



## Welcome to SmartHR's July 2012 E-Newsletter

*We hope you find this 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](#)

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: Recruitment, HR Consultancy and Training.



### Recruitment:

- Executive Appointments
- General Recruitment
- Interim Positions



### 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

## ECJ confirms holiday ruling re sick leave

The European Court of Justice (ECJ) made a ruling on 21 June 2012 re a case brought by unions in Spain acting on behalf of employees working for a Department Store regarding the right to retake annual paid leave / holidays if employees become sick before starting a period of pre-arranged leave or who are affected during annual leave. **The ECJ ruled that employees who become ill while on annual paid leave will be allowed to retake this time off.**

The ECJ said that the right to paid annual leave cannot be interpreted restrictively. The purpose of paid annual leave is to enable the worker to rest and enjoy a period of relaxation and leisure, whilst sick leave entitlement enables a worker to recover from an illness that has caused him / her to be unfit for work. The point at which the temporary incapacity arose is irrelevant. A worker is therefore entitled to take paid annual leave which coincides with a period of sick leave at a later point in time, irrespective of the point at which the incapacity for work arose.

***The ECJ previously ruled a worker could carry leave forward into the next holiday year if he/she was unable to take leave through no fault of his/her own. A 15 month carry over period was lawful.***

The UK Government is currently looking at reforming the Working Time Regulations 1998 regarding annual leave & sickness absence. Under Manx regulations, annual leave cannot be taken at the same time as sick leave. Where a worker takes sick leave not exceeding 26 weeks in a complete leave year (or a relative proportion in a part year), his/her entitlement to annual leave remains unaffected. Should an employee take over 26 weeks' sick leave in a complete year (or more than 50% of any part year), then the entitlement to annual leave is reduced accordingly. A worker who is on sick leave for the whole of a leave year will have no statutory entitlement to annual leave for that year – unless there is a contractual provision to the contrary. IOM employers can adopt a 'use it or lose it' approach to annual leave. Unused leave can be paid in lieu where employment is terminated.

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## RETAINING TOP TALENT

In difficult times it is important to retain your high-performance talent, as these people are most likely to have other options available to them.

**Myrna Hellerman & Jim Kochanski have identified 5 key ingredients to a successful selective strategy to attract and retain high performers:**

1. **Identify high performers** – the group usually takes up to 5% of the workforce; a larger group tends to mean performance expectations are lowered, to the disadvantage of the organisation. Selection of this group requires organisation-wide agreement about what constitutes high performance.
2. **Set and communicate expectations** – setting clear career and reward expectations is essential to keep high performers engaged as well as delivering consistent messages about performance expectations from all levels of management.
3. **Be clear on what is different for high performers** – organisations that take a selective approach to talent management, focusing on their 'stars', provide a clearly differentiated offering to this group, with a faster career trajectory and more generous reward package, providing high performance is maintained.
4. **Offer the personal touch** – high performers value highly having more opportunities for development & access to senior leaders. Offering a very personal and professional special experience can add to the perceived value of the programme.
5. **Define what success looks like** – as well as defining success for the individuals, it is important to know what 'success looks like' for the organisation. As well as attraction and retention figures, look at qualitative measures such as how engaged senior leaders are with high performers.

## SUSTAINABLE ORGANISATION PERFORMANCE THROUGH HR IN SME'S

Latest research from the CIPD shows that HR, or people management, has a vital role to play in driving long-term performance in SMEs, whatever stage of growth the organisation is in and whether or not the organisation has a dedicated HR function. The study uncovered 4 key stages of organisation transition in SME's, each associated with different opportunities and challenges for people management: *entrepreneurial edge*, *emerging enterprise*, *consolidating organisation* and *established organisation*.

**6 key insights for HR practitioners in SME's (as well as those who are responsible for HR activities) were identified:**

- 👤 **Anticipation is key: readiness and relevance will determine success** – HR must have a deep understanding of the organisation's context, strategy, vision and values in order to anticipate key stages of growth and transition that may require a shift in HR strategy and practices.
- 👤 **Organisation values and purpose need to be the constant bedrock of the business** – HR must work hard to preserve the owner/leader's founding vision and values by making them vibrantly part of how the organisation and its people work on a day-to-day basis, as well as ingrained in the organisation's people management processes.
- 👤 **Skilful alignment of people management insight with leaders' aspirations is a critical HR challenge** – while leadership appetite for the more intangible HR issues may be limited in the early days of the business, HR must be confident in using its insight into current people management issues and future challenges to ensure its potential to influence long-term performance is not overlooked.
- 👤 **Simplicity of structure and purity of process preserves innovation and entrepreneurship** – although more processes and structure will be needed as a business grows, it's important to find the right balance between structure and fluidity so that agility and entrepreneurial spirit are not stifled or undermined by bureaucracy.
- 👤 **Sustainable growth involves striking a balance between preservation and evolution** – rather than being sentimental about what has always been, it is often necessary to let go of processes or aspects of the organisation's culture that no longer support its vision and priorities.
- 👤 **Look beyond immediate operational issues and take the opportunity to lay the organisation's cultural foundations for the future** – process driven responses to challenges as a business grows may only provide short-term solutions and miss a golden opportunity to support the longer-term goals of the organisation.

