



CHILTERN HR

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NEWSLETTER

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1. Auto-enrolment minimum contribution timetable is extended

The Government has announced that the auto-enrolment minimum contribution timetable will be extended.

Minimum contribution requirements apply where an employer uses its own defined contribution pension scheme to comply with its auto-enrolment duties.

These are being phased in over two transitional periods spanning six years. The date from which the next two scheduled increases in contribution levels apply has been extended by six months so as to align with the start of the tax year. This is intended to simplify auto enrolment for the smallest employers in particular.

The new deadlines will be as follows:

Year	Minimum employer contribution	Total contribution (including tax relief)
Employer's staging date to 5 April 2018	1%	2%
6 April 2018 to 5 April 2019	2%	5%
From 6 April 2019	3%	8%

2. Holiday entitlement for part-time workers whose hours of work increase

The European Court of Justice has held that the holiday entitlement of a part-time worker has to be recalculated if their hours increase to reflect the new working pattern. However, when a part-time worker increases their hours, any statutory annual leave that has already accrued does not need to be recalculated retrospectively to take account of the increased working hours. Any leave taken in excess of the entitlement that applied under the previous working pattern should be deducted from the leave going forward. The calculation of leave entitlement is the same, regardless of whether employment has terminated or is continuing.

What should employers do?

Employers should take legal advice if they are unsure as to how to calculate holiday entitlement.

3. New guidance on reservist leave

The Ministry of Defence has published an employer toolkit providing guidance and support on all aspects of employing reservists. The toolkit sets out the rights and responsibilities, and financial assistance available to employers and reservists. It contains guidance for line managers on how to manage reservists and on managing requests for time off for reservist training. It also provides guidance and actions for when a reservist is mobilised, demobilised and returns to work.

4. Guidance on workplace investigations

ACAS has published new detailed guidance on workplace investigations. The guidance applies to both disciplinary and grievance investigations. It explains how an organisation should prepare for an investigation, how an investigator should prepare, how an investigation meeting should be handled, how evidence should be gathered, how to write an investigation report and what should be done after the investigation has been completed.

5. Disparate treatment of employees

The Employment Appeal Tribunal has held, in a case where two employees were involved in the same incident, both found to be guilty of gross misconduct but where only one of them was dismissed, that when considering issues of disparity of treatment between employees, the relevant question is whether the employer has acted reasonably towards the employee who has been dismissed, regardless of what sanction has been applied to the other.

The Employment Appeal Tribunal also said that provocation was not a 'defence' but only a mitigating factor to be considered by an employer.

What does this mean?

Disparity of treatment will occasionally be relevant to reasonableness, but the circumstances need to be 'truly parallel'.

What should employers do?

Employers should always take specific legal advice before dismissing an employee or taking action short of dismissal.

6. Resignation should have been taken into account when deciding whether collective redundancy consultation obligations were triggered

The European Court of Justice has held that a resignation following a unilateral substantial change in working conditions (namely to reduce an employee's salary by 25%) was a 'redundancy' under the Collective Redundancies Directive.

What does this mean?

The definition of 'redundancy' in the Collective Redundancies Directive is wide enough to include resignations where an employer has unilaterally made significant changes to essential elements of an employee's contract for reasons not related to them as an individual and which cause them substantial detriment.

That being the case the resignation should have been taken into account when considering whether the necessary threshold for collective consultation had been satisfied.

What should employers do?

Employers should always take legal advice before embarking on a redundancy process.

7. No TUPE transfer occurred

The Employment Appeal Tribunal has held that no TUPE transfer occurred when an employee's employment was transferred from a sole employer to a group of companies which included the original employer.

What does this mean?

TUPE does not preclude the transfer to multiple transferees, as long as the economic unit retained its identity, and there is no transfer under TUPE where the transferor remains the employer.

The original employer, in this case, retained liability for the employee's employment (even though as a result of restructuring the employee would be jointly and severally employed by all members of the group, including the subsidiary who had employed him in the first place) which meant that the legal position remained unchanged.

What should employers do?

Employers should always take legal advice before embarking on a restructuring.

8. The apprenticeships levy

The Government has published details on the apprenticeships levy, which it intends to introduce in April 2017, to help fund new apprenticeships. The levy will support all post-16 apprenticeships in England, and will provide funding that each employer can use to meet their individual needs.

The levy will be set at a rate of 0.5% of an employer's pay bill (total employee earnings but not including benefits in kind). However, employers will receive an annual allowance of £15,000 against the levy. This means that the levy will only be payable if the employer's pay bill exceeds £3 million per year and 98% of employers are expected to be exempt from paying the levy. Connected employers, such as a group of companies, will however, only receive one allowance. The levy will be collected by HMRC through PAYE.

Employers in England will be able to access funding for training through the Digital Apprenticeships Service. Employers who pay the levy will be able to access more funding than they have put in, through government top-ups. However, levy funding which is not used within two years will expire, making it available for other employers. Although the apprenticeship levy will apply across the whole UK, as apprenticeships are a devolved matter in Scotland, Wales and Northern Ireland separate arrangements will need to be made for giving employers in those parts of the UK access to the fund.

9. New DBS Code of Practice

The Disclosure and Barring Service has published a new code of practice https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/474742/Code_of_Practice_for_Disclosure_and_Barring_Service_Nov_15.pdf for registered persons and other recipients of disclosed information. It contains information on registration details, the application process, identity verification, data handling, suitability policy, eligibility, compliance requests and payment of fees. Failure to comply with the code of practice can result in the suspension or cancellation of registration.

10. Data protection: guidance on disclosing information safely

The Information Commissioner's Office (ICO) has published guidance on disclosing information safely. The guide 'How to disclose information safely – removing personal data from information requests and datasets' is aimed at helping organisations fully understand their obligations and promoting good practice. The guidance is relevant to organisations who disclose information which has been derived from personal data, including organisations releasing data as part of a subject access request. It is also relevant to public authorities responding to a freedom of information or environmental information requests or proactively publishing data as part of a publication scheme or otherwise making data available. The guidance explains some of the most common types of inappropriate disclosures that the ICO has seen as well as other types that data controllers and public authorities should be aware of.