



**ActifHR**

Where people matter...

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## January 2017 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this edition we report on:

- Workers v Self Employed
  - Gross Misconduct Allegations
  - Gender Pay Reporting
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### Workers v Self Employed – where are we now?

Many of you may have seen the press reports recently on the case involving Uber, the taxi hailing app. The definition in the Employment Rights Act 1996 of what is a worker is not very helpful. Being a worker, means they have more entitlements than self-employed, but less than being an employee.

Uber argued it was just a technology company, providing the app to put passengers in touch with self-employed drivers. It argued it was not a taxi company with workers. This was rejected by the Tribunal who looked carefully at the level of control that Uber had over the drives. Uber interviews and recruits drivers, imposes conditions on them, controls their performance, duties

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and key information they are allowed to hold. Uber will of course appeal the decision that they were workers and not self employed but it has major ramifications on other businesses.

So what does this mean for those companies who are found to have workers rather than self-employed?

Workers are entitled to:

- 5.6 weeks' paid annual leave each year for full-time work
- The national minimum wage or national living wage
- possible rights to pension contributions under pension auto-enrolment regulations
- Protection under whistleblowing legislation

However, workers do not have the following entitlements:

- The right to claim unfair dismissal
- The right to statutory redundancy payment
- The benefit of the implied term of trust and confidence
- TUPE (transfer of business) protection

**Employers:** if you engage contractors where you exert control over them and how they provide their services or portray them as your own workers, then you may need to take advice as it is a risk they may be found to be workers.

**Contact us:** we can assist with advice on contractor and self-employed working relationships.

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## **Gross Misconduct Allegations - what happens when an employee hands in a sick note?**

What should an employer do if an employee facing gross misconduct allegations asks for more time to prepare for a hearing and then submits a fit note for depression or stress? Does that sound familiar?

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The employee may of course be stalling the process or there is a chance their illness could be genuine. An allegation of gross misconduct is serious, which means you will need to see it through, however much the employee wears you down through avoidance tactics or legitimate reasons. The employee should have the chance to answer such a charge.

There may be a proper reason for the employee submitting the fit note. Has the disciplinary been sprung on them? How complicated are the issues? Does the employee need more time to gather evidence?

Pressing on with the disciplinary regardless, if an employee is unable or unwilling to attend is never wise. Of course an employee who repeatedly asks for more time must be pinned down. The challenge is in judging when that time has come.

Make sure you take into account:

- your rules and policies
- the seriousness of the charge
- their employment record
- has the employee been uncooperative?
- how many times the employee has asked for a delay

You won't need to agree to a long series of postponements, but make sure you are satisfied that the employee has a valid reason and be clear that there are strict timeframes when agreeing to an extension

If someone is signed off with depression they may be still fit to attend a disciplinary hearing. In fact, it may be better to attend so it is not hanging over them. Still, the right thing to do is to postpone the hearing and if the absence continues it is worth seeking some medical information from the employee's doctor or appoint Occupational Health to try and understand the likelihood of attending a rescheduled hearing.

Take your time and get advice on the instruction letter to Occupational Health to make sure you cover the practicalities of the disciplinary hearing (including possible adjustments) as this could turn out to be a crucial report.

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At some point you will need to draw the disciplinary process to a close, either with the employee there or in their absence.

If you are sure you can show you have done everything reasonable to support the employee then you will need to go ahead, bearing in mind the recommendations of the medical professionals.

**Employers:** Being the reasonable employer is not as easy as it sounds -there is no easy formula. Remember factors such as the size of the business and resources available do get taken into account when it comes to reasonableness.

**Contact us:** we can help with practical advice on dealing with disciplinary procedures.

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## Gender Pay Reporting

The Gender pay gap was a hot topic for HR in 2016. The Gender Pay Gap Regulations were introduced as part of the Government's strategy to tackle pay inequality between men and woman.

The regulations come into force on 6 April 2017 and require employers with more than 250 employees to publish reports on their gender pay gaps.

The gender pay reporting covers basic pay, allowances, holiday pay, shift premiums and bonus pay, profit sharing. It does not cover overtime pay, redundancy or termination payments.

The question is, can smaller companies afford to ignore the Gender Pay Gap Regulations?

Probably... although as hopefully the larger businesses will need to be more open on publishing reports on pay gap inequalities it should produce benchmarking figures for employees who move to smaller companies to understand the fair and equitable rates in their industry, sector and level of seniority. This will trickle down to smaller employees who may be expected to be more open about their pay scales.

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**Employers:** it is worth reviewing pay scales and groups of employees as well as equality policies in the light of these regulations.

**Contact us:** we can help guide you through the process of Gender Pay Reporting

**Caroline Robertson, CEO**

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.

She qualified as a Solicitor in 1999 and is able to assist

Businesses on all aspects of employment law and HR.



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