

### Developments in 2017

**A very happy (if belated) New Year to you all. As usual, we are taking the start of the year as an opportunity to provide an update on developments in the employment field for 2017.**

**We are being asked by clients about the likely impact of Brexit on employment matters during the forthcoming 12 months but we believe it will be negligible. Exit negotiations will take up the time, leaving no room for new employment initiatives or related law reform.**

**This is what has been put in place for 2017:**

#### Apprenticeship Levy

Employers with an annual payroll of more than £3 million will be required to pay a 0.5% levy on their total pay bill starting on 6 April 2017.

Large employers will be able to access levied amounts, plus a government top-up of 10%, to fund apprenticeships from accredited training providers.

Smaller organisations not required to pay the levy will be able to receive funding for accredited apprenticeships by contributing 10% towards the cost of an apprenticeship, with the Government paying the remaining cost.

#### Changes to Rules for Employing Foreign Workers

Employers sponsoring foreign workers with a tier 2 visa will be required to pay an immigration skills charge of £1,000 per worker (£364 for small employers and charities) beginning in April 2017. The immigration skills charge will be in addition to current fees for visa applications.

In April 2017, the minimum salary threshold for “experienced workers” applying for a tier 2 visa will also increase to £30,000. New entrants to the job market and some health and education staff will be exempted from the salary threshold until 2019.

#### Increase in National Living Wage and National Minimum Wage

The National Living Wage applies to all working people aged 25 and over. With effect from April 2017, the National Living Wage rate will increase from £7.20 to £7.50 per hour.

For those employees who are aged under 25, the National Minimum Wage will also increase in April in accordance with the following details:

- £6.95 per hour – 21-24 years old

- £5.55 per hour – 18-20 years old
- £4.00 per hour – 16-17 years old
- £3.40 for apprentices aged under 19 (or over 19 if in the first year of apprenticeship).

#### New Childcare Scheme

Tax-Free Childcare is a delayed government scheme to help working parents with the cost of childcare which now looks as if it will be launched in the early part of this year.

The scheme doesn't rely on employers offering it, unlike the current scheme Employer-Supported Childcare which will remain open to new entrants until April 2018.

Tax-Free Childcare will allow parents to open an online account which they will be able to use to pay for childcare from a registered provider. The scheme will be available for children up to the age of 12, or 17 for children with disabilities.

For every £8 a parent pays in, the Government will pay in an extra £2. Parents can receive up to £2,000 per child annually towards their childcare costs, or £4,000 for disabled children.

Any working family can use Tax-Free Childcare, provided they meet the eligibility requirements. To qualify, both parents will have to be in work with each expecting to earn at least £115 a week. Each parent must not have income over £100,000 per year.

#### Changes to Trade Union Balloting

The implementation date for new balloting requirements under the Trade Union Act 2016 has yet to be confirmed but it is scheduled for this year.

The new rules specify that a successful vote for strike action will require a 50% minimum turnout and a majority vote in favour of industrial action.

Industrial action in important public services will require a strike vote of 40% of all eligible voters.

#### **Uber and Out?**

**A significant amount of media time and space has been given to the recent Employment Tribunals involving Uber and CitySprint.**

Both organisations are part of the so-called gig economy which depends upon a labour market focussed solely on short-term contracts and freelance work as opposed to permanent employment. So, companies operating in this way will depend upon using the self-employed which means they can avoid

statutory costs such as the minimum wage, pensions, holiday pay and sick pay which have to be provided to employees.

In both cases, individuals who were working on behalf of the companies based their claims on the fact that they were employed rather than working for themselves. Both Uber and CitySprint maintained that the claimants were independent self-employed contractors who could choose where and when they worked.

The Employment Tribunals found for the claimants on the basis that they were expected to work when required and could not decide to bring other people in to undertake the duties on their behalf.

The decisions could have a massive impact although it is important to highlight that, because Employment Tribunals were involved, precedents have not been set and so other organisations are not bound by those decisions.

