



ActifHR

Where people matter...

January 2021 Update

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

In this Edition we report on:

- Are your Contracts of Employment and Policies compliant and effective?
 - Staff Reorganisation and Redundancies
 - Will workplace testing become mandatory?
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Are your Contracts of Employment and Policies compliant and effective?

As we kick off the New Year, it's a good time to review your Data Protection compliance, Contracts of Employment and Policies to make sure they are up to date and effective for your business. We can help you to check your policies and contracts are legally compliant whilst also effective in protecting your business. This helps you in managing employees in the future.

Whilst we all tend to think of a contract as a paper document, it can also be based on verbal agreements, which are called implied terms (being the duty of trust between employer and employee). And because employment law is continuously updated with new regulations, a frequent review of an employment contract can help protect your entitlements and rights as an employer, as well as those of your employees. Of course, don't forget that terms of employment under a contract should be varied if both your employee and you agree to a variation, although sometimes businesses are able to force through a change.

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Fit for purpose

The last 12 months have seen more employment law and regulatory developments. It is worth checking that when it comes to your employees, your contracts are still in good shape and reflect the working arrangements. Here are some issues and areas that might necessitate a review:

- From April 2020, all new employees and workers are entitled to receive either a Contract of Employment or a statement of written particulars on or before their first day of employment. Previously an employer had 8 weeks to do this.
- If your organisation has had a structural reorganisation, sold sections, relocated the workforce, merged with another company or you have had to make redundancies, terms and conditions could have changed.
- If you have experienced any disputes around current employment contracts, make sure that you review that the contracts are accurate when it comes to salary, pay, holiday, equal pay, annual leave entitlement or flexible working requests.

It's not just your employment contracts...

As well as reviewing your contracts, you might want to review a few other important documents and policies. We encourage you to:

- Check that your Company's General Data Protection Regulations (GDPR) compliance is still effective.
- Ensure your Company Handbook is up to date.
- If you don't have a Company Handbook, make sure that important policies, including Email, Internet, Social Media, Computer and Privacy are up to date and still reflect your business needs.

Employers: Ensuring your contracts and policies are up to date safeguards against future misunderstandings or disputes.

Contact us: We can review your documents and policies

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Staff reorganisation and redundancies

Of those planning to make redundancies, more than a quarter of employers said they would be telling staff via video calls or over the phone. Only a third intended to tell people in person.

These figures are not surprising due to many businesses struggling over the past few months. However, it is essential that businesses know the procedures and law involved before embarking on this process.

Redundancies should always be a last resort and employers must use a fair and balanced selection process and conduct consultation proceedings with all employees affected. Make sure you give them as much warning as possible.

Given the substantial number of redundancies expected over the coming months, it is very important employers and HR plan these stages in the most fair and open way possible.

Companies may need to allocate extra time towards the consultation process to allow for any logistical issues that arise from having to tell people remotely rather than face to face. Don't forget employees still have the right to be accompanied at these meetings. Every employer should approach a redundancy process with empathy and treat all employees with respect, dignity and kindness.

Make sure that the consultations are meaningful, and as such employers should factor in the difficulties that organising these processes over the phone or via video calls could present. Sometimes a message that can be clearly delivered face to face can get lost over electronic communication.

Consultation with individual employees is fundamental to the fairness of any dismissal for redundancy and collective consultation is mandatory in any situation involving 20 or more redundancies. The fact that 24 per cent of employers are unaware of this law is a worry.

Employers: Make sure you follow a fair and transparent procedure at all times

Contact us: We can assist with redundancy support and guidance

Will workplace testing become mandatory?

It has been reported that the UK government could start to urge companies to have regular workplace Covid-19 testing. With further lockdown announcements there may be some

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employees who are finding it increasingly hard to work at home, therefore finding their wellbeing affected with constant home working.

Of course, those employees who are unable to do their job at home for whatever reason should attend the office. Workplaces must ensure they have a **Covid-19 Risk Assessment** in place to ensure that it is safe to attend the workplace, particularly with concerns of a new variant of the virus.

Many employers are considering workplace testing for those employees that are required to be in the workplace.

What kits are available and how much are they?

Current testing methods vary in price, with the choice depending completely of course on a company's budget. The range of price per testing kit starts from free, especially trial period offers on apps, to around £400 per person.

What if an employee refuses?

While employers are held responsible under the Health and Safety at Work Act 1974 to keep all employees safe, even if the Government recommends it, an employer cannot make an employee take a test if they refuse.

If an employee is not showing any symptoms, it may not be a reasonable request to expect them to be frequently tested or to try to discipline them if they refuse. Instead, it is advisable to consider any mitigating factors behind their refusal, for example, the employee may have a disability.

How often should employees be tested?

It is important to understand that testing is a one-off and, as people come into contact with others, for instance socially or when shopping, then further, ongoing testing would be required. Of course, the longer you spend close to an infected person, the higher the likely risk of transmission and different workplaces pose different risk levels.

In the workplace you probably spend more time around colleagues than anyone, other than your family, so a routine testing approach may be recommended in certain industries.

In particular industries routine testing is being carried out, particularly with the potential of a 10 or 14-day incubation period. There are clear cost implications for employers as much as logistical considerations, alongside how you 'police' any testing policy that you may introduce.

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What are the GDPR implications of testing?

It is important to remember that testing involves the taking and storing of employee personal health data, which is classed as highly sensitive, 'special category' personal data under the GDPR. Employers need to make sure their processing of this data is lawful and secure.

Do not collect any more data than necessary whilst retaining the confidentiality of who has been tested. Avoid naming positive tests to colleagues as much as is possible.

Employers: We can assist with Covid-19 Risk Assessments and advice

Contact us: If your business is needing Covid HR support



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.

Caroline Robertson, Director



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