

Contact Us
Contact Heidi or
Alex on 0845 610
0651

HR Helpline

Available 24 hours a day, 7 days a week, Contact with HR Smart can be made via telephone, fax or e-mail.

We provide practical HR advice and answers to questions, as well as offering step by step solutions to your everyday requests.

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Fixed fee
Redundancy
Support packages available
from £395
plus VAT

Why not contact us via our website or e-mail, if you have any questions you wish to raise and have published in our next newsletter.

Useful Facts & Figures

Compensatory Limits

Statutory Redundancy Payment limit
Compensation award for unfair dismissal

From February 2009

£350.00 per week
£66,200 maximum

Statutory Rates

Statutory Sick Pay (SSP)
Statutory Maternity Pay (SMP) & Statutory Adoption Pay (SAP)

SMP / SAP is paid for 39 weeks for births 1 April 2008 onwards:

Until April 2009

£75.40 per week
First six weeks: **90%** of the employee's average weekly earnings, with no upper limit

Remaining weeks: **£117.18** or **90%** of average weekly earnings which ever is less, (subject to conditions)

Statutory Paternity Pay (SPP)

£117.18 or **90%** of average weekly earnings which ever is less.

SUBJECT TO PARLIAMENATRY APPROVAL

Statutory Rates

Statutory Sick Pay (SSP)
Statutory Maternity Pay (SMP) & Statutory Adoption Pay (SAP)

SMP / SAP is paid for 39 weeks for births 1 April 2009 onwards:

From April 2009

£79.15 per week
First six weeks: **90%** of the employee's average weekly earnings, with no upper limit

Remaining weeks: **£123.06** or **90%** of average weekly earnings which ever is less, (subject to conditions)

Statutory Paternity Pay (SPP)

£123.06 or **90%** of average weekly earnings which ever is less.

Annual Holiday

From April 2009, the minimum Annual Holiday entitlements:

to be increased to 5.6 weeks (28 days), this can be inclusive of bank and public holidays subject to how your contract of employment is worded.

Minimum Wage Hourly Rates

Adult rate (aged 22 years or over):
Development rate (18-21 year olds):
Youth rate (16-17 year olds):

From 1st October 2008

£5.73 per hour
£4.77 per hour
£3.53 per hour

Inflation and Unemployment

Consumer Price Index:
Retail Prices Index:
Unemployment Rate:

As at January 2009

4.1%
3.0%
6%

A recent survey undertaken by the CIPD has found that employees have the following expectations to pay reviews in 2009



Are all your ducks in a row?



Contact HR Smart Ltd to talk through any employment issues on 0845 610 0651

UK Employment

Law is only

introduced each

April and

October.



In this time of economic downturn, many companies are now looking at reducing their internal costs. This inevitably leads to reviewing employees, their performance and contribution. Given this, we are going to take you through the six – yes six, fair reasons for dismissing an employee from your Company.

As an employer, you must have a good reason for dismissing an employee, along with showing that the reason is genuine and justifies your decision to dismiss. We will look in turn at the six lawful reasons for dismissal.

Conduct

This usually means that the employee has broken one or more terms of their employment. It tends to be a wilful act on behalf of the employee, where they have taken a decision to do or not do something. Common examples include:

- Continually missing work
- Poor discipline
- Drug or alcohol abuse
- Theft or dishonesty

Capability

More obvious to spot, is where an employee, whilst maybe putting lots of effort in, is not able to fulfil their job properly or meeting the required standard of performance. Examples of lack of capability include, not being able to keep up with changes in technology and process, not getting along with colleagues or long term or persistent illness. However, in order to ensure that a dismissal on the grounds of capability is fair, you must ensure that the employee has been given adequate training and support along with being given the opportunity to improve. In cases of capability, it is normally best practice to look at alternative employment options before reaching a dismissal.

Redundancy

This means that there is a reduction in or a lack of workload. Law defines there are only three fair reasons for redundancy, which are:

- The place of work is closing or ceasing to exist
- The place of work is relocating
- Their workload has ceased or has been significantly reduced

An important tip for any redundancy dismissal is to talk in terms of the role not the employee and to ensure a period of consultation is undertaken, including have a fair selection process and to consider any alternative roles or solutions before the dismissal is made.

Retirement

Since 1st October 2006, retirement has been a potential fair reason for dismissal. In order for the dismissal to be fair, you must ensure the statutory retirement procedure is followed. This must be started within specific time-scales, which are no earlier than 12 months but no later than 6 months before the employee's 65th birthday. Any employee whose employment ends before the age of 65 cannot be classed as retirement. Dismissals on grounds of retirement are being challenged currently, so this type of dismissal could become unlawful in the future.

