



ActifHR

Where people matter...

April 2017 Update

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

In this edition we report on:

- References - what do employers need to watch for?
 - Apprenticeship Contracts - can an employer terminate them?
 - Statutory Payment increases
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References – what do employers need to watch for?

All employers are aware a reference should be true and accurate. You need to not give a misleading impression, still there is a worry that what an employer writes may lead to a claim.

However, if the negative part of a reference is accurate and made in good faith, with evidence to back it up, there should not be a concern of a claim. Still employers are wary of doing so. Usually, a referee does not have to show a copy to the employee, although this can change if they start legal proceedings.

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Potentially a reference could fall within the Data Protection Act ('DPA') as personal data. Although, there is an exemption in Schedule 7 of the DPA for disclosure if the reference is given in confidence for education, training or employment purposes.

This still raises the question of whether the reference can be disclosed to the employee by a third party – i.e. the prospective employer. It would require the consent of the ex-employer before the reference is disclosed. It is wise to write on a reference, that this is given '*in confidence*' so that the new employer would have to contact the ex-employer to ask if they object to the disclosure of the reference. However, your objection won't necessarily block the disclosure of the reference to the employee if it would be reasonable to disclose it. It may be that the reference can be disclosed by blacking out who wrote it, if it is a bigger organisation.

Employers: be careful when writing references. Ensure they are accurate and made in good faith. Be aware an employee can use the DPA to officially request disclosure of a reference. There is an exemption to this but it is wise to mark the references '*in confidence*'.

Contact us: we can assist with the content of references, particularly if you are worried about disciplinary or performance issues.

Apprenticeship Contracts – can employer terminate them?

An employment tribunal has awarded £25,000 for breach of contract to a roof tiler whose apprenticeship was ended early in the case of *Kinnear v Marley Eternit Ltd t/a Marley Contract Services*.

The apprentice roof tiler was made redundant when there was a downturn in business, before his apprenticeship had ended. The tribunal accepted that the lack of a roofing qualification might disadvantage him in the labour market for a number of years to come. In upholding Mr Kinnear's claim, the tribunal noted that he had 122 weeks left to run on his apprenticeship. He would have been paid £24,217 for the remainder of his apprenticeship.

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There are two different types of apprenticeships and the distinction can have a major effect on the relationship between the employer and apprentice. Contracts of Apprenticeships are governed by common-law principles and are generally fixed term and cannot be terminated early except for extreme misconduct.

The other type is an Apprenticeship Agreement which should comply with the 'apprenticeship framework' published by the Government. This has a training element generally through an external training provider. Government funding is available to cover part of the cost of training and unlike some common-law contract of apprenticeships, an apprentice can be dismissed in the same way as any other employee.

Employers: be careful when giving out apprenticeship contracts that it is structured in the format of an Apprenticeship Agreement so you have the ability to terminate.

Contact us: we can assist on putting together apprenticeship agreements.

Statutory Payment Increases

From 1st April 2017, the following rates will apply:

- The National Living Wage (NLW) which applies to workers aged 25 and over, will be increased from £7.20 to £7.50.
- The National Minimum Wage (NMW) will increase as follows:
 - The rate for apprentices increases from £3.40 to £3.50 per hour;
 - The rate for workers aged 16 to 17 years old increases from £4.00 to £4.05 per hour;
 - The rate for 18 to 20 years old increases from £5.55 to £5.60 per hour; and
 - The rate for 21 to 24 years old increases from £6.95 to £7.05 per hour.
- From 2nd April 2017, rates of Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay will increase from

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£139.58 to £140.98 per week (or 90 per cent of the person's average weekly earnings, if lower).

- The rate of Statutory Sick Pay will increase from £88.45 to £89.35 per week from 6th April 2017.

Employers: check your payroll software picks up that the employee goes into the next age bracket so that you ensure you are paying the NMW.

Contact us: we can advise on different statutory payments and how to calculate them.

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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