



Welcome to SmartHR's Feb 2013 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
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Employment Law... What's on the horizon for 2013?



SmartHR provides a wide range of professional and effective outsourced HR solutions tailored to individual needs.

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 Programmes
- Performance Management Frameworks / Appraisal Processes
- Redundancy Support and Outplacement Services
- Ad hoc / Interim HR and Change Management Projects

Training:

- 'Skills Workshops' delivered on a wide range of topics to improve people management skills
- 1-to-1 coaching e.g. managing absence, discipline & grievances
- Bespoke courses created to your needs and delivered internally or externally

There are a number of changes on the horizon to UK employment law in 2013, and various employment law proposals, including:

- **Parental leave:** From March 2013, unpaid parental leave in the UK will increase from 13 weeks to 18 weeks per parent, per child aged under 5. 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.*
- **Third party harassment:** It is expected that the UK Government will bring into force changes to The Equality Act 2012 in March 2013 to remove third party harassment provisions and discrimination questionnaires.
- **Collective redundancies:** From 6 April 2013 the minimum consultation period for UK employers proposing to make 100 or more redundancies at one establishment will be reduced from 90 to 45 days.

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UK: TRIBUNAL COMPENSATION LIMITS INCREASED

Effective 1 Feb 2013, a week's pay for calculating unfair dismissal compensation has been increased from £430 to £450. The maximum compensatory award for unfair dismissal will rise from £72,300 to £74,200

UK: GOVT DEPT SACKS 11 CIVIL SERVANTS FOR SOCIAL MEDIA MISUSE

The Department for Work & Pensions (DWP) has sacked 11 civil servants for misusing Twitter or Facebook. The 11 employees are amongst 116 DWP employees to have faced disciplinary action for social networking and blogging since January 2009.

UK: COURT ORDERS THAT CRIMINAL CHECKS ON NEW STAFF 'BREACH HUMAN RIGHTS'

Employers will no longer have access to the full criminal records of potential hires after a Court of Appeal rules that the current checks breach a person's human rights. The Court of Appeal found that the Criminal Records Bureau (CRB) check is incompatible with Article 8 of the Human Rights Act, which protects the right to a private life.

The decision follows judgments made in favour of 2 job seekers who discovered that historical or minor convictions were having a detrimental impact on their employment prospects.

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

Employment Law - What's ahead for 2013 cont'd...

- **Employee owners / shareholders:** Expected to come into force in the UK in April 2013, this proposal will allow companies to give shares to employees in exchange for them relinquishing some of their statutory employment rights e.g. unfair dismissal, statutory redundancy pay, right to request flexible working and time off for training. Women will also be required to provide 16 weeks' notice of their return from maternity or adoption leave (instead of the usual 8 weeks). Up to £50k of shares would be exempt from capital gains tax.
- **Fixed-term contracts:** UK legislation could be introduced to ensure that fixed-term contracts are excluded from collective redundancy consultations.
- **Tribunal fees:** Fees to make tribunal claims are due to be introduced in the second half of 2013.
- **Unfair dismissal cap:** The UK Government intends to introduce a 12-month salary cap on the compensatory award for unfair dismissal awarded by Employment Tribunals. Expected Summer 2013.
- **Settlement agreements:** The UK Government intends to make it easier for small employers to enter into Settlement Agreements which would allow employers and employees to have a conversation and make a settlement offer to end the employee's employment, without the conversation being admissible as evidence in an unfair dismissal claim (it will still be admissible in other claims such as discrimination). Non-statutory ACAS guidance is to be drafted. The legislation and guidance is expected to be in place from April 2013.

Longer-term, changes could occur in the following areas:

- **Flexible working:** The right to request flexible working is expected to be extended to all employees in the UK from April 2014. The current timescale of meetings will be changed to a duty to consider a request 'reasonably'. A consultation on a new statutory code is expected in 2013.
- **Shared parental leave:** The UK Government is proposing to make the remaining period of maternity leave, after the 2 week compulsory leave, eligible for sharing. Consultation is expected this year, with implementation by 2015.
- **Working Time Regulations amendments:** Changes are expected to the UK's WTR's to comply with European Court of Justice decision on the interaction between annual leave with sick leave, maternity leave and parental leave.

