possible, performance concerns should be dealt with informally. This can include providing additional training, coaching and feedback. Where informal action does not achieve the desired result, formal disciplinary procedures may be the next step.

Your organisation should have in place a disciplinary policy and procedure for you to follow that includes various stages and levels of disciplinary sanctions e.g. verbal warning, written warning, and dismissal. The main aim of the disciplinary procedure is to *improve underperformance* relating either to a person's *capability* or *conduct*. It should follow the principles of the **Code of Practice on Disciplinary and Grievance Procedures in Employment 2007 (IOM)** or **ACAS Code of Practice on Disciplinary and Grievance Procedures 2009 (UK)**.

Before reaching a decision to dismiss, to minimise the risk of a claim, any contractual disciplinary and grievance procedures must always be followed. Where a dismissal occurs it should be for a **fair** reason i.e. capability, conduct, redundancy, statutory illegality, some other substantial reason, or retirement (UK is abolishing the default retirement age from October 2011).

If the dismissal of an employee has not been managed well, he or she could potentially claim:

- **Wrongful dismissal** – this concerns a breach of an express or implied term of the contract e.g. inadequate notice to terminate or inadequate payment in lieu of notice. Compensation is a damages payment for breach of contract. **A UK Employment Tribunal could award up to £25,000. IOM compensation is limited to the person's notice period.**

If an employer implements a summary dismissal for misconduct which is not *gross*, they could be liable for damages for **wrongful dismissal**.

- **Unfair dismissal** - an employer must follow a fair procedure to avoid claims from employees who qualify to pursue unfair dismissal claims even where gross misconduct occurs. Remedies can include **compensation** (*basic award* and *compensatory award*), **reinstatement** or **re-engagement**. **A basic award** could be made via an Employment Tribunal. **UK maximum basic award is £12,000; IOM is one week's pay for each year of service (there is no limit on the number of years, although the maximum weekly pay cap is £480).** In addition, a **compensatory award** could be made. **Maximum UK limit is £68,400; IOM is £50,000.**

There are various **automatically unfair** reasons for dismissal that employees can claim without any qualifying period of service with their employer e.g. asserting a statutory right, making a protected disclosure. Where there is **unlawful discrimination** e.g. sex, sexual orientation, marital status, race, religion or belief, age (UK), and disability (UK) – **compensation is unlimited in the UK; IOM maximum compensation is £50,000.** A Tribunal may also issue an award for injury to feelings – **up to £5,000 in the IOM.**

There could be a situation where an employee resigns, asserts that the employer has committed a serious breach of contract, and claims **constructive dismissal**, seeking compensation.

Bribery Act 2010

The new Act will come into force on 1 July 2011. It will then become an offence not to prevent bribery by people working on behalf of a business in the UK or overseas – punishable by a maximum of 10 years imprisonment, with an unlimited fine.

Employers should have adequate procedures in place to prevent bribery.

The Ministry of Justice has issued two guidance documents about preventing bribery – these can be found at:

www.justice.gov.uk/guidance/bribery.htm

IBM to pay £6 million to settle international bribery case

IBM is set to pay out \$10m (c£6M) to settle an international bribery claim out of court brought by a US government watchdog (SEC).

It is claimed that bribes were paid to officials through local business partners and travel agents – allegedly including overseas trips, entertainment and gifts such as laptop computers.

SmartHR can assist you by reviewing, updating or introducing appropriate HR policies and procedures, employment contracts and employee handbooks

To find out how SmartHR can add value to your business call Gail on 619619, email gail@SmartHR.co.im or visit our website at www.SmartHR.co.im

UK: CHANGING TAXES ON TERMINATION PAYMENTS

Some important changes have been announced by the HMRC to the tax on UK termination payments. Currently 20% tax is deductible from any taxable element in a termination payment after an employee's P45 has been issued. Employees are then accountable to HMRC for any further income tax due if they are higher earners.

