



SmartHR provides a wide range of *professional and effective outsourced HR solutions* to businesses and individuals. With almost 20 years' HR management experience, we utilise our skills and knowledge to assist clients in 3 areas: HR Consultancy, Training and Recruitment.



HR Consultancy:

- HR Consultancy and Advice
- Tailored Business Support Packages for a fixed monthly fee
- HR Healthchecks and Planning
- Employment Contracts and Staff Handbooks (IOM and UK)
- HR Policies and Procedures
- Induction, Performance Review and Succession Processes
- Ad hoc / Interim HR Projects
- Redundancy Support and Outplacement Services
- Online E-HR Shop to purchase template employment documents



Training:

- 'Skills Workshops' to improve people management skills
- 1-to-1 coaching e.g. managing absence, discipline & grievances



Recruitment:

- Executive Appointments
- General Recruitment
- Interim Positions

Welcome to SmartHR's Dec 2012 E-Newsletter

We hope you find this e-newsletter of interest and share it with your colleagues. Gail Yeowell Chartered FCIPD FInstAM(Dip) FCMI FIRP
Managing Director, Smart HR Solutions Limited

Read our Client Testimonials here: [Testimonials](#)

*Season's Greetings
from SmartHR*

*We wish you a very merry festive
season and a happy, healthy
and prosperous 2013.*



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UK: SUPREME COURT RULING PROVIDES EXTENDED PERIOD FOR EQUAL PAY CLAIMS

The UK Supreme Court has announced that equal pay claims that could not proceed in the Employment Tribunal because they had not been timely filed can proceed as breach of contract claims in the High Court.

The impact is that a person has potentially 6 years to bring an equal pay claim in the High Court, compared with a limit of 6 months from the date employment was terminated to bring a claim to tribunal.

UK: GOVT TO REPEAL THIRD PARTY HARASSMENT PROVISION IN EQUALITY ACT 2010

Following consultation, the UK Govt has concluded that there are no compelling arguments for keeping the third-party harassment provision and has added an amendment to the Enterprise and Regulatory Reform Bill repealing the provision.

UK: INCREASED TRIBUNAL COMPENSATION LIMITS

Increased tribunal compensation limits come into effect for unfair dismissals on or after 1 February 2013.

A week's pay increases from £430 to £450. Maximum compensatory award increases from £72,300 to £74,200.

Need help with HR / people management matters?

Contact Gail on 619619 / 478764 to discuss your needs or email

gail@SmartHR.co.im to arrange a meeting

Two recent restrictive covenant cases...

UK: HIGH COURT RULES THAT RESTRICTIVE COVENANTS ARE BINDING IN AN UNSIGNED CONTRACT

FW Farnsworth Ltd v Lacy. In this case, Lacy had worked for the company since 2000. From joining as a graduate, he received a number of promotions and signed contract of employment in 2003. He was further promoted in 2009 to a senior management role and was issued with a new contract, which included a restrictive covenant. He did not sign this contract. His previous contract in 2003 was the last one he had signed, which didn't contain a restrictive covenant.

Lacy resigned in March 2012 to move to a competitor, the company wanted to impose the restrictive covenant in its 2009 contract. Lacy argued that he was not bound by it as he did not sign the contract.

The High Court found that Lacy had responded to other elements of the unsigned contract, including joining a pension scheme and applying for private medical insurance (that were not offered in his 2003 contract). The Court found that by taking these actions he had indicated his acceptance of the contract and therefore the restrictive covenants contained within it were applicable.

UK: HIGH COURT RULING MEANS THAT YOU CANNOT NECESSARILY RELY ON RESTRICTIVE COVENANTS SIGNED MANY YEARS BEFORE THEY ARE USED

Patsystems Holding Ltd v Neilly. Neilly entered into a restrictive covenant in 2000 when he was a junior employee (an Account Manager). It was intended to prevent him from joining a competitor firm for 12 months after leaving the Company. He was subsequently promoted several times and became a Director in 2005.

On promotion, Neilly signed a letter agreeing to variations to his terms and acknowledging that all other terms of his original contract remained unchanged. The letter made no reference to the restrictive covenants. The restrictive covenants were not subsequently renewed or re-affirmed during his promotions.

Neilly resigned in 2012, with the intention of joining a competitor. Patsystems told Neilly that he could not join a competitor firm because of the non-competition clause. He was then dismissed.

Patsystems applied to the High Court to enforce the 12 month non-compete clause on Neilly. The High Court ruled that the variations to Neilly's contract were inadequate. In the absence of an express renewal or re-affirmation of the original contract, the validity of the clause had to be assessed as at 2000 and at that time the Court believed the restriction was too onerous for Neilly's previous junior status in the Company and would have been unenforceable in 2000.

UK: EAT RULES THAT A CONTRACT OF EMPLOYMENT EXISTS ONCE AN EMPLOYMENT OFFER HAS BEEN ACCEPTED **Welton v Deluxe Retail Ltd**

Welton worked in a Deluxe store in Sheffield for just over a year when it closed on 23 February 2010. The next week he accepted an offer to work at the company's Blackpool store. He started work there on 8 March 2010. His employment was terminated less than a year later.

