



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
- **Online E-HR Shop to purchase template employment documents**



Training:

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

Welcome to SmartHR's November 2011 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

IOM Employment Legislation Changes

Civil Partnership Act 2011 (CPA)

The CPA has changed some aspects of employment law, such as:

The Control of Employment Act 1975: The *civil partner* of a person who is qualified as an Isle of Man worker is now taken to be an Isle of Man worker.

In addition, a one year permit ("section 3A permit") must be granted on application to anyone who is married to either a permit holder or an exempt person. The permit is renewable annually provided that the permit-holder's spouse is still working on a permit or an exempt person and the couple are still married. The position has now changed so that a person who is the civil partner of either a permit holder or an exempt person is entitled to a work permit.

The Employment (Sex Discrimination) Act 2000: has been amended so that protection against both direct and indirect discrimination on the ground that a person is married now also covers the ground that a person is in a civil partnership.

The Act contains an exception to the usual non discrimination principle, known as a "Genuine Occupational Qualification" (GOQ) whereby it is unlawful to discriminate in favour of a married couple in certain circumstances e.g. where a married couple are required to manage a public house. The scope of the GOQ has now been extended to cover a couple who are civil partners of each other.

The Employment Act 2006 – Right to request flexible working: men and women who are employees are entitled to request flexible working in order to care for various categories of dependant, such as their spouse or children under the age of 6. The right has now been extended to include the civil partner of the particular employee.

Also, changes to IOM minimum wage...

From 1 November 2011 the main adult rate will increase from £6.10ph to £6.20ph in respect of any pay reference period beginning on or after 1 November 2011. All other rates remain unchanged.

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- The median cost of absence is **£673** per employee per year (compared with £600 in 2010) - **£800** in the public sector, **£743** in the non-profit sector, **£446** in the private sector and **£444** in the manufacturing and production sector.
- Popular methods to identify and reduce workplace stress include training for staff/managers, staff surveys, flexible working, and improved work-life balance.
- Common methods to manage short-term absence include return to work interviews, trigger mechanisms to review attendance (e.g. the Bradford Factor), providing sickness absence information to Line Managers, and using disciplinary procedures for unacceptable absence levels.
- The most common methods used to manage long-term absence include return to work interviews, using Occupational Health, providing sickness absence information to Line Managers, using trigger mechanisms to review attendance, and risk assessments to aid return to work.
- Two-thirds of the public sector and one-third of the private sector have an employee well-being strategy in place.
- Well-being benefits commonly provided are access to counselling services, employee assistance programmes and support to help stop smoking.

A proactive approach should be taken to managing absence, including a focus on promoting employee well-being.

SPECIAL FEATURE:

Are you managing stress at work?

According to a recent absence survey completed by the CIPD and Simplyhealth covering 592 organisations, stress is the number one cause of long-term absence from work for the first time. *The survey reports that only 58% of organisations are taking steps to identify and manage stress at work. Are you?*

The survey also finds that:

- 40% of organisations have seen an increase in stress-related absences over the past year; within the public sector this rises to 50%.
- Top causes of stress at work are workloads, management style, relationships and family, relationships at work and organisational change/restructuring.
- Job insecurity is found to be a common cause of work-related stress – almost double in the public sector (24%) compared with the private and non-profit sectors (14%).
- Employers planning to make redundancies are significantly more likely to report an increase in mental health problems amongst their staff (51% compared with 32% who are not planning to make redundancies).
- Half of employers use employee absence records as part of their redundancy selection criteria; three-quarters in the manufacturing and production sector.
- The average level of absence remains at 7.7 days per employee per annum (the same as the 2010 average level) – the public sector average is 9.1 days per employee per annum, non-profit sector is 8.8 days per employee, and the private sector is 5.7 days (private sector has reduced from 6.9 days per annum reported in 2010).
- Two-thirds of working time is lost due to short-term absences of up to 7 days.
- Three-quarters of absence in the private sector is short-term.
- Common causes of long-term absence are stress, acute medical conditions (e.g. stroke, cancer, heart attacks), musculoskeletal injuries, back pain and mental ill health.
- Less than half of employers monitor the cost of absence.

Cordell v Foreign and Commonwealth Office (case ref UKEAT/0016/11) – reasonable adjustments under disability discrimination law can be ruled out on financial grounds

Cordell was employed as a Senior Diplomat and worked in Poland for 3 years. She was deaf and during her posting to Poland received assistance from three lipspeakers at an annual cost of approx £146,000. She was offered promotion to a new role in Kazakhstan which she accepted. The FCO's reasonable adjustments policy was applied as a precondition to her being able to take up the new role. The FCO's assessment was that the potential costs of equivalent support in Kazakhstan would be approx. £249,500 and subsequently withdrew their offer employment as the adjustment costs would be unreasonably high. Cordell's claim for breach of duty to make reasonable adjustments was unsuccessful. This was appealed. The EAT held that in determining whether an adjustment is reasonable, a tribunal must judge what is "right and just". The EAT stated factors which should be considered include: 1) the size of any budget which the employer has dedicated to reasonable adjustments, 2) what the employer has chosen to spend in comparable situations, and 3) what other employers are prepared to spend in similar circumstances.