For Uber and CitySprint, the potential resulting increase in employment costs could result in the foundations of their business models in the UK being undermined. It does not come as a surprise, therefore, that Uber immediately appealed the decision and will, no doubt, take it as far as they can in order to get a ruling in the company's favour. If not, it is possible that the business will no longer be viable.

There are wider implications too. There are an increasing number of start-up businesses adopting Uber's model. The risk now is that they could owe a lot more to their workers in the shape of rights such as paid holiday and minimum wage than their budgets allow.

We highlighted the risks associated with using contractors and freelancers in our last Employment Briefing and mentioned that Her Majesty's Revenue and Customs are taking actions against companies in the gig economy for similar reasons. If HMRC wins the day, there will be demands for backdated and ongoing income tax and NI contributions from those employers.

There is a lot more court time and legal debate to take place before we can be absolutely clear on the legal position. Uber is taking its case to the employment appeal tribunal, and following its decision there could be further hearings in the court of appeal and then the supreme court. Any payments due to drivers will not be calculated until that process is over.

If, however, you are considering following a similar business model, we would advise that you proceed with caution and factor in the fact that, at some time in the future, you may be asked to pay the people who work for you holiday pay, sick pay, pension contributions and the minimum wage. Anything due

would be backdated from the first day of employment.

## **Staff Surveys – Do we really want to know what our team thinks?**

**How recently have you canvassed opinions from members of your team as to how they feel about working as a part of your organisation – last month, last year, a few years ago.....perhaps never?**

As we embark on a new year, it is a good time to consider undertaking a survey but, before you leap in, it is appropriate to weigh the positives against the negatives.

Firstly, let's look at the benefits:

1. Team members are able to give more open, honest feedback to their employer through surveys because they are conducted on an anonymous basis. So, you are more likely to find out what people really think rather than what you want to hear.
2. You can focus on the issues that seem to matter to all employees across the whole organisation and this makes everyone feel they are being consulted on the real issues.
3. You may well receive good ideas which, for all sorts of reasons, people don't feel able or comfortable to put forward through their line management
4. The responses provide you with an agenda to improve the working experience for your people within the organisation.
5. You can compare subsequent surveys in the future to see what impact there has been from any changes implemented as a result of previous surveys which will become a motivating tool.
6. You can congratulate managers who get positive feedback from their teams.
7. You can use the results to assist you in managing the performance of your managers.

Now, let's consider the potential downside:

1. You may not like what you hear!
2. You may not receive enough responses to make the comments valid.
3. You may raise expectations amongst the staff that changes they suggest or request will take place but it may not be possible for sound business reasons.
4. People may not express their real views which, in turn, may skew the outcomes (although in our experience this is unlikely).

Generally speaking, the positives outweigh the negatives, some of which can be managed to minimise their effect.

You will need to take on board a few key points if you decide to go ahead with a survey:

- think carefully about the questions you want to ask and how you write them (it's a good idea to try out the questions before you issue the survey to everyone);
- ensure the process enables people to respond anonymously,
- explain to people what the process will be and how they will be advised of the outcomes;
- when you repeat the survey at a later date, use the previous questions (you can add new ones too) so that you can then compare progress from the last survey;
- it helps if you can group responses by department/division so that you can see if certain issues relate to only certain parts of the organisation;
- encourage the team to add narrative to their responses (not just tick boxes) as this helps to explain why they have responded in the way that they have;
- manage expectations up front to explain that you will implement any changes that will work for the organisation and the staff but that there may be some things that it is not possible to do (on the grounds of cost, resources, etc.).

In our experience carrying out staff surveys is a really useful, highly effective tool that will assist you in making your organisation a great place to work. If you need some guidance or support in developing suitable content and undertaking relevant analysis, we would be pleased to help.

## **Redundancy Ban Being Considered for New Mothers**

**You may have read in the press last week that pregnant women and new mothers could be entitled to additional protection from redundancy if new government proposals go ahead.**

A redundancy ban, whereby employers would be unable to make women redundant during pregnancy, maternity leave or for six months after they return to work, is being considered in response to the women and equalities committee's August report on workplace pregnancy discrimination.