Welton brought a claim against Deluxe for unfair dismissal (he needed one year's continuous service to bring the claim).

The Employment Tribunal found that Welton did not have sufficient continuity of employment to bring a claim of unfair dismissal, because there was a gap of more than a week between the end of the Sheffield contract ending and the Blackpool contract starting. The ET only took into consideration Welton's time working at the Blackpool store. Welton appealed the ET's decision.

The EAT ruled that even though Welton didn't start work under the Blackpool contract for over a week after the Sheffield contract came to an end, the second contract began when Welton accepted the employment offer – not when he started work in the Blackpool store. Welton's absence was found to be due to a temporary cessation of work, which alone would have preserved his continuity.

UK: EAT RULES THAT EMPLOYEES CAN BE PERSONALLY LIABLE FOR DISCRIMINATION

Barlow v Stone (2012 IRLR 898). In this case, Barlow brought an alleged disability discrimination claim against his employer, which included a failure to make reasonable adjustments. Subsequent to this, Stone (a fellow colleague) lodged a complaint to the Police about Barlow, alleging threatening and abusive behaviour. This allegation turned out to be false.

Barlow made a second complaint to an Employment Tribunal, against Stone, alleging that he was discriminated by reason of victimisation. Barlow indicated that it was his intention to claim for victimisation against his employer also – on the basis that his employer and Stone were jointly liable.

Barlow didn't lodge a victimisation claim against his employer.

The ET dismissed the victimisation claim on the basis that Stone (the sole respondent) was a fellow colleague and not Barlow's employer.

Barlow appealed to the EAT, arguing that he could make a claim against Stone (only) because the relevant sections of the Disability Discrimination Act 1995, read together, provide that employees can be liable for their own discriminatory actions.

The EAT upheld Barlow's appeal and ruled that a Tribunal has jurisdiction to hear a claim against an employee who knowingly aids an unlawful act. Stone, as an employee, was therefore personally liable for discrimination and Barlow's claim was considered viable.

It was noted that a freestanding discrimination claim could be brought directly by one employee to another, even though an ET claim had not been lodged against their employer, as the legislation did not require that the employer also had to be cited as a respondent.

The same principle applies under the UK's Equality Act 2010, which makes it clear that an employee is personally liable for unlawful acts committed in the course of employment where the employer would also be liable. Employees can therefore be personally liable and be required to pay compensation if a claim is lodged and upheld.

Where an employer is cited in a claim, it may mount a defence against liability by stating it had taken all reasonable steps to prevent discrimination or harassment occurring.

Ensure your staff are fully aware of the potential consequences of discriminatory acts and their own personal liability.

To find out how SmartHR can add value to your business call Gail on **619619 / 478764**, email: **gail@SmartHR.co.im** or visit our website at **www.SmartHR.co.im**

Other UK news...

- From March 2013, unpaid parental leave will increase from 13 weeks to 18 weeks per parent, per child aged under 5 - in order to comply with the revised EU Parental Leave Directive. The maximum of 4 weeks' leave per annum will remain unchanged. The provision for parents of disabled children will continue i.e. up to 18 weeks' leave to be taken up until the child's 18th birthday. *In 2015, the current age limit on parental leave will increase, giving each parent the right to up to 18 weeks' unpaid parental leave for each child under 18.*
- The UK Government has announced that the right to request flexible working hours (e.g. job-sharing, reduced hours, homeworking etc.) will be extended to all employees with 26 weeks' continuous service "as soon as parliamentary time allows". Currently the right to request is restricted to parents of children under 17, or disabled children under 18, and to certain carers. Only one request will be able to be made within a 12 month period. *The extended right is expected to come into force in 2014 and will apply to all qualifying employees in all organisations irrespective of size.*



Are you complying with employment legislation?

Do you need support with HR matters on a flexible basis?

Contact Gail on **619619 / 478764**,
email **gail@SmartHR.co.im**
or visit our website at:
www.SmartHR.co.im

SmartHR delivers a range of 'Skills Workshops' in order to enhance people management performance, including:

- **Essential HR for Line Managers**
- Effective Recruitment & Selection
- **Effective Appraisals & Objective Setting**
- Managing Performance
- **Negotiating & Influencing**
- Coaching & Feedback Skills
- **Managing Performance Problems**
- Managing Discipline & Grievances
- **Managing Absence**
- Effective Team Meetings
- **Effective Time Management**
- Delegation Skills
- **Managing Stress**
- Customer Care, Telephone & Time Management Techniques
- **Train The Trainer**

Visit the **Training** page of our website at **www.SmartHR.co.im** for details of all of our training workshops. Click on the workshop name for course outline and learning objectives.

For a cost effective quote to deliver any of the courses internally, please email gail@SmartHR.co.im

We can also create bespoke courses & deliver employment law presentations

