

Post-Election Confusion?

Some of you may have noticed that we did not circulate a Spring Employment Briefing in April. The General Election had just been announced and so we decided to delay producing it because we felt that there would be greater clarity on employment and related issues following the results.

It just shows how wrong you can be! A minority government, an insecure Prime Minister and doubt over the country's approach to Brexit has led to understandable uncertainty and confusion. Consequently, the government is not in a position to introduce the initiatives proposed in the Conservative's election manifesto. Indeed, it will find it difficult to avoid some of the actions being pushed by the opposition with the demands to abandon the 1% cap on salary increases for public sector employees being at the top of the list.

Many people felt that Brexit would result in a rapid move away from EU employment policies and practices. However, through the Queen's Speech, the government has confirmed that it will introduce the EU's General Data Protection Regulations in May 2018. To the general public, this action is unlikely to reinforce the belief that Parliament is committed to Brexit.

The doubts over what protection and rights EU citizens will have in the UK in the future has resulted in a reduction in numbers coming to the UK to seek employment. As a result, businesses in Britain who have become reliant upon this sector as a key source of labour are now struggling to reach required staffing levels to remain efficient.

So, there is considerable confusion and uncertainty and, regrettably, there is no indication that the outlook is going to change for the foreseeable future.

Publication of Taylor Review Receives a Mixed Response

The Taylor review, commissioned by the government to investigate modern employment practices, has been met with a mixed response.

Part of the purpose of the review was to look at current employment issues like zero-hour contracts, considered controversial by some. It was also to investigate how "gig economy" firms like Deliveroo and Uber treat their workers. The term gig economy loosely refers to the rising number of firms that rely on more casual than full-time workers, who often take work via smartphone apps.

In the report, Mr Taylor has created seven principles for "fair and decent work" namely:

- that the "national strategy for work" should have the explicit goal of good work for all. Government is accountable but businesses also need to embrace responsibility;
- worker status should be renamed dependent contractor status and it should be made easier to distinguish between these individuals and those who are genuinely self-employed;
- employment law and the way it is enforced should help companies make the right choices and enable individuals to know and exercise their rights;
- good corporate governance and strong employer relations, not more employment law, are the best way to achieve better work;
- everyone should feel they have "realistically attainable ways to strengthen their future work prospects", whether through formal learning or on-the-job activities;
- organisations should take a more proactive approach towards workplace health, given that "the shape and content of work" and wellbeing are closely related; and
- employers in different sectors should form sectoral strategies to ensure individuals do not get stuck at national living wage level and are able to progress in their careers.

The report concluded that dependent contractors are most at risk of being taken advantage of by businesses and that those who fall under this category should be granted additional protections.

Other recommendations include:

- for those organisations running platform-based working – essentially, platforms that connect workers via apps with customers who want a service – to be able to show they are paying their average worker 1.2 times the national minimum wage;
- the report suggests that regulation is not the best answer for improving workers' experiences. Instead, responsible corporate governance, better management and stronger employment relations are required and companies should aim to be open about their practices and make sure all their workers are engaged and feel heard;

- although apparently not calling for tribunal fees to be scrapped, it has advocated significant changes to the system, including introducing a mechanism where people can have their employment status determined without having to pay tribunal fees. The review also calls for businesses that don't pay awards from tribunal rulings within a reasonable timeframe to be named and shamed;
- the review suggests the creation of a right that would allow those who have worked on a zero-hours contract for 12 months or longer to request fixed hours from their employers that better reflect the hours they have actually been working;
- it suggests also a right which would allow agency workers who have been placed with the same hirer for at least 12 months to request a direct contract of employment. The hirer would be obliged to treat any such requests seriously.

Mentoring – Does It Work?

The book 'Everyone Needs A Mentor' is viewed as an authority on using mentoring for people development. Written by David Clutterbuck, it explores the concept in full but we would take issue with the statement used in the title and, instead, ask 'does everyone really need a mentor'?

We do not mean to sit on the fence but, when considering people, our answer is maybe! We have no doubt that certain development needs will not be met most effectively by mentoring. In addition, it will not suit some individuals and so will not work no matter how competent the mentor.

But how do we get the most out of the concept? The basic principle of mentoring is that one person provides a 'listening ear', support, guidance and a sounding board to others who are probably less experienced and looking to develop their skills, knowledge and expertise. The following factors must be taken into account:

- Logic suggests that the role should be taken up by the immediate line manager. However, very often it works more successfully when the mentor is not a part of the direct line management in the area of the business that the mentee works.
- In order for a mentoring relationship to work there needs to be mutual respect. The mentor should only provide advice when the mentee asks for it.
- Forcing ideas on someone is likely to backfire. Because a particular course of action worked well for the mentor, it does not mean it will work for the mentee in the same way.

- There is a presumption that mentors only share what has worked. Sharing their mistakes can have just as much, if not more, value for someone because as the mentor you're showing what you've learned and how you have dealt with things when they have gone wrong.

How do mentoring relationships get established? In larger organisations, they can often be set up in a formal way as part of a graduate development or leadership development scheme but they can also be established on a more informal basis. Indeed, in our experience, relationships that are 'imposed' on people don't always work. Sometimes, the chemistry doesn't work between the two people involved and, if neither party feel they are gaining value from the relationship, there is a greater likelihood that it won't work.

It may be that an individual does not need a mentor all the time but there may be a need for temporary support when, for example, managing a new project or embarking on a role that is new.

Encouraging staff to work with a mentor can be a very helpful way of developing the team outside of the formal performance management process. Managers of mentees will need to trust the mentors to work in a positive way and not feel undermined in that members of their team are talking to someone else outside of the department about their development. This shouldn't be a problem when managers recognise the value of mentors particularly when they are actually doing the line manager a favour!

General Data Protection Regulations

It may come as a surprise to many that the UK is still introducing EU-generated legislation onto its statute books such as the General Data Protection Regulations (GDPR) which is to be introduced in May of next year. We will still be a part of the EU at that time and so we have a duty to comply with the requirements.

Many experts are advising that we all need to take action to comply with the regulations as a matter of urgency. We would, however, recommend caution on this front because our Parliament has been known to make changes and introduce variations on previous EU regulations e.g. the creation of an 'opt-out' on the Working Time Regulations.

From an