



Employment Law Newsletter - January 2020

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The twilight zone of Christmas and New Year, where we spend some time in the office, some time at home, and forget the days of the week, is over. But many of your people will be wondering whether they can be just as, if not more, productive, working at home.

So, how should you deal with it?

How should you manage home workers?

The Care Quality Commission (CQC) has announced that at the end of March 2020, it will stop supporting its home workers by paying for their broadband. In contrast, BT gives its home working employees an allowance for an ergonomic chair, a desk and a laptop. It also supplies broadband. BT broadband, of course.

The different approaches highlight the lack of consistency in this area despite 1.7 million people regularly working from home, a number that is set to grow.

Allowing people to work from home can help attract and retain staff, save travel costs and time along with promoting a healthy balance between working and living.

What should you consider?

Criteria

Who can apply and what factors will you consider when assessing a request? It is a form of flexible working so you may adopt similar rules. You may decide that those with 26 weeks' continuous employment can apply and that the business will consider how it will affect quality and

performance along with any additional cost before agreeing. Create a policy that, among other things, says people can ask to work from home, and you will allow it where it is operationally justified, but it is not a contractual right.

Health and safety

Assess your employee's home working arrangements so that you can identify and remove, or at least minimise, any hazards. Do they have a suitable room in which to work? Do they require display screen equipment or other equipment? Obtain their agreement to you carrying out a risk assessment as a condition of the application.

Attending work

Explain that although they work from home, you will, at times, require them to attend the workplace and other locations for training, team meetings or other business-related matters. Agree who will bear the cost and remind your employee that you expect them to take adequate rest breaks pursuant to the Working Time Regulations 1998.

Confidentiality

Your GDPR obligations still apply. Home workers must comply with your data protection policy and take all necessary steps to protect personal data. That includes access by their family and visitors. Protect devices, your network and the transfer of data with adequate encryption.

Insurance

Mortgage providers and landlords may prohibit residential properties from being used for commercial purposes so your employee should obtain the necessary permission.

Length of the arrangement

Consider a trial period at the start so that you can assess whether the arrangement works. Explain that they will return to being office-based if it fails.

Provide a right for either party to terminate the home working arrangement by giving written notice.

New leave and pay for bereaved parents

A new statutory payment will be introduced from 6th April 2020. It's intended to support parents who lose a child under the age of 18.

Bereaved parents will have the right to time off work within 56 weeks of the date of their child's death. Those with 26 weeks' continuous service and average earnings at or above the lower earnings limit will get up to two weeks' leave paid at up to £148.68 per week (based on current figures).

We don't yet have regulations that confirm the fine detail. The definition of parent may include adopters, foster parents and guardians, as well as more informal groups such as close relatives or family friends who have taken responsibility for the child's care in the absence of their parents.

New rules on written statements of terms and conditions of employment

From April 2020, the requirement to provide minimum written terms will be extended to all workers and employees engaged on or after 6th April 2020 in England and Wales. You will need to include extra terms on the working pattern, the entitlement to paid leave, any probationary period along with its length and any mandatory training that you provide.

Current employees and workers will also be entitled to request updated minimum written terms including the new, additional information, which must be provided within one month.

So, what should you do?

You should review and update your current written terms in readiness for these to be provided to new employees from April 2020.

Be prepared for current employees to exercise their right to request updated written terms that include the additional information.

The holiday reference period will increase from 12 weeks to 52 weeks

From 6th April 2020 the reference period used for determining a week's pay when calculating holiday pay for workers with irregular hours will increase from 12 to 52 weeks. The change is designed to allow greater flexibility for workers in choosing when to take holiday, particularly for those in seasonal or atypical roles that may limit them from benefiting from their full holiday pay entitlement.

As with the current twelve-week reference period, any weeks not worked are excluded from the calculation. Where there are fewer than 52 weeks' of pay information, you must include as many whole weeks of pay information as possible.

Don't leave changes to the calculation of the new pay reference period until the last minute. Start preparing now.

