



ActifHR

Where people matter...

July 2016 Update

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

In this edition we report on:

- Holidays - managing holiday periods
 - Raising Concerns with an employee on sick leave
 - New guidance on when the ACAS Code of Practice on Disciplinary and Grievance procedures may not apply
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Holidays – managing holiday periods

The long school holiday season is upon us, much to the panic of working parents. For some businesses it can be difficult to manage, particularly when we all seem to want to be off together!

Here are a few of our top tips:

- Make sure your employment contracts set out the holiday rules such as:
 - the basis for approving holidays (is this simply on a first-come, first-served);
 - limiting holidays to 2 weeks maximum at one time (unless exceptional

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- circumstances);
 - whether holiday can be carried over from one year to the next, and if so, how many days;
 - specify particular busy times for your business where employees are not able to take holidays;
 - the company's ability to reschedule holidays or propose alternative dates where business needs dictate
- Sharing the employee holiday calendar with the team is one of the easiest and most effective ways to avoid holiday scheduling difficulties. It helps employees take responsibility for avoiding holiday clashes with their colleagues.
 - Do some employees not take enough holidays and want to carry them over to the next year, think about setting a deadline for when your employees must have submitted all their holiday requests.
 - For times when most of your team want to be on holiday at the same time (e.g. between Christmas and New Year), the usual first-come, first-serve basis for approving holidays may not be the fairest way. Instead, you might want to consider pulling names out of a hat or rotating who gets to be off each year.
 - Think about how you will cover employee absences. For holiday cover to work effectively, encourage the employee going on holiday to write a 'handover' report, covering tasks in progress, tasks remaining, deadlines coming up, key contacts etc, particularly if they are in the middle of an ongoing project.

Employers: check your employment contracts have clear simple guidance on holidays and your employee has briefed you or their manager on any important deadlines or problems that may come up while they are away.

Contact us if you need help with checking or drafting Employment Contracts

Should an employer raise concerns with an employee when they are on sick leave?

Recently the Employment Appeal Tribunal (EAT) decided that an employer who attempted to discuss workplace difficulties with an employee on sick leave constructively dismissed that employee.

The employee was disabled and had a history of sickness absence. In 2013 the employee went off sick again due to depression and anxiety, claiming that two senior employees of the company had bullied and harassed her.

The company's CEO wrote to her, while she was still off sick, outlining six areas of concern to discuss. A week later, the employee resigned and claimed that the employer had fundamentally breached her employment contract by sending the CEO's letter.

The Tribunal agreed with the employee and found that the employer knew that the employee was very ill and that while the letter was a genuine attempt to resolve the employee's concerns, the issues did not have to be addressed urgently.

This case highlights the difficulty of communicating with an employee who is off sick with work-related anxiety, stress or depression. Employers must take care to balance the needs of addressing work-related issues with the potential effect on a sick employee of communications that they may be unable to cope with at that time.

Employers: Before sending letters to ill employees, dealing with performance and/or conduct concerns, employers should assess if the concern merits the degree of urgency it is being accorded.

Contact us if you need help with an employee if they are off work due to long-term illness

When the ACAS Code on Disciplinary and Grievance Procedures applies

The ACAS Code of Practice ('ACAS Code') on disciplinary and grievance procedures sets out guidance for employers to follow, including minimum steps for carrying out sufficient investigations, holding a hearing and appeals.

An Employment Tribunal can award an uplift in compensation of up to 25% for non-compliance where Claimants are successful with their claim.

Disciplinary procedures are regularly used, not just to deal with misconduct issues, but also with issues of capability. However, a recent case has clarified that the ACAS Code will not be applicable to every type of capability dismissal.

In this case, the Claimant was dismissed on grounds of ill health as he was no longer able to carry out his job as a security guard. The EAT found for the ACAS Code to apply, there must be some culpability on the part of the employee (ie due to misconduct). In this situation the ACAS Code did not apply to this type of ill health dismissal.

This concept that there must be some element of culpability for the ACAS Code to apply is helpful, but there will remain many grey areas, in terms of what amounts to culpability. The position would be different if the reason for dismissal was not the sickness absence itself, but rather a failure to comply with sickness absence procedures. The ACAS Code would probably also apply in cases where an employer considers that the illness is not genuine.

Employers: it is important to understand that following the ACAS Code is vital in terms of affecting the fairness of a dismissal as well as the question of an uplift in compensation.

Contact us if you have any questions about sickness or capability

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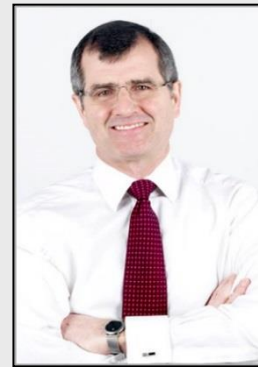
Caroline has a wealth of experience supporting business clients with practical hands on HR advice.

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



John Wade

John has successfully led several SME 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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