



ActifHR

Where people matter...

## May 2018 Update

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

### GDPR JOURNEY

We are still offering GDPR personal data mapping, GAP Analysis document, Privacy Policy for your website, Data Protection Policy, email footer draft, Spreadsheet of personal data for HR/customer data with retention periods for a limited fixed price throughout May 2018.

**We are sending your update as someone who has agreed to receiving these bulletins. Please find our privacy policy at**

<http://www.actifhr.co.uk/privacy-policy/>



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In this Edition we report on:

- GDPR – Finally, we are there!!
  - Giving References
  - Notice of Termination
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## **GDPR – Finally, we are there!!**

The 4 letters we are all fed up with.....

There are eight things you need to be considering as the GDPR comes into force this month. (Feel free to send it to your colleagues or clients as your own work - I release copyright!)

1. Think about processing some client personal data (if applicable) in a way so that you can't tell from looking at it which person it relates to. Additional information would be required (a key or code) kept separately (and securely) to decode it (Known as 'pseudonymisation').
2. Consider if some data can be anonymised. Do you really need to be able to identify the employee to use the data? For example, if you are processing information for statistics or research then you could probably anonymise it. This is frequently seen in the public sector when data is collated for the purposes of equal opportunities.
3. Ensure that passwords are used, encourage employees to use more complex passwords, not to share them, and to change them regularly.
4. Data should be encrypted where possible, particularly if you are transferring data or allowing remote working.
5. Think about the devices that employees use and their security access. Will you still permit employees to use their own smartphones etc., or will you provide company phones and laptops now instead?
6. Personal data should only be processed for specific purposes when necessary.
7. Implement measures to ensure you are compliant with the principles.
8. Keep clear and precise records to prove you are compliant.

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**Employers:** Any of this sound complicated? We can help businesses with the Categories of Personal Data spreadsheet and ensure you have the right Privacy Policy in place.

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

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## Giving References

A duty of care must be taken by employers to employees when writing a reference and exercise reasonable care and skill. It should be accurate, fair and true and not ambiguous by what is included or omitted from it. If you produce a reference and it contains information that is inaccurate then you could be sued for any resulting loss.

Recently in a High Court, Mr Hincks contested that Sense Network Ltd had made a 'negligent misstatement' about him in a reference. Sense Network Ltd presented negative opinions in a reference based on a previous investigation into Mr Hincks' conduct. Mr Hincks contested that the person giving the reference should have satisfied himself that the investigation was reasonable and procedurally fair, before making any comment of it in the reference. He stated that some of the reference was inaccurate and gave an overall misleading impression.

The High Court dismissed Mr Hinks' claim. It was found that a reasonable reference writer did not need to delve into the procedural fairness of earlier investigations. A referee should conduct an objective and rigorous appraisal of facts and opinions, particularly negative opinion. However, the referee should take reasonable care to be satisfied that the facts in the reference are accurate, there was a legitimate basis for the opinion, and that the resulting reference was fair and not misleading.

This particular case involved the financial services industry where the employer had a duty to provide a more detailed reference.

**Employers:** Most employers will be safer restricting their references to facts only and stating that this is their company policy.

**Contact us:** We can help with reference requests.

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## Notice of Termination

Some employment contracts are silent on when notice is deemed to be given. When this is the case, notice of termination takes effect when it is actually received by the employee and it has been read by them, or they have had a reasonable opportunity to read it.

In a recent case an employee, who was at risk of redundancy, went on holiday during the process. Her employer sent notice of termination by recorded delivery and ordinary post. She read it on her return from holiday, a few days after the letter was sent. If delivery was assumed effective on the day the letter was dated and sent, she would have received a much lower pension. But if it was assumed effective on the day she returned from holiday and read it, she would have received a much more generous pension.

The Supreme Court held that the notice was only sufficient when it was read by the employee (or she had a reasonable opportunity to read it). Based on this, her termination of employment date was not deemed to have taken effect until she had read the letter, when she returned from holiday and was then entitled to the higher pension.

**Employers:** To avoid these situations, it is always good to communicate face to face with employees.

**Contact us:** We can assist with redundancy consultations and exiting an employee from the business.

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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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