



Employment Law Newsletter - January 2019

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As we congratulate ourselves on surviving dry January and our new regimen of healthy eating and exercise, we're hit with wintry showers, freezing fog and icy roads. While we can't control the adverse weather, we can anticipate the obstacles it may bring and take steps to avoid them.

Winter weather

Employees who can't get to work

You could refuse to pay an employee who can't get to work because of severe weather, even if it's not their fault. However, what you can do and what you should do may differ. The cost of paying someone who can't make it in may be outweighed by the benefit in morale that you achieve by paying them for a snow day. Courts are increasingly willing to hold employers liable for acts by employees that are closely connected with the performance of their job so you should not encourage them to travel in dangerous weather.

What if you need someone to work?

Many jobs can be done from home. So, when bad weather approaches, you should encourage employees who frequently work from home to do so when severe weather makes travelling difficult or even dangerous. For others, check whether their contract of employment allows you to require them to work from home rather than just take the day off. If it doesn't, speak to them about your plans with a view to reaching an agreement. Remember that some employees' homes will not be suitable work places so consider the health and safety aspects of homeworking before imposing a requirement.

What about using annual leave?

Faced with taking paid holiday or losing a day's pay, most employees, if given a choice, will take annual leave. You can offer employees the chance to book holiday if they can't make it in.

Could you avoid paying staff by closing the workplace?

If employees are working from home, you must pay them their normal wage. If an employee is unable to work because you have chosen to close the premises, this will in effect be a period of lay off. Unless you have a contractual provision permitting unpaid lay-off, you should pay them as normal.

Must you permit parents time off if their children's schools have closed because of bad weather?

Employees have a statutory right to deal with an incident that occurs unexpectedly in a period during which an educational establishment is responsible for their child. However, the right is limited to sufficient time off to deal with the immediate issue and sort out longer-term arrangements if necessary. So, if the school will be closed for a week, it would be reasonable for them to make alternative arrangements in a day or two. The employee must tell you the reason for the absence as soon as reasonably possible and how long they expect to be away. The time off is unpaid.

Regulations on executive pay ratio

The [Companies \(Miscellaneous Reporting\) Regulations 2018 \(SI 2018/860\)](#) introduce new reporting requirements on certain companies. Quoted companies with more than 250 UK employees will be required to include certain pay ratios for the relevant financial year in the directors' remuneration report. The pay ratios compare the total annual remuneration of the CEO to UK employees whose pay and benefits are on the 25th, 50th and 75th percentiles.

The reporting requirements under the Regulations apply to financial years beginning on or after 1st January 2019. Therefore, the first reports will appear in 2020. You should start gathering evidence now.

Dismissing for urinating in a loading yard was discriminatory and unfair

In [Asda Stores Ltd v Raymond](#), the Employment Appeal Tribunal (EAT) found that Asda had acted unfairly when dismissing one of its lorry drivers for publicly urinating near one of its shops. It had also discriminated against him because of his disability.

Where did the employer go wrong?

Investigation

On leaving his vehicle, Mr Raymond, who had diabetes had been 'overcome by a desperate and uncontrollable urge to urinate'. The employer failed to investigate the reasons why Mr Raymond had urinated or to obtain any medical evidence.

Disciplinary hearing

The disciplinary officer did not acquaint himself with the particular policy or provision that it was alleged Mr Raymond had breached.

The charge against Mr Raymond was not simply one of urinating in the yard, or even of urinating on pallets, but that by urinating he had breached health and safety regulations and seriously or wilfully neglected company property. In the EAT's view, had Asda been genuinely concerned

about a serious breach of regulations, it would have had to know what provisions were being breached in order to know the seriousness of the charge.

Appeal

The appeal didn't remedy any of the earlier failures.

A fair misconduct dismissal should be supported by an impartial and thorough investigation in which you search for evidence to exonerate your employee as much as to condemn them.

Extend itemised pay statements to workers

From 6 April 2019, the right to an itemised pay statement will be extended to workers, not just employees.

Further, where a member of staff's pay varies according to time worked, the itemised statement must include the total number of hours worked for which variable pay is received.

This can be done either as an aggregate figure or as separate figures for different types of work or different rates of pay.

Publish second gender pay gap report

Employers with 250 or more employees on the 'snapshot date' (31st March in the public sector and 5th April in the private and voluntary sectors) must report on their percentage gender pay gap annually within 12 months of that date.

This means that the deadlines for the second round of reports are 30th March or 4th April 2019. You need to be ready to publish your second report on both your web site and the .gov.uk site, if you have not done so already.

In the private and voluntary sectors, your report must also be accompanied by a written statement confirming its accuracy. While you are not obliged to provide a narrative to justify any gender pay gap, an explanation may help to limit any reputational damage. It will also provide any opportunity to highlight any reduction in the gap or provide good reasons for any increases in the gap.

Post-Brexit immigration rule changes

Regardless of whether a deal on the UK's exit from the EU is agreed, the rules for employing EU nationals will change sooner or later. Once the UK leaves the EU, free movement will end, although in practice this is likely to be delayed pending legislation to repeal the current arrangements. Also, it will take time to put in place the practical arrangements necessary to make this possible.

The government has introduced a scheme: [Settled and pre-settled status for EU citizens and their families](#), under which EU workers already in the UK will be able to apply for "settled status", which will allow them to live and work in the UK indefinitely.

In the future, the employment of workers from the EU is likely to be subject to restrictions in the same way as the employment of other foreign nationals, so you will need to adjust your recruitment processes accordingly. Recruitment and retention policies will need to be reviewed for effective workforce planning.

Start preparing for parental bereavement leave and pay

The government has confirmed that it intends to introduce a right for bereaved parents to take paid time off work. It is proposed that bereaved parents will be able to take leave as a single two-week period, as two separate periods of one week each, or as a single week. They will have 56 weeks from their child's death to take leave.

The right will apply to any parent who loses a child under the age of 18 or suffers a still birth after 24 weeks of pregnancy. Parents with at least 26 weeks' service will also be entitled to be paid for this leave at a statutory rate.

Although the government has yet to publish the regulations specifying the detail of the right it is expected that it will be afforded not just to biological parents, but also those who have primary care responsibilities for the child and their relationship is parental in nature. This should include step-parents, legal guardians and those who obtained a court order to give them day-to-day responsibility for the child.

The new right is expected to come into force in April 2020, but you should start preparing for it during 2019, and decide whether to introduce your own bereavement leave policy.

If you would like to discuss these or any other issues facing your organisation please speak to your usual contact at Watershed or Keith Morgan on +44 161 703 5611

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