



110 Butterfield, Great Marlings  
Luton • Bedfordshire • LU2 8DL

## CHILTERN HR NEWSLETTER MAY 2017

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**Employment law** is the area of **law** regulating the relationship between employers and **employees**, including what employers can expect from **employees**, what employers can ask **employees** to do, and **employees'** rights at work.

We can help you with your Contracts of Employment and Staff Handbook. Policies set out in the Staff Handbook form an essential part of a firms HR.

- setting out standards of behaviour expected of the employee by the business
- reducing legal risks
- will enable the business to comply with good HR Practices
- Policies in the staff handbook need to be updated on a regular basis

We can offer three Packages to guide you through the minefield of Employment Law:

**PACKAGE ONE**      Updating / preparation of Contracts of Employment and Staff Handbooks.  
Telephone assistance from a Solicitor who specialises in Employment Law

**PACKAGE TWO**      Software package  
Updating / preparation of Contracts of Employment and Staff Handbooks

**PACKAGE THREE**      Software package  
Updating / preparation of Contracts of Employment and Staff Handbooks  
Telephone assistance from a Solicitor who specialises in Employment Law

### REDUNDANCY

Redundancy is when you dismiss an employee because you no longer need anyone to do their job. This might be because the business is:

- changing what it does
- doing things in a different way, for example using new machinery
- changing location or closing down

For a redundancy to be genuine, you must demonstrate that the employee's job will no longer exist. Redundancies can be compulsory or non-compulsory.

#### ➤ **Employee rights**

Employees have certain rights and may be entitled to redundancy pay if they're made redundant.



All employees under notice of redundancy have the right to:

- reasonable time off to look for a new job or arrange training
- not be unfairly selected for redundancy

You should always take steps to avoid redundancies before dismissing staff.

➤ **Alternative employment**

Employers must try to find suitable alternative employment within the organisation for employees they've made redundant.

Employees can try out an alternative role for 4 weeks (or more if agreed in writing) without giving up their right to redundancy pay.

➤ **Avoiding redundancies**

You should take steps to avoid compulsory redundancies, for example by:

- seeking applicants for voluntary redundancy or early retirement
- seeking applications from existing staff to work flexibly
- laying off self-employed contractors, freelancers etc.
- not using casual labour
- restricting recruitment
- reducing or banning overtime
- filling vacancies elsewhere in the business with existing employees
- short-time working or temporary lay-offs

➤ **Giving staff notice**

You must give staff notice and agree a leaving date once you've finished the redundancy consultations. Give staff at least the statutory notice period, based on how long they have worked.

<b>Length of service</b>	<b>Notice you must give</b>
1 month to 2 years	At least a week
2 years to 12 years	A week's notice for every year employed
12 or more years	12 weeks



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You can allow staff to leave earlier than the planned leaving date (for example without notice) by offering payment in lieu of notice.

➤ **Notice pay**

You must give staff notice pay - based on their pay rate and notice period - or make a payment in lieu of notice.

➤ **Pay in lieu of notice**

If you have included a payment in lieu of notice clause in the employment contract, you can end your staff's employment with no notice. This lets you make a payment to cover the notice period they would have worked.

These payments must have tax and National Insurance deducted.

When you make payments in lieu of notice, you still have to pay staff the basic pay they would have got during the notice period. You also have to pay pension, private health care insurance or other contributions if it's in the employee's contract.

***Employers should always take specific legal advice where redundancies are contemplated.***

## **NOTICE OF TERMINATION TOOK EFFECT WHEN EMPLOYEE RECEIVED LETTER**

The Court of Appeal has held that, in the absence of an express term, contractual notice of termination takes effect when the employee personally takes delivery of the letter containing notice. It also said that a notice sent by email was not effective.

In the absence of an express contractual term specifying when a notice of termination is effective, **the notice takes effect from the date it is received by the employee in the sense of them having personally taken delivery of the letter containing it.**

The notice sent by email was not effective as it was sent to the employee's husband's email address, she had provided a postal address, and she had not given permission to send communications to her at this email address.

Employers should where possible give notice of termination personally.

## **POOR ATTITUDE TO CHANGE COULD BE GROSS MISCONDUCT**

The Court of Appeal has held that an employee's poor attitude to organisational change could amount to gross misconduct.

Whether an employee's poor attitude amounts to gross misconduct will depend on the facts of a particular case. In this case the employee had been in a managerial position and had been



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involved in leading a project to alter the way in which services were provided. Various allegations of misconduct were raised against her, including unprofessional and inappropriate behaviour and failure to co-operate, support and lead the service change.

***Employers should always take specific legal advice before disciplining an employee.***

### **COMPULSORY RETIREMENT WAS LAWFUL**

The Court of Appeal has held that the compulsory retirement of police officers, pursuant to the Police Pension Regulations 1987, following budget cuts was lawful and did not amount to age discrimination.

The Regulations allow police authorities to compulsorily retire officers of the rank of chief superintendent or below if their retention is not 'in the general interests of efficiency of the force' as long as the officer has sufficient service to qualify for a pension of at least 2/3<sup>rds</sup> of their average pensionable pay. This means that generally the officer must be aged 48 or over with at least 30 years' service.

In an ordinary redundancy situation tribunals cannot question the commercial or economic reasons of an employer to close a business or make a reduction in the workforce. In the absence of a statutory provision any decision to limit the selection pool to employees with at least 30 years' service would on the face of it amount to age discrimination. However, if a statutory provision makes it unlawful to include anyone with less than 30 years' service in the pool, the selection method would be inevitable, and a claim for unfair dismissal or age discrimination would fail.

It was lawful to limit the pool to this group of officers because there was no other method of selection. The Regulations were the only legal way to reduce the number of police officers on a mass basis.

***Employers should always take specific legal advice where redundancies are concerned.***

### **PENALTY FOR SMOKING IN THE WORKPLACE**

Workers can be fined up to £200. The law doesn't apply to e-cigarettes. Employers can decide if they can be used on their premises.

Businesses must:

- display 'no smoking' signs in all workplaces and vehicles - no smoking signs in Wales must be in both Welsh and English
- make sure people don't smoke in enclosed work premises or shared vehicles

Staff smoking rooms aren't allowed - smokers must go outside.



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Businesses can be fined up to £2,500 if they don't stop people smoking in the workplace or up to £1,000 if they don't display 'no smoking' signs.

Smoking isn't allowed in any work vehicle that more than one person uses, e.g.:

- taxis
- buses
- vans
- goods vehicles used by more than one driver
- company cars used by more than one employee

A worker can smoke in a company car that only they use of - if their employer agrees.

**Residential care homes and hospices** can offer individual smoking rooms but only for residents. The rooms must be well ventilated and smoke mustn't get into other rooms.



**PHILIP IVINSON LLP**

- **Specialist in all Employment Matters**
- **For all your HR Help and Guidance**

Telephone: 01582 439795

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