SmartHR e-Newsletter

April 2014 Issue 30

SmartHR
delivering effective solutions

SmartHR is a leading provider of multi-sector outsourced HR consultancy and training solutions

HR Consultancy:

- HR Consultancy & Advice
- Business Support Packages tailored to your needs
- HR Strategy, Audits & Planning
- Employment Contracts & Staff Handbooks (IOM and UK)
- HR Policies & Procedures
- Induction Programmes
- Performance Management / Appraisal Frameworks
- HR Projects & Interim Solutions
- Change Management Projects
- Business Restructuring & Redundancy Support
- Outplacement Services
- Online 'E-HR Shop' to purchase a wide range of IOM or UK template employment documents

Training:

- A wide range of people management 'skills workshops'
- 1-to-1 coaching e.g. managing absence, discipline & grievances
- Bespoke courses created to your needs and delivered internally or externally
- Employment legislation overview & update sessions

Welcome to SmartHR's April 2014 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

What's changed recently?

There have been a number of changes to legislation since our last eNewsletter in February 2014, including:

UK: 10 March 2014 - The rehabilitation periods for criminal convictions have been reduced. The new rehabilitation periods apply to a conviction / caution before, on, or after 10 March 2014. Further details can be found at: https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974

UK: 1 April 2014 - Pensions Auto Enrolment. The time period for employers to auto-enrol eligible jobholders into a qualifying pension scheme was extended from 1 month to 6 weeks. The deadline for providing information to the Pensions Regulator was also extended.

UK: 6 April 2014 - ACAS Early Conciliation is available and will be mandatory from 6 May 2014. Before raising a tribunal claim, prospective claimants will need to submit an 'Early Conciliation Form' to ACAS. However, neither the claimant nor respondent will be obliged to engage in the conciliation process.

UK: 6 April 2014 - Additional Employment Tribunal (ET) Reforms. ETs will be able to levy fines equivalent to 50% of any award made (up to a maximum of £5k) on employers who lose cases and have been found to "have breached any of the worker's rights" and the breach has "one or more aggravating features" e.g. where an action was deliberate or committed with malice, or the employer had repeatedly breached the employment right concerned. The penalty will be paid to the Exchequer, not the claimant. A 50% discount will be payable if the penalty is paid within 21 days.

UK: 6 April 2014 - Equality Act 2010 change re discrimination questionnaire system. A person will no longer be able to obtain information about potential discrimination from an alleged discriminator. ACAS has produced a guidance document on how to respond to discrimination questions received in the workplace.

UK: 6 April 2014 – The maximum civil penalty for employing an illegal immigrant has increased from £10k to £20k.

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SmartHR E-Newsletter

April 2014 Issue 30

What's Changed Recently continued...

UK: REGULATION FREEZE FOR SMALL BUSINESSES

This has been extended to businesses with less than 50 employees. These businesses will be exempted from new regulations if there is any evidence that they will result in disproportionate burdens that could impede growth. It applies to new regulations which come into force after 31 March 2014.

UK: STATUTORY PAY INCREASES

From 6 April 2014, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay increased from £136.78 to £138.18 per week. Statutory Sick Pay increases from £86.70 to £87.55 per week.

UK: PERCENTAGE THRESHOLD SCHEME (PTC) CHANGES

From 6 April 2014, the PTC which allows employers to reclaim Statutory Sick Pay in certain circumstances has been abolished.

UK: INCREASED LIMITS ON EMPLOYMENT TRIBUNAL AWARDS

From 6 April 2014 the maximum compensatory award for unfair dismissal has risen from £74,200 to £76,574, subject to the overall limit of 1 year's salary. A week's pay has risen from £450 to £464.

And.. ON THE HORIZON…

UK: RIGHT TO REQUEST FLEXIBLE WORKING

The right to request flexible working will be extended to all employees with 26 weeks' service with effect from 30 June 2014.

UK: SHARED PARENTAL LEAVE AND PAY

The UK Govt has now published draft regulations for consultation. It is expected that shared parental leave will come into effect for babies due (or children matched or placed for adoption) on or after 5 April 2015

Some interesting court/tribunal rulings…

Europe: The European Court of Justice ruled that EU maternity laws do not apply to a woman who had a baby through a surrogate and that an employer's refusal to grant maternity leave / pay was not unlawful disability or sex discrimination.

Note: In April 2015, as part of the UK's shared parental leave plans, prospective parents in a surrogacy arrangement who meet the criteria to apply for a 'parental order' will be eligible for statutory adoption leave and pay and for shared parental leave and pay, subject to rules about qualification. Both intended parents will be entitled to attend two antenatal appointments with the surrogate mother.

UK: Makanjuola v London Borough of Waltham Forest. The ET ordered a claimant who unsuccessfully made a claim against a local authority to pay record costs of £117k when it dismissed in its entirety all of Makanjuola's 69 allegations of discrimination and matters arising from protected disclosures.

UK: Peacock Stores v Peregrine. In this case the Employment Appeal Tribunal (EAT) ruled that the consistent practice of calculating redundancy payments without the statutory caps converted it into a contractual right for future practice by virtue of implied 'custom and practice'. Peacocks had routinely paid redundancy pay to staff in accordance with the statutory redundancy scheme, except for the statutory caps relating to length of service and the amount of weekly pay being disapplied.

UK: Metropolitan Police v Keohane. In this case, the EAT ruled that an employee (a dog handler) was discriminated against when her dog was removed from her when she was no longer at work and operational due to pregnancy reasons.