The final two types of dismissal are more unusual and should only be undertaken with professional advice and guidance.

Statutory Restriction

As an employer, you can dismiss an employee if they have broken a law, which means that as a result they are unable to fulfil their duties e.g. a driver losing his licence. However, before a this type of dismissal occurs, you must consider all alternative employment options.

Another Substantive Reason

The emphasis on this type of dismissal is "substantial". It applies where the employer has an overwhelming reason to dismiss. Examples that have previously fallen into this category are imprisonment, an unresolved personality clash between you and the employee or an economical, technical or operational reason, which stops you employing them.

Regardless of the reason for dismissal, it is important that you follow the statutory procedures. If you find yourself considering dismissal you are urged to seek advice before you start talking with your employees, so that you understand what you are doing, how you do it and what risks you are putting the Company under.

NEWS FLASH - HOLIDAY PAY

The Advocate General has delivered her opinion in the case of Stringer and others v Her Majesty's Revenue and Customs, (previously known as Ainsworth v HMRC), on whether workers on long-term sick leave are entitled to holiday pay.

The following questions were referred to the ECJ in relation to a worker's potential entitlement to sick leave:

- are workers on indefinite sick leave entitled to (i) designate a future period as paid annual leave and (ii) take paid annual leave, during a period that would otherwise be sick leave?
- if a payment is made in lieu of holiday, on termination of employment, are workers on long-term sick leave entitled to such a payment and how should any payment be calculated?

The UK Government had argued that workers on

long term sick leave should not be entitled to paid holiday on the basis that they are not actually working, so there is no "work" for them to take leave from.

The Advocate General had decided that:

- a worker on indefinite sick leave is entitled to designate a future period as paid annual leave; **but**
- they cannot take this leave during a period in which they would otherwise have been on sick leave; **and**
- when employment is ended, workers are entitled to a payment in lieu of holiday accrued while on sick leave. The calculation of the payment must ensure that the worker receives an amount which is equivalent to their normal pay.

At the time of going to press the full written reasons had not yet appeared on the ECJ website.

EMPLOYEE OR NOT AN EMPLOYEE....

With the economic climate getting tougher by the day and employees getting smarter on their statutory employment rights. Here at HR Smart, we have recently been seeing a number of employers who may be setting

Recession Free Zone

Quick tips for those of you who are choosing not to take part in the recession.

Engage with your Employees

- Show genuine concern
- Be accessible
- Encourage them to ask questions and bring forward suggestions

Engage with the Company

- Create and support a culture of development and progression
- Inspire others to be at their best
- Ensure that everyone is focused and playing their part.
- Build a shared vision

You

- Be honest and consistent
- Act with integrity
- Resolve issues quickly
- Facilitate change sensitively

themselves up for a future fall by not being clear on the employment status of some of their workers. To clarify, there are only two type of employment status, which are **employed** or **self-employed**.

Does it matter?

Yes, any employee has statutory rights, which must be adhered to and failure can lead to employment tribunals, which are costly in terms of time, reputation and lets not forget —stress, regardless of winning or losing.

How do I tell?

In the first instance, check if there is a contract of employment or a contract for service in place. If there are no formal arrangements then you need to review a series of indicators, that may help you define the employment status. These are

- Personal service—is the individual expected to do the work personally or can someone else do it on their behalf;
- Mutual obligation—meaning that the employer is obliged to offer work to the individual, who is obliged to perform it.
- Control—the employer controls what work is done, when, where, how and with what equipment.

The HMRC ask the following questions when checking the employment status:

Employed - if your workers answer yes to most of these questions, they are likely to be employees.

- Do you have to do the work yourself?

- Can someone tell you where to work, when to work, how to work or what to do?
- Can someone move you from task to task?
- Do you have to work a set number of hours?
- Are you paid a regular wage or salary?
- Can you get overtime pay or bonus payments?
- Are you responsible for managing anyone else engaged by the person or company that you are working for?

Self-employed - if your workers answer yes to some of the questions they are likely to be self-employed.

- Can you hire someone to do the work, or take on helpers at your own expense?
- Can you decide where to provide the services of the job, when to work, how to work and what to do?
- Can you make a loss as well as a profit?
- Do you agree to do a job for a fixed price regardless of how long the job may take?
- Do you risk your own money?
- Do you provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?
- Do you regularly work for a number of different people and require business set up in order to do so?
- Do you have to correct unsatisfactory work in your own time and at your own expense?

