



# CHILTERN HR

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### NEWSLETTER

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#### 1. Preparing for the National Living Wage

The Government is advising employers to be prepared to pay the new National Living Wage, which is being introduced on 1 April 2016.

It is advising employers <https://www.gov.uk/government/news/be-prepared-to-pay-new-national-living-wage-government-urges-britains-bosses> to prepare early for the changes by carrying out the following steps:

- Know the correct rate of pay – staff aged 25 and over and not in the first year of an apprenticeship will need to be paid at least £7.20 per hour from 1 April 2016;
- Find out which staff are eligible for the new rate;
- Update payroll systems in time for 1 April 2016;
- Tell staff about the changes as soon as possible.

More information about the National Living Wage can be found here <https://www.livingwage.gov.uk/>.

#### 2. Statutory payments for the 2016/17 tax year

The Department for Work and Pensions is proposing to keep certain statutory payments at the current rates for the 2016/17 tax year. Under the proposals Statutory Adoption Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Shared Parental Pay will remain at the rate of £139.58 per week and Statutory Sick Pay will remain at the rate of £88.45 per week.

#### 3. Guidance on disability discrimination

ACAS has published a new guide on disability discrimination in the workplace.

The guide <http://www.ACAS.org.uk/media/pdf/4/j/Disability-discrimination-key-points-for-the-workplace.pdf> explains what disability discrimination is, what is a 'disability' and what is an 'impairment'. It also explains how disability discrimination can happen, the key areas of employment where it can happen and how employers should handle disability discrimination complaints.

#### **4. Guidance on employing disabled people and people with health conditions**

The Department for Work and Pensions has published guidance on employing disabled people and people with health conditions.

The guidance <https://www.gov.uk/government/publications/employing-disabled-people-and-people-with-health-conditions/employing-disabled-people-and-people-with-health-conditions> is aimed at increasing employers' understanding of disability and to enable them to recruit and support disabled people and those with long term health conditions in work.

It contains general guidance on recruiting disabled people, how employers can support them to remain in work and what financial help is available to employers where an individual requires support or adaptations. It also contains guidance on specific conditions - mental health conditions, hearing impairment, visual impairments, physical impairments, and 'hidden impairments' such as autistic spectrum conditions, dyslexia and learning disabilities. In relation to these specific conditions it provides examples of adjustments that may be appropriate.

The guidance also includes a number of links to websites where additional information and guidance can be found.

#### **5. Disciplinary sanctions under sickness absence policies are subject to the duty to make reasonable adjustments**

The Court of Appeal has held that the trigger for disciplinary sanctions under a sickness absence policy is subject to the duty to make reasonable adjustments.

##### What does this mean?

The trigger for disciplinary sanctions under a sickness absence policy is subject to the duty to make reasonable adjustments.

However, in this case the employer did not fail to make reasonable adjustments by not extending the point at which disciplinary action could be taken under its attendance management policy and by failing to disregard periods of sickness absence. This was because the specific adjustments sought in this case were not steps which the employer could reasonably be expected to take.

The employee had argued that a 62 day absence should have been disregarded but the Court said that it was not reasonable to expect the employer to disregard such an extended period of absence. She had also argued that the trigger for disciplinary action should have been extended by 12 days but the Court said that there was no obvious period by which it should be extended. If future absences were likely to be long, a relatively short extension would, it said, be unlikely to remove the disadvantage. The Court did, however, say that in different circumstances where the periods of absence were short, it may be that such an adjustment would be reasonable.

##### What should employers do?

Employers should always take specific advice before disciplining an employee.

## **6. Negative reference amounted to disability discrimination**

The Employment Appeal Tribunal has held that a negative verbal reference, which resulted in a job offer being withdrawn, was discrimination arising from disability.

### What does this mean?

Sickness absences, which arose out of the employee's disability, played a part in the negative verbal reference, which was provided after a positive written reference had been given. This meant that in this case it was possible to conclude that unlawful discrimination had taken place.

### What should employers do?

Employers should avoid providing verbal references which are separate to and contradict a written reference. Recipients of such references should take specific legal advice before withdrawing a job offer.

## **7. Guidance on recruitment and retention of transgender staff**

The Government Equalities Office has published guidance for employers on the recruitment and retention of transgender staff.

The guidance

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480362/The\\_recruitment\\_and\\_retention\\_of\\_transgender\\_staff-guidance\\_for\\_employers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480362/The_recruitment_and_retention_of_transgender_staff-guidance_for_employers.pdf) is aimed at employers but also provides guidance for the managers of transgender staff and for transgender staff themselves. It contains practical advice, suggestions and ideas based on the expertise and experiences of a number of large employers and organisations as well as real life case studies provided by individual transgender employees.

## **8. Guidance on legal highs in the workplace**

ACAS has published guidance to help employers deal with the challenges of a rise in the use of legal highs.

Legal highs are largely substances which imitate the effects of illegal drugs such as speed and cannabis when consumed, but are not actually illegal themselves. As with illegal drugs, they can have a range of effects on users and are generally used as stimulants, 'downers' or hallucinogens. They generally cannot be sold for human consumption and, therefore, are often marketed as bath salts, incense or plant food.

The guide <http://www.ACAS.org.uk/index.aspx?articleid=5572> includes advice on the need for robust drug and alcohol policies, that account for all types of substance misuse in the workplace (whether legal or not), to avoid any ambiguity. It also contains advice on how to manage staff under the influence of mind-altering legal drugs.