However, from 8 April 2011, an employer making the same termination payment must deduct income tax at the applicable rate for the individual i.e. 20%, 40% or 50% (rather than the basic 20%).

Termination payments can arise in different circumstances e.g. dismissal (actual or constructive); redundancy; retirement; the end of a person's employment contract due to ill health or disability; confidentiality or post-termination restrictions in employment contracts.

It is irrelevant for tax purposes that a payment is made under a settlement or compromise agreement.

There are generally 3 ways in which the part of a termination payment can be taxed:

1. General earnings (to which income tax and NICs are applied);
2. Payments for termination of employment (the first £30k being exempt and income tax (but no NICs) due on any amount in excess of this);
3. Payments on termination because of injury / disability or death (the whole amount being exempt from income tax and NICs)

It can be hard to distinguish between general earnings and termination payments. Typically, a payment element that is or has its origin in the contract of employment will be general earnings (attracting full income tax and NICs). This includes pay in lieu of notice (PILON) clauses.

Components in termination packages that are likely to be general earnings and **fully taxable** are payments:

- In lieu of notice (where there is an express PILON or where it is customary);
- In lieu of holidays;
- For "golden goodbyes";
- For periods of garden leave;
- For confidentiality and other restrictive covenants.

Components that are likely to be 'payments for termination of employment', with the **first £30k being exempt** are:

- Redundancy payments;
- Damages for wrongful dismissal;
- Compensation for discrimination;
- Compensation for unfair dismissal.

Further details can be found on HMRC's website at: www.hmrc.gov.uk or you should seek individual advice.

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Issue 4

UK's Default Retirement Age abolished from 1 October

2011: Employers can lawfully retire an employee who is already 65 or will turn 65 on or before the 30 September 2011. Employers must provide between 6 and 12 months' notice of their intention to retire an employee before the intended retirement date. *The last date that a notification of compulsory retirement can be issued is 5 April 2011 and it must follow the statutory retirement procedure, including dealing with requests to work beyond the normal retirement date.* From 6 April 2011 employers will no longer be able to issue any notifications for compulsory retirement using this process. It will still be possible for employers to have a compulsory retirement age if it can be objectively justified and employers will have to show that it has a 'legitimate aim' and that the retirement is a 'proportionate means of achieving that aim'. A cost saving would not be considered a legitimate aim. If an employer does not want to retire someone, it will have to follow a fair procedure under dismissal rules and there will have to be a potentially fair reason.

Gosden v Lifeline Project Ltd: An offensive email sent between colleagues but on their home computers did threaten an employer's reputation, justifying the employee's dismissal. Following the outcome of this case, employers should ensure that their internet policies make it clear that employees should not send offensive emails, or similar communications, inside or outside the workplace and that disciplinary action could result if they do so.



How well are you managing workplace stress?

- Have you adopted a stress policy?
- Do you train your managers how to manage stress in the workplace?
- Do you conduct 'return to work interviews'?
- Do you conduct regular performance reviews and ensure that staff are adequately trained for their job role?

SmartHR is delivering a 'Managing Stress' workshop on 14 April – 9am to 12.30pm to provide advice and guidance in managing stress
Contact Gail for further details on 619619
or email gail@SmartHR.co.im

SmartHR is delivering the following 'Skills Workshops' in order to enhance people management performance:

7 Apr – Managing Discipline & Grievances (1 day)

14 April – Managing Stress (1/2 day)

21 Apr – Effective Time Management (1 day)

19 May – Negotiating & Influencing (1 day)

26 May – Effective Appraisals & Objective Setting (1 day)

23 & 24 June – Train the Trainer (2 days)

7 July – Managing Performance (1 day)

14 July – Managing Performance Problems (1 day)

21 July – Effective Recruitment & Selection (1 day)

Further details can be found on the Events Page at www.SmartHR.co.im

To book – contact Gail on 619619 or email: gail@SmartHR.co.im