The report called on the government to follow Germany's lead in granting more protection for women who were pregnant or had returned from

maternity leave, after research conducted as part of the report revealed that cases of pregnancy-related discrimination had doubled in the last decade, with current figures standing at 54,000.

MCM finds the proposal difficult to understand. Pregnancy-related discrimination is illegal and appropriate legal action can be taken by the victims. So why is further protection necessary unless what exists currently is proving ineffective? Surely, therefore, it would be more relevant to investigate ways to improve the current legislation rather than to add new laws?

In addition, when there is a genuine need to make employees redundant, why should one particular group have protection? It will restrict the ability of employers to carry out their current legal obligation to undertake fair redundancy exercises when **all** employees must be treated equally. A further complication is that giving special rights to one group will result in conflict within the workplace.

Pregnant women and new mothers are not the only vulnerable group in employment. As a result, if they are given greater protection than others, it is highly likely that claims for discrimination will emanate from those other groups.

Some readers might flinch at this but we also have to consider that the number of unethical employers who are discriminating on pregnancy-related grounds may increase and decide not to employ women who may fall within this group at all!

A strong and fair legal framework is in place already but we need a more effective education process with greater access to information to ensure women understand their rights and employers understand their obligations.

## **74% of Employees Want More Freedom at Work**

**A study by the Institute of Leadership and Management (ILM) has found that more than half of employees would consider leaving their job if the structure and culture of their organisation didn't change. According to the research, lack of employee empowerment is the root cause of much dissatisfaction in the workplace.**

The research joins other studies in showing that poor leadership will cause many to consider quitting their jobs this year. A recent study by Crunch Accounting found a third of staff plan to quit, with bad bosses cited by 46 per cent of staff at the top reason.

The ILM study reveals that 74% of staff surveyed said they wanted more freedom in their roles with a third believing that their work was overly regulated and that they had to work within overly controlled structures.

As a result, employees were having difficulty fitting in to their organisation with just 24% feeling that their line managers fostered collaboration.

The survey showed that people want to be given greater autonomy and offered the opportunity to be innovative in a flexible, friendly working environment.

It is possible to create a participative workplace of this nature without losing control or productivity. Modern, effective leadership based upon trust and confidence in your team's skills and knowledge will allow your people to develop the commitment, passion and teamwork which will attain the business goals you require. It will also provide the challenge, involvement, interest and career growth to retain employees who are motivated and willing to adapt to change.

## **And Finally.... Management Gone Awry?!**

**To most managers, treating members of your team with respect is at the very heart of effective leadership. There is, however, the odd exception...**

An employee of Urban Planet, a Canadian Retailer, with a food allergy ate something she should not have done and realised that she had left her EpiPen at home. Because she went into anaphylactic shock and after her manager forgot to call 911, she was driven to hospital by a colleague. When she was being taken home in an ambulance, she received a text from her boss confirming that she would not be needed at work anymore. Urban's CEP later apologised.

Bus drivers at Blackpool Transport almost went on strike in 2010 after two 20 stone bus drivers were suspended on full pay until they lost seven pounds. The company feared they might break their seats.

A Job Centre insisted that the term 'hard-working' was discriminatory and had to be omitted from a Liverpool optician's advertisement for a Receptionist. In 2010, an official at a Job Centre in Norfolk refused to include the word 'reliable' in an advert for health workers, claiming they could be sued for discriminating against the unreliable.

Two employees of Jerez city council were disciplined in 2016 after failing to turn up to work for a full 15 years apiece. The pair claimed that they were carrying out union duties by using up allotted hours not required by other staff. Appropriate action was taken but does anybody know of a longer absence?

A training course should be an opportunity to develop new or existing skills as well as improve teamwork with colleagues. Not always, however. Seven staff from insurer Eagle Star were hospitalised when a teambuilding exercise involving walking over white hot coals ended badly.

Earlier this year, heat and motion sensors were installed into the offices of The Daily Telegraph to

monitor how long members of staff were at their desk. One journalist noted "Never has going for a s\*\*\* on company time felt so rebellious. The sensors were withdrawn after protests from employees.

(Thanks to *People Management* magazine for the above material).