For further advice on this matter, give us a call or go to <http://www.hmrc.gov.uk/employment-status/index.htm>

LEGAL UPDATE - DISCIPLINARY PROCESS

The Queen's Speech in December will bring a new raft of employment legislation into effect from 1st April 2009, under the Employment Act 2008. Amongst these changes will be the long awaited repeal of the Statutory Dismissal and Grievance Procedures, which were implemented in October 2004.

It is proposed, although yet to be formalised, that these statutory procedures will be replaced by a Code of Practice which has been drafted by the Advisory, Conciliation and Arbitration Service (ACAS).

The Code of Practice is not legally binding and a failure to follow it does not automatically make the employer liable to proceedings.

However, the proposals allow an Employment Tribunal to uplift any award by up to 25%, where it feels there has been an "unreasonable failure to comply with any provision of the Code".

Therefore, it is important that all employers are aware of the new draft Code and its clauses so as to ensure, come April 2009, it is followed when dealing with any employee dispute.

The Code of Practice states that employers should

- have clear policies for Disciplinary and Grievance Procedures, which are written down and provided to employees.
- deal with issues in a timely manner and should not unreasonably delay meetings or decisions.
- carry out investigations to establish the facts of each case. In some cases this may mean undertaking an investigatory meeting first.
- inform the employee, in writing, of the problem and the possible penalty. Employers must provide copies of any written evidence which is to be used in the disciplinary meeting, (including witness statements), to enable the employee to prepare for the disciplinary meeting.
- give the employee the right to be accompanied by a work colleague or Trade Union representative at any formal meetings and allow them the chance to give their side of the case before a decision is made.
- inform the employee, in writing, of the decision after any disciplinary meeting and how long any penalty will remain current on their personal file.
- always give the employee the opportunity to appeal the decision made.



In addition, the Code gives some useful advice to employers to help deal with any employee disputes. It says:

- employers must act consistently by applying a similar level of penalty to similar cases.
- where a written warning is issued at a disciplinary meeting, employees should be informed of the required change in behaviour or improvement in performance and given a timescale to do this.
- where gross misconduct is alleged, employers should follow a fair disciplinary process, using the Code of Practice before dismissing.
- where an employee is persistently unable or unwilling to attend a disciplinary meeting, without good cause, the employer should make a decision on the evidence available.
- where a disciplinary issue and a grievance overlap, the disciplinary process should be temporarily suspended and the grievance dealt with. Where the issues are related, it may be considered appropriate to deal with both issues concurrently.

Until 1st April 2009, all employers should continue to use the Statutory Dispute Procedures that came into force in April 2004.

Our Experts

NOEL PRESTON, Sutton Winson Insurance & Risk Manager, tells us about **EMPLOYMENT PRACTICES LIABILITY INSURANCE**

What is EPL?

Employment Practices Liability insurance is another way of protecting your company from the financial impact of employment-related legal actions from current, previous or prospective employees.

Why have it?

Good human resources management from someone like HR Smart will help limit exposures, but risks can never be eradicated completely. Today's 'compensation culture' means that legal action can be a real possibility. The legal cost of defending an employment claim, even an unfounded one, can be substantial!

EPL policies offer broader cover than traditional legal expense contracts.

What can it cover?

- defence costs and awards of claims arising from allegations by employees including wrongful dismissal, harassment, discrimination, breach of contract and even failure to employ
- defence costs and awards of claims by third parties for claims arising from harassment or discrimination by an employee
- defence costs of assumed liability claims (including TUPE)
- defence costs of pension and employee benefit claims
- costs of legal representation at an investigation where no allegation of a wrongful act is made

Recent prosecutions...

An accountant was sacked for gross misconduct after warning his directors that his former chief executive had claimed £371,000 in cash advances and expenses without receipts. The Public Interest Disclosures Act allows 'whistleblowers' to recover more than the normal £50,000 limit applied by tribunals. This claimant was awarded £293,000 compensation for unfair dismissal.

An employee of a magazine publisher told a tribunal that she was forced to resign after bosses refused to allow her to change her hours to look after her new born baby. She had previously worked alternating shifts but now needed to finish work at 5pm to look after her child. She claimed £43,593 compensation for sexual discrimination including £5,000 for injury to feelings.

How much is it?

Employment Practices Liability insurance always used to be offered only as an extension of cover to a Directors' & Officers' (D&O) Liability policy, but it is now available and affordable on a stand-alone basis or as part of an extremely competitive package policy, incorporating D&O and Entity Defence as well.

