



ActifHR

Where people matter...

September 2019 Update

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

In this Edition we report on:

- How long should you keep employee records for?
 - Data Protection - Subject Access Requests
 - Whistleblowing – is it OK if an employee believes it is in the public interest?
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How long should you keep employee records for?

While recruiting there is a huge amount of data that comes your way, such as interview notes, emails and CVs. Ideally this information should be kept for at least 6 months, as this is the period of time a discrimination claim can be brought.

Other employee data such as employment contracts, personal records, performance appraisals, etc, we suggest that you aim to keep them for up to 6 years after they have left. Potential tribunals for the 3-month risk period may occur during which terminated employees can bring a claim, but also it could be used during defending a high court of county court claim, which can occur many years later.

HMRC can also ask questions regarding former employees up to 7 years after they have left.

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Under the GDPR, the reason for processing would be legitimate interest or legal obligation to justify the length of time you need to keep this data.

Employers you need to consider both your legal and business requirements to decide how long to store data.

Contact us: we can help with data protection

Data Protection – Subject Access Requests

The Information Commissioner's Office (ICO) has updated its guidance on timings to respond to data subject access requests, by individuals.

These are often shortened to SAR's.

The day of receipt is day one rather than the day after receipt, when calculating the one-month period to respond as a business.

Businesses that mirror the previous position in their policies on handling SAR requests should update these so that it is obvious when the one-month time frame starts.

If your business receives a subject access request, you may ask them for more clarification to try and narrow it down and/or ask them to be more specific with the request, such as defining dates.

If the request is complicated, you can ask for more time to deal with it and make a charge.

Employers: make sure your managers do not write personal opinions about staff in emails

Contact us: for guidance on data subject access requests

Whistleblowing – is it OK if an employee believes it is in the public interest?

Yes, held the EAT in *Okwu v Rise Community Action*.

Rise was a small charity, giving support to individuals affected by domestic violence. The charity employed Miss Okwu as a domestic violence specialist worker. Rise extended her

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probation period by three months, after having raised a number of issues regarding her performance.

Miss Okwu wrote to Rise claiming they were acting in breach of Data Protection Legislation as they had not given her a personal mobile phone with secure storage. She said this was vital when dealing with confidential and sensitive personal information.

Her employment was terminated on performance grounds. Miss Okwu claimed she had been dismissed unfairly as she had made protected disclosures (blown the whistle).

Her claim was dismissed. The Employment Tribunal (ET) held that the points were not in the public interest (needed for whistleblowing) and were instead about her contractual position.

On appeal, it was found by the Employment Appeal Tribunal (EAT) that the tribunal unsuccessfully asked whether Miss Okwu had a reasonable belief that her disclosure (potential breaches of the Data Protection Act) was in the public interest.

The EAT said it was hard not to see how it could not have been in the interest of the public given the sensitive information involved.

Employers: assess any whistleblowing issue an employee raises carefully

Contact us: we can assist with whistleblowing issues



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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