In this case the proposed cost of making the adjustment would be 5 times the employee's salary and more than the entire annual cost of employing local staff at the Kazakhstan Embassy. It would also have used up more than half of the FCO's budget for making adjustments for the year.

UK Employment Tribunal / EAT findings...

Crisp v Apple Retail (case ref ET/1500258/2011) – posting derogatory comments on a 'private' Facebook page did merit a gross misconduct dismissal

In this case, Crisp (who worked in an Apple Store) posted derogatory comments on Facebook about Apple and its products. Although the posts were made on a 'private' Facebook page and outside of working hours, one of Crisp's colleagues (who was a Facebook "friend") saw the comments, printed the posts and provided them to the Store Manager. Crisp was subsequently dismissed for gross misconduct. The ET rejected a claim for unfair dismissal. Key to the ET's decision was that Apple has a clear Social Media Policy and had made it clear throughout the induction process that comments on Apple products or critical remarks about the Apple brand were strictly prohibited. The ET took into account that the derogatory comments could be damaging for Apple as its image is central to its success. The ET decided that despite having a "private" Facebook setting, there was nothing to prevent friends from copying or passing on Crisp's comments, so he could not rely on the right to privacy.

Salford NHS Primary Care Trust v Smith (care reference UKEAT/0507/10) – re reasonable adjustments for disabled employees

Smith was an Occupational Therapist on long-term sick leave due to chronic fatigue syndrome. Her job ceased to exist whilst she was off sick. The employer offered a number of alternative roles, all of which were rejected. She was then offered administrative work, but she rejected this as she had no IT skills, and did not respond to the Trust when she was offered IT training. She failed to attend two meetings. The Trust then wrote to her to schedule a third meeting, saying (not for the first time) that if she failed to attend, other options would have to be considered, including termination. Smith then resigned claiming constructive unfair dismissal and a failure to make reasonable adjustments contrary to the Disability Discrimination Act 1995 (DDA). An Employment Tribunal upheld the claim saying that the Trust should have provided Smith with something to do, even if only "by way of rehabilitation, not necessarily productive", and should have proposed "light duties" so that her GP could sign her back to work. The EAT disagreed with this stating the Tribunal's suggestion was not a reasonable adjustment for DDA (now Equality Act 2010). A reasonable adjustment would only come within the DDA if it would alleviate a particular disadvantage to the disabled person caused by a provision, criterion or practice (PCP) applied by the employer. The PCP in this case was the expectation that Smith would perform her full role within her contracted hours. The adjustments the Tribunal suggested would not have alleviated the disadvantage Smith was under as a result of the PCP. She would have remained unfit to return to work.

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 Tribunal Reforms

A change to the service qualification period for unfair dismissal tribunal claims from 1 year to 2 years looks likely to go ahead from April 2012. The UK Government has also confirmed its intention to introduce fees from April 2013 for lodging a tribunal claim. This is likely to consist of an upfront fee of between £150 - £250 when lodging an ET1, and a further fee of £1,000 payable by the claimant when the hearing is listed. Higher fees could be charged if the claim is for over £30k. The fee will be refunded if the claimant wins; forfeited if the claimant loses.

Recent UK Whistleblowing Claim cost £1.2M

£900k was awarded to John Watkinson, an ex-NHS Chief Executive. Watkinson's claim related to whether or not the authorities were legally required to carry out a public consultation about proposed changes to reconfigure one of the Trust's specialist cancer services. Watkinson was suspended after a protected disclosure. He subsequently lodged a tribunal claim alleging his detrimental treatment was due to a protected disclosure and won this. The Royal Cornwall Hospitals NHS Trust's costs in defending the claim reportedly came to £380,000. Case ref UKEAT/0378/10/DM.



SmartHR's Recruitment Services

Whether you are an employer looking to fill a specific job vacancy, or a candidate seeking a new opportunity, we will work in partnership with you to understand your needs and provide you with a *professional, confidential and dedicated personal service.*

Contact Gail on 619619 / 478764 to discuss your requirements

Visit our Recruitment Page at <http://www.SmartHR.co.im/recruitment>

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

15 Nov: Coaching & Feedback Skills (am)

15 Nov: Managing Stress (pm)

16 Nov: Effective Appraisals (1 day)

17 Nov: Effective Team Meetings (am)

17 Nov: Effective Time Management (pm)

22 & 23 Nov: Train the Trainer (2 days)

29 Nov: Delegation Skills (am)

1 Dec: Recruitment & Selection (1 day)

7 Dec: Managing Discipline & Grievances (1 day)

8 Dec: Managing Absence (1 day)

13 Dec: Managing Performance (1 day)

14 Dec: Managing Performance Problems (1 day)

Further details can be found on the Events Page at www.SmartHR.co.im
To book email: gail@SmartHR.co.im

