



**ActifHR**

Where people matter...

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## January 2016 Update

Welcome to this months' update - where we discuss latest legislation and guidance.

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### Workplace Investigations

ACAS has published useful new guidance to help employers conduct workplace investigations. Before taking disciplinary action, it is essential to review what facts need to be established - the extent of an investigation will depend on the nature of the issues.

A failure to carry out a proper investigation will usually impact on the fairness of any disciplinary sanction that may be imposed and can of itself render a dismissal unfair.

The ACAS guidance sets out:

- When an investigation might be necessary;
- How the investigating officer can prepare for the investigation;
- How the investigating officer should conduct the investigation;
- What other evidence the investigating officer might need to gather as part of the investigation;
- Information about the investigation report that might be prepared;
- The possible outcomes of the investigation, and how the investigating officer should conclude the investigation.

**Employers:** This is useful guidance for managers of all levels of experience and can be read here: <http://www.acas.org.uk/media/pdf/o/5/Conducting-workplace-investigations.pdf>

**Contact us if you need any help if you have a concern with an employee**

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## Zero Hours Contract Workers

New regulations for zero hours workers came into force on 11 January 2016 - The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 ('the Regulations').

The Regulations offer protection for zero hour contract workers against dismissal and detriments in particular circumstances as follows:

- From day one of their employment, the dismissal of an employee who works under a zero hours contract will be unfair if the main reason for the dismissal is that they breached a provision of their zero hours contract which sought to stop them from working for another employer.
- A worker who works under a zero hours' contract has the right not to be subjected to any detriment if they work for another employer.

**Employers:** make sure if you are putting together zero hours contracts that you do not prohibit the employee from working elsewhere.

**Contact us if you need help with drafting zero hours' contracts.**

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## Monitoring of Personal Messages

Employees sometimes use work email and computer systems to send personal messages. This can cause difficulty for employers unless their Internet, Email and Computer policy has some clear guidance.

Last week a high-profile decision of the European Court of Human Rights (ECtHR) was decided in relation to the right to privacy. Specifically, the ECtHR was asked to consider whether an employer breached an employee's right to privacy when the employer accessed personal emails sent by the employee through a work-related messaging account.

In this case, the employee used the employer's IT systems and his work Yahoo messenger account to share personal messages with friends and family during working time. This

breached the employer's policy, which stated that personal use of the employer's IT systems was not permitted.

The employer became aware of the messages and, whilst investigating the matter, accessed and printed the private messages. After a disciplinary hearing, the employee was dismissed for unauthorised personal internet use at work.

The employee argued that his employer had breached his human rights, in particular his right to respect for his private life. The ECtHR has now decided that the monitoring and use of the personal messages by the employer was a proportionate interference with the employee's right to privacy.

The decision does not give employers an absolute right to access employees' personal emails and care must still be taken by employers in deciding whether it is appropriate to do so in any particular set of circumstances. However, it should encourage employees to exercise great caution when sending personal emails from a work system, particularly if the employer's policy prohibits this.

**Employers:** may wish to review their own policies to ensure that these reflect current rules. If personal use is prohibited or limited and monitoring may take place, employees must be made aware of this and any specific rules should be put in writing and explained to employees.

**Contact us for help in reviewing or setting up your IT Policies.**

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**Caroline Robertson, CEO**

Qualified as a Solicitor in 1999.

Caroline has a wealth of experience supporting business clients with practical hands on HR advice.

Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations.



### **John Wade**

John has successfully led several small and medium-sized businesses as Operations Director and COO. His experience includes managing businesses and coaching business owners through development. John has led redundancy, disciplinary and grievance procedures. He is renowned for solving problems quickly, efficiently and fairly.



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