To find out more about how you can protect your company at an extremely affordable price, contact:

Noel Preston, Sutton Winson Insurance & Risk Managers on 01444 251 161

NICK STUBBS, advises us how to **CUT THE COST OF WORKPLACE MUSCULOSKELETAL DISORDERS**

When anyone mentions health and safety, the usual reaction is to imagine someone with a clipboard telling us we cannot carry out a particular activity or task or use a piece of machinery or equipment. Health and safety professionals are keen to dispel this image and emphasise the point that sensible risk management is about enablement – allowing people to carry out tasks and use equipment knowing the risks involved and the controls that are required to minimise the risk of injury or harm.

Although the emphasis has historically centred around accident prevention strategies, your employees are far more likely to complain about health issues arising from workplace activities than be injured in an accident. We often neglect or minimise the impact and costs associated with occupational ill-health and the effect it can have on an organisation.

Musculoskeletal disorders currently account for almost 8.8 million lost working days per year identified through the annual Labour Force Survey. The term musculoskeletal disorder refers to problems affecting the muscles, tendons, ligaments, nerves, joints or other soft tissues of the body. These disorders most commonly affect the back, neck and upper limbs. They can give rise to clinical effects in an individual i.e. pain, numbness and tingling, and may also result in functional changes in reduced ability to use the part of the body affected and can restrict movement and strength.

The type of work most commonly associated with musculoskeletal disorders is that which requires the use of force, repetitive and frequent movements of particular areas of the body, poor posture (both static and awkward) and exposure to hand or arm vibration. Although there tends to be a higher incidence rate amongst those employed in construction, healthcare, agriculture and transport, most occupational areas are susceptible to this problem.

There is currently no specific legislation relating to musculoskeletal disorders, but general assessments carried out under the Management of Health and Safety at Work Regulations 1999, specific assessments required by the Manual Handling Operations Regulations 1992 and the Health and Safety (Display Screen Equipment) Regulations 1992, should identify areas where improvements are required to reduce ill-health risks.

The greatest risk reduction benefits will be achieved by tackling both physical and psychological risk factors in the workplace. The appropriate design of tasks and layout of workstations can help to prevent injury to the musculoskeletal system by ensuring work is designed to be within the physical capabilities of individuals. If postural problems in particular can be identified before they result in absence or ill-health, the benefits to both the individual and the employer will be tangible and long-lasting. To learn more about this topic, please contact: **Nick Stubbs Health & Safety on 01903 816846 or 07762789947**

Martin Williams, Associate Solicitor for Mayo Wynne Baxter, informs us of the recent development in case law on **WORK RELATED STRESS**.

As the credit crunch begins to bite employers and employees are feeling more and more pressured. A freeze on recruitment can mean an employee taking on extra tasks. Managers have to take difficult decisions about planning and resources. An increased work load or worry about performance targets can lead to anxiety and ill health. What actions should an employer take in such circumstances?

An employer has a duty to take care of the health and safety of its employees. If there is an alleged breach of this duty, then an employee can pursue a personal injury claim against the employer. In order to be successful with such a claim the employee has to demonstrate that there was such a breach, that it was reasonably foreseeable, that injury would result from the breach and that there was some form of mental or physical injury.

In the 2002 case of *Sutherland v Hatton*, the House of Lords provided guidance on how cases involving stress in the workplace should be considered by the courts. The key issue in each case will be whether the effects of a stress related illness were reasonably foreseeable in the circumstances. Once an employer is on notice that an employee could be suffering from a stress related illness then the employer is under a duty to take action.

A strict interpretation of the reasonably foreseeable test set out by the House of Lords in *Hatton* was a high hurdle for an employee to clear. Now, with *Dickens*, the Court of Appeal has held that it was sufficient that Ms Dickens had previously complained about the stress she was under because of the demands of her job. Specifically, she had requested a less stressful role, had difficulty getting up and consequently arrived late for work on several occasions, had told her manager that she did not know how long she could keep going and requested six months off because she was stressed. Ultimately she was signed off work with anxiety and depression.

There was a breach of duty of care on the part of O2. They should have sent Ms Dickens home while her health was investigated, even though she had not been signed off by her GP. The fact that O2 suggested counselling was not regarded as a sufficiently strong response to the situation.

Employers must keep an eye on the warning signs of stress. The fact that someone is signed off due to stress is the most obvious. Earlier indications should also be noted, such as behavioural patterns. When the employee raises concerns about the stress they feel they are suffering from at work, this is a key trigger for action.

In many cases, only direct action by managing the cause of the stress in the workplace will be a sufficient response. Until a solution can be found to the root cause of the stress the reasonable employer will be expected to remove the employee from the workplace. To talk through any legal concerns you may have regarding your business, contact:

Martin Williams, Mayo Wynne Baxter Solicitors on 01273 233263