UK: HIGH COURT RULING CONFIRMS AN EMPLOYER CAN WITHDRAW A CONDITIONAL BENEFIT UNDER A COMPROMISE AGREEMENT WHEN THE EMPLOYEE IS IN BREACH OF HIS UNDERTAKINGS

Imam-Sadeque v Bluebay Asset Management

In this case, Imam-Sadeque was a highly paid Senior Investment Manager. He wanted to leave Bluebay Asset Management. If he resigned, he would be a 'bad leaver' for the purpose of his share option arrangement.

He entered into a Compromise Agreement which would deem him as a 'good leaver' and allow him to exercise his share options worth £1.7M. This share option benefit was conditional upon compliance by Imam-Sadeque with non-compete and non-solicit promises.

Imam-Sadeque broke the non-compete and non-solicit promises by setting up in competition to Bluebay and poaching one of Bluebay's employees.

Bluebay subsequently withdrew Imam-Sadeque's benefits on account of his actions.

The High Court held that Bluebay was entitled to do this on account of Imam-Sadeque's repudiatory breach of the agreement, and the shares were forfeited.

UK: EAT RULING REGARDING REASONABLENESS OF DISCIPLINARY INVESTIGATION

Stuart v London City Airport

In this case, the EAT ruled that it wasn't within the range of reasonable responses for the employer to refuse to undertake further investigations which would support the account of the employee accused of gross misconduct.

Stuart was employed as a Ground Services Agent in a position of trust. He entered a duty-free shop within the airport to buy some presents which he had in his hands. Whilst he was queuing he was directed to another till by a member of staff. He was then beckoned outside the shop boundary to a seating area by another member of staff for a conversation. At this point he was apprehended for dishonesty removing goods from the shop without payment.

He was subsequently dismissed for gross misconduct following an investigation and disciplinary proceedings.

The Company relied primarily upon the conclusion that Stuart had left the shop boundary with the unpaid goods and upon the vigorously disputed evidence of a Store Assistant who informed her Store Manager that she saw Stuart put the items in his jacket before he left the shop.

The Store Assistant's evidence was not tested orally during the internal appeal or the Employment Tribunal's proceedings.

The Company refused to interview the Cashier or the member of staff who beckoned Stuart outside the shop.

It also failed to consider available CCTV footage of Stuart's movements which would have assisted in determining whether concealment of the items had taken place.

The EAT noted that serious allegations of dishonesty require careful investigation, and ruled that the failure of the Company to carry out such investigations, which would have supported Stuart's account that he was at no time acting dishonestly, was objectively unreasonable.

The EAT overturned the Employment Tribunal's original ruling that the dismissal was fair.

Employers should ensure that they fully investigate any potential defence put forward by an employee, particularly when dealing with gross misconduct allegations.

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

UK: EAT case re Definition of Disability – Aderemi v London & South East Railway. In this case, the EAT ruled that a Tribunal should concentrate on those activities which the employee *cannot* do rather than those which he can do.

Mr Aderemi was a Station Assistant who worked in the station gate line, checking tickets and acting as a first point of contact for customers. His role involved being on his feet for substantial periods of time during his 9 hour shifts. He developed back problems which precluded long periods of standing at his job. He was dismissed for capability reasons. The ET dismissed his claim for unfair dismissal and disability discrimination. It held that Mr Aderemi was not disabled because his impairment did not have a substantial adverse effect on his ability to do normal day-to-day activities. It set out a list of things he could continue to do. The EAT ruled the Tribunal had looked at the situation the wrong way. It had set out a list of those things he could continue to do, but had failed to concentrate on various things he could not do e.g. standing for periods of 30 minutes, bending and lifting – which not only hampered him at work but also may have involved substantial effects on his ability to carry out normal day-to-day activities.



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:

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- **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.

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

We can also create bespoke courses & deliver employment law presentations