UK: Prophet plc v Huggett. In this case, Huggett (a Sales Manager) was subject to a restrictive covenant that prevented him from working with, or working for a competitor of, Prophet plc. His contract had an additional sentence that qualified this restriction by defining what competition would mean, namely that it related to the provision of computer software systems for the fresh produce industry, produced by Prophet plc.

Huggett left employment with Prophet plc and took up a position with a competitor organisation. Prophet then sought to enforce the restrictive covenant in Huggett's contract. During the High Court case, Prophet plc accepted that the competitor company would never be able to provide software systems produced by Prophet plc and therefore the covenant would not provide them with protection.

The Deputy High Court Judge rejected Huggett's assertion that the covenant meant to say what it said. The Judge concluded that by adding the words "or similar thereto" would reflect its true meaning.

This case shows that an ill-worded restrictive covenant can be enforced even if the Court would need to add wording in order to give it effect.

SmartHR E-Newsletter

April 2014 Issue 30

UK: SECRET RECORDINGS AT DISCIPLINARY HEARINGS CAN BE EVIDENCE

In Punjab National Bank (PNB) v Gosain, Gosain claimed sexual harassment, sex discrimination and constructive dismissal. Prior to her dismissal she attended a disciplinary hearing and a grievance hearing. She covertly recorded conversations in relation to both hearings that were 'public' (remarks made during the meetings) and 'private' (remarks allegedly made between managers during the breaks in the hearings).

PNB objected to the 'private' recordings being made and used as evidence in an Employment Tribunal.

The ET ruled that the recordings were admissible as evidence and that there was no reason why the comments made in private should be protected or treated as an exception to the general rule that relevant evidence is admissible. PNB appealed the decision.

The EAT upheld the ET's decision. The fact that the recordings were made covertly was not, by itself, a reason for ruling them inadmissible. The ET had carried out the balancing exercise required between the general rule that relevant evidence is admissible and the need to preserve the confidentiality of private deliberations during internal grievance and disciplinary proceedings.

As an employer consider making it clear in disciplinary and grievance procedures that employees should not make recordings of any part of a hearing without the consent of those present. All present at a hearing can be requested to turn off mobile phones or other portable devices and remove all belongings during a hearing adjournment.

Further court/tribunal rulings...

UK: Jessemey v Rowstock. In this age discrimination case, the Court of Appeal ruled that the Equality Act 2010 covers post-employment victimisation.

Jessemey had been dismissed and made age discrimination and unfair dismissal claims against Rowstock. Shortly afterwards Rowstock provided an unfavourable reference for Jessemey to an employment agency. Jessemey then brought a victimisation claim against Rowstock.

Prior to the Equality Act 2010 ex-employees were expressly protected against victimisation by their former employers. Whilst the Equality Act 2010 protects ex-employees from post-employment discrimination and harassment, there isn't express protection against post-employment victimisation. However, this case shows that the Equality Act 2010 can be interpreted to provide protection from post-employment victimisation. *Employers should exercise caution when providing references for ex-employees should have raised a complaint of discrimination to ensure that they do not expose themselves to a claim of post-employment victimisation.*

UK: Kisoka v Rung Ratnpinyotip t/a Rydevale Day Nursery. In this case, the EAT ruled that the employer was entitled to dismiss when an internal appeals process said otherwise.

Kisoka was suspected of causing a fire in her workplace (nursery). Following investigation she was dismissed for gross misconduct. Kisoka appealed. An independent appeal panel overturned the dismissal decision as they did not feel there was enough conclusive evidence to indicate Kisoka had started the fire. The employer decided not to follow the appeal panel's decision.

Kisoka subsequently made a claim for unfair dismissal. The ET reviewed the 'reasonableness' of the employer's decision and whether the employer was bound to follow the appeal panel's decision. Also, it looked at whether failing to follow the appeal panel's decision amounted to Kisoka being denied the right of appeal.

The ET ruled that the employer did have reasonable grounds for believing Kisoka had committed misconduct and that the dismissal was fair because the employer still had reasonable grounds to believe the Kisoka was guilty (despite the appeal panel's decision).

Kisoka appealed the ET's decision and stated that the employer's disciplinary procedure provided for an appeals process and that the result of the appeals process should be final or the procedure was ineffective. The EAT rejected the appeal ruling that the statutory test of reasonableness was to ask whether there had been a fair result in accordance with equity and the substantial merits of the case, having regard to the procedure as a whole. It found that the employer was responsible for the welfare of the children at the Nursery and that it could not re-employ someone it genuinely believed had tried to start a fire.

SmartHR E-Newsletter

April 2014

Issue 30

- **IOM: Employment Equality Bill** – progress will continue over the next 2 to 3 years. The Bill will deal with discrimination on the grounds of race, religion or belief, sexual orientation, age, disability and gender reassignment. A phased introduction is expected with an introduction date indicated as July 2016.
- **UK: Long-term post-natal depression not covered by law.** In ***Lyons v DWP Jobcentre Plus***, Lyons didn't return to work after maternity leave because of post-natal depression. This continued for c6 months. The employer stated it was no longer able to support Lyons absence and dismissed her. She claimed unfair dismissal, direct sex discrimination and/or pregnancy and maternity discrimination. The ET rejected the discrimination claims but found the dismissal unreasonable as the employer failed to follow its own procedures. The ET reduced the compensation awarded by 50% because there was a chance she would still have been dismissed if procedures had been followed. Lyons appealed. The EAT dismissed the appeal. Dismissing Lyons for post-natal depression was treating her unfavourably for a pregnancy-related illness, but such treatment only amounts to discrimination under the Equality Act 2010 if it occurs between the beginning of the pregnancy and the end of maternity leave. The unfavourable treatment took place outside the 'protected period'.

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.

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