Proposed increases in statutory maternity, paternity, adoption and sick pay

The Department for Work and Pensions has placed a paper in the members' library of the House of Commons setting out proposed increases in a number of statutory benefit payments. From April 2020 the weekly rate of statutory sick pay is expected to increase from £94.25 to £95.85.

The weekly rates of

- statutory maternity pay
- maternity allowance
- statutory paternity pay
- statutory shared parental pay
- statutory adoption pay (SAP)

are set to increase from £148.68 to £151.20.

The rates will be confirmed once an Order is made. The increase normally occurs on the first Sunday in April, which would be 5th April 2020.

More equal pay problems at the BBC

The principle of equal pay is that you should pay men and women equal pay for equal work unless the difference is due to a material factor which is neither directly nor indirectly sex discriminatory.

In [Ahmed v BBC](#) an employment tribunal has decided that Samira Ahmed's work on Newswatch was like, or of equal value to, Jeremy Vine's work on Points of View for equal pay purposes. For each episode, the BBC paid Ms Ahmed £440 but paid Mr Vine £3,000.

Each presenter led a 15-minute pre-recorded programme with a magazine format, which discussed viewers' opinions. The producers wrote the scripts. There was no material factor to justify the difference in their pay. The tribunal said, having a "glint in the eye" did not require any

particular skill or experience.

Ms Ahmed could now be awarded up to £700,000 in compensation.

Also this month, Sarah Montague, a BBC radio presenter, has confirmed that in 2019 she secured a £400,000 settlement and an apology from the BBC after finding out that her £133,000 salary was lower than that of her co-presenters.

These cases provoke several questions.

How can you defend an equal pay claim?

By showing that the difference between the claimant's pay and their male comparator's is due to a material factor that does not discriminate directly because of sex. Typical factors that may qualify would be seniority, length of service or merit, qualifications or skill.

If the material factor is indirectly discriminatory (in that, as a result of the factor, the claimant and other female employees doing equal work to theirs are put at a particular disadvantage when compared with men doing equal work to theirs) you would need to show that it is a proportionate means of achieving a legitimate aim.

Can you determine your own levels of pay?

Although it is largely up to you to agree pay with each employee, legislation places restrictions on what can be agreed. In addition to paying men and women equal pay for equal work, you must not pay less than the national minimum wage or discriminate against employees in relation to their pay on grounds of any protected characteristic.

Also, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 provide that workers must not be treated less favourably in relation to their pay on account of their part-time or fixed-term worker status.

What about other benefits?

Your duty to ensure that you pay men and women equally for like work, work rated as equivalent or work of equal value also applies to their terms and conditions of employment. For example part-time working and benefits for dependants should be available to all employees in the same or similar circumstances.

What is "like work" between a man and a woman?

A woman is employed on like work with a man if her work is the same or broadly similar and such differences as there are between their work are not of practical importance. The test is the nature of the job and not the specific tasks undertaken so, for example, a cleaner in a kitchen will do broadly the same work as one on a factory floor.

The comparison should consider the frequency with which differences between their work occur in practice and the nature and extent of those differences. If the man has a much wider range of duties than the woman this will constitute a significant difference, meaning that there cannot be a valid claim for like work.

Can you defend an equal value claim on the basis that you have carried out a job evaluation scheme?

Yes. Although there is no obligation to carry out a job evaluation scheme, where an analytical job evaluation scheme has given the claimant's job a lower value than that of their comparator, an employment tribunal is required to find that the claimant's work is not of equal value to the comparator's unless it reasonably suspects that the study is discriminatory on the grounds of sex or is otherwise unreliable.

These cases at the BBC remind us of the importance and benefit of having transparent processes for determining pay and maintaining accurate records of the rationale for any pay decisions.

Regularly review your staff's pay to check that the reason for any difference is not due to an inadmissible reason and that you can support it with contemporaneous evidence.

[Here is our briefing note on equal pay.](#) Do let us know if you wish to discuss an equal pay audit or job evaluation scheme.

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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