



## March 2017 Update

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

In this edition we report on:

- Top tips for managing conflict – Part 1
  - Timing of notice of termination – when does a letter terminating employment take effect?
  - Long-term absence dismissals
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### Top tips for managing conflict – Part 1

Conflict is a normal part of human relationships. The key is recognising when conflict arises at an early stage and then try to minimise its capacity to cause damage to working relationships.

#### \* Improve your communication skills

Ineffective communication may exacerbate workplace conflicts, leading to employees attributing all sorts of false motives to one another as the conflict escalates. As a more effective communicator you can explain what you are doing and why you are doing it, as well as how to

have the 'difficult conversation' which are key soft skills for every manager. What you say and do may be misinterpreted.

\* Become a more active listener

This allows you to understand an employee's point of view. By trying to understand the employee's underlying interest will often be key to understanding their stance adopted in conflict.

\* Address unfulfilled needs

Conflicts in the workplace may be due to a sense of unfulfilled needs on the part of at least one of the participants.

This may be a direct result of a desire to have a sense of autonomy over their own work, gain more recognition or to just feel valued. Identifying these issues and then finding ways to address the employee's needs in an acceptable way is often the key to avoiding conflict.

When the underlying interests of the parties are analysed, it is amazing how often they have more common interests than conflicting ones. These common interests can then be looked at collaboratively to address the opposing positions and to try and find a way to help avoid or resolve the present conflict.

\* Don't take it personally

Try to not attribute negative motives to those perceived to be the source of the problem. The principle known as Hanlon's Razor is useful, being "*never attribute to malice something which can be adequately explained by stupidity*".

This helps managers perhaps to consider the 'cock up' theory not the 'conspiracy' theory of life.

**Employers:** So if it is not malice or stupidity, open your mind to the possibility that (a) you may not understand their motives (which may have a sensible explanation) and/or (b) they may have made incorrect assumptions about the situation and/or you may be being unreasonable yourself. You may then find yourself in less conflict situations and perhaps will be less angry about the infuriating things that others do.

**Contact us:** if your business needs help to resolve conflict or simply increase team productivity

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## Timing of notice of termination of employment

There is uncertainty on when does termination of employment takes effect in some situations.

In the recent case of *Newcastle Upon Tyne NHS Foundation Trust v Haywood*, Ms Haywood was at risk of redundancy. She turned 50 on 20<sup>th</sup> July 2011. If she was made redundant after her 50th birthday she would have been entitled to a more generous pension. She was contractually entitled to 12 weeks' notice. Hence the key issue was when did the termination of her employment take effect?

On 19<sup>th</sup> April 2011, she went on holiday, returning on 27<sup>th</sup> April. On 20<sup>th</sup> April, her employer sent notice of termination of employment, due to redundancy, by recorded delivery, ordinary post and email to her husband's email address. She did not read the notice until her return from holiday.

The Court found that the contractual notice of termination was given on actual receipt rather than on delivery or any deemed date of receipt. Ms Haywood thus received notice on 27<sup>th</sup> April and termination took place after her 50th birthday, resulting her receiving a higher pension entitlement.

**Employers:** be careful about how you notify your employee about termination of their employment in situations where you don't see them face to face.

**Contact us:** if you need any assistance with disciplinary or redundancy issues.

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## Long-term absence dismissals

In the case of *O'Brien v Bolton St Catherine's Academy*, the Court of Appeal has provided some clarity to help employers understand the legal test in the context of discrimination arising from disability in the dismissal of long-term sick employees. This is compared with the legal test for unfair dismissal.

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The Court found that the law is complicated enough without tribunals having to judge the dismissal of such an employee by one standard for the purpose of an unfair dismissal claim and by a different standard for the purpose of discrimination law.

**Employers:** whilst this decision does not change the law in any way, it should provide comfort to employers when they are considering dismissing a disabled employee who has been on long-term sickness absence. Employers should therefore use the same test for unfair dismissal, which is whether the decision to dismiss was within the range of reasonable responses open to the business.

**Contact us:** for guidance on managing long-term absence issues

### 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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