April 2018 Update

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

In this Edition we report on:

- GDPR – Only 1 Month to go!
- New Tax Rules from April on Payments in lieu of Notice
- The Meaning of Working Time

GDPR – Only 1 Month to go!

We're all sick of hearing about the General Data Protection Regulations aren't we?
Well with only one month to go, we have set out some practical tips on data retention:

- Employees should review their key information for accuracy on an annual basis, for example their home address and emergency contact details.
- Keep information for as long as it is actually needed, no longer.
- Draft and communicate a document setting out personal data retention periods. Set standard retention periods for various categories of information.
- Inform job applicants how long you intend to keep their information and give them an opportunity to object- add this to your application form or recruitment process.
- Revise arrangements on dealing with old records to ensure they are securely disposed of.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

- Don't assume that pressing the 'delete' key on a computer erases a record completely from the system.
- Review who has access to electronic records of personal data and ensure they are authorised to do so.

There is an expectation to have a spreadsheet setting out these categories of personal data, what personal data is held, who has access to it and the data retention periods. This information will be required for your internal audit.

Ensure you have a GDPR compliant Privacy Policy on your website, particularly with the ‘Right to be Forgotten’ option that you can point customers and clients too.

Employers: Categories of Personal Data spreadsheet and a correct Privacy Policy is something we can help your business with.

Contact us: for a fixed price, we can draft the documents you need and explain these to you.

New Tax Rules on Payments in lieu of Notice

New tax rules that came into force on 6 April 2018 will mean that income tax and national insurance contributions (NICs) must be paid on all payments in lieu of notice (PILONs) on the termination of employment.

However, some contracts of employment do not have a Payment In lieu of Notice clause which allows employers to make these payments at the end of employment tax free. This loophole (where the payment is treated as damages for breach of contract) has now been closed.

In an attempt to simplify matters, the changes brought in from 6 April 2018 will mean that all PILONs will be taxed as earnings, regardless of whether they are contractual or not. Tax cannot be avoided by failing to pay in lieu.

Under the new rules, employers are required to work out an employee's "Post-employment notice pay" Essentially this represents the amount of basic pay the employee will not receive because their employment was terminated without full notice being provided.

This notice pay is taxable as earnings and therefore subject to income tax and NICs, even if depicted as compensation.

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The new rules therefore will not apply if the employment terminates before 6 April 2018, even if payment is made on or after 6 April 2018.

Employers: employees still get the benefit of the £30,000 threshold for tax free payments for compensation for loss of employment. For example, if agreed under a Settlement Agreement or other negotiations.

Contact us: If you need any help on employee exit arrangements or Settlement Agreements, please let us know.

The Meaning of Working Time

For many employers, the term "working time" can be difficult to work out. In particular, the question as to whether time spent "on call" can count as working time has been the subject of case law decisions over the last decade.

Within the Working Time Directive (WTD) working time is described as any period during which a worker is carrying out his duties, and is at the employer's disposal.

Historically, when considering this issue, the courts have tended to focus on the worker's location during periods of time spent on call. Although, in the recent Belgian case of *Ville de Nivelles vs Matzak*, the European Court of Justice (ECJ) appears to be moving away from that line of thinking.

This particular case involved a firefighter, who was on call at his home address. The ECJ ruled in Mr Matzak's favour, confirming that any on-call time that a worker spends near his workplace, with the duty to respond to calls from his employer within eight minutes (in this case) must be regarded as working time.

Employers: this case is key for employers with workers who are required to be on call. We advise you to review the restrictions placed on such workers.

Contact us: We can help with all working time questions.

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M: 07947567661
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Caroline Robertson, CEO

Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

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