CIPD members can download the report written by Dr Jill Miller from: <http://www.cipd.co.uk/hr-resources/research/achieving-performance-hr-sme.aspx>

## UK: Enterprise and Regulatory Reform Bill (ERRB)

The UK Govt is proposing to reform the use of compromise agreements and rename them 'settlement agreements'.

Proposals include adding a new section 111A to the Employment Rights Act 1996 regarding 'confidentiality of negotiations before termination of employment'.

This includes that when determining any unfair dismissal claim matter, an Employment Tribunal may not take account of any offer made or discussions held, before the termination of employment in question, with a view to it being terminated on terms agreed between the employer and the employee.

*This looks to be what the UK Govt has previously called a 'protected conversation' (but would apply in a very limited extent).*

Breach of contract & discrimination claims would not be affected by the new rules.

If a discrimination claim is brought at the same time as an unfair dismissal claim, it appears the 'protected conversation' can be taken into account in the unfair dismissal claim as well as the discrimination claim. It wouldn't apply in any automatic unfair situation e.g. whistleblowing.

The legislation will allow employers to make an offer of a termination package without fear of the offer being raised in a tribunal claim. The Govt will publish standard 'settlement agreement' forms. It is not clear whether the employee will be required to obtain legal advice before signing. More details will emerge on this in due course as the ERRB progresses.

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

## PAY IN LIEU OF NOTICE CLAUSES

### Cavenagh v William Evans Ltd

In this UK case, the Company defended an appeal received from an ex-employee (the ex-Managing Director) in relation to making a payment in lieu of the employee's notice period. The Company had invoked the PILON clause in the employee's employment contract in order to terminate the employee, but had refused to make payment.

The Company made a decision to terminate Cavenagh's employment contract by reason of redundancy. The Company then discovered that Cavenagh had wrongfully authorised the payment of a substantial amount of money to himself – this was considered an act of gross misconduct. The Company decided not to pay Cavenagh's 6 month pay in lieu of notice (PILON) it had previously agreed as part of a settlement agreement. Cavenagh claimed against the Company for non-payment of the PILON.

The County Court ruled that the Company had been entitled not to make the PILON payment to the employee. It relied on a previous ruling that allowed an employer to justify what would otherwise be a wrongful dismissal by relying on facts it did not know at the time of the dismissal but only found out about at a later date.

The Court of Appeal found that the employer was not defending a claim for breach of contract by relying on gross misconduct discovered after the employee had been dismissed. Cavenagh's appeal was allowed as the Company had chosen to terminate the employee's contract at once by paying a lump sum equivalent to the employee's salary and benefits for the 6 month notice period. Once the Company had made that decision, the PILON payment was due to the employee as a debt.

The Court of Appeal pointed out:

- *the employer had opted for a 'clean break' by invoking the PILON clause and had knowingly taken the risk that some gross misconduct might come to light later*
- *the employer could have avoided the result by framing the case in a different way – as the employee was a fiduciary (in a legal relationship of trust with the Company), he should have disclosed his own misconduct to his employer. Failure to do so may have given the Company the grounds to recover the PILON payment*
- *compromise agreements typically contain clauses which make it an express condition of payment of the PILON that the employee has not committed an act of gross misconduct, and the employee is required to warrant that s/he has not done so*

In this case, no compromise agreement was in place, and the employee's employment contract did not contain a clause or provision for the above.

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## Other UK news...

- **Tribunals empowered to require equal pay audits.** The UK Govt has confirmed it will proceed with plans to give Employment Tribunals power to require employers who lose an equal pay case (or a sex discrimination case related to pay) to carry out an equal pay audit where continuing discrimination is likely. Details of how the audit will operate & publication requirements will be consulted on later this yr.
- **UK Government consults on collective redundancy.** Consultation has commenced regarding a proposal to reduce the 90 day minimum consultation period before redundancies of 100 or more employees can take effect – the timeframe could be reduced down to 45 or 30 days. *The consultation ends on 19 September 2012.*
- **Enterprise Regulatory Reform Bill (ERRB) – Binding votes on executive salaries planned.** The ERRB includes comprehensive reform of boardroom pay. Shareholders would be given binding votes on remuneration policy and companies compelled to make executive pay more transparent. The binding vote, including exit payments, would be held annually. If companies choose to leave their remuneration policy unchanged, binding votes would be compulsory at least every 3 years. Once pay policy is approved, additional payments to Directors could not be made. *Consultation responses due to DBIS by 26 Sept 12.*



**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](mailto:gail@SmartHR.co.im) or visit our website at: [www.SmartHR.co.im](http://www.SmartHR.co.im)**

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

- 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 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](mailto:gail@SmartHR.co.im)**

*We can also create bespoke courses & deliver employment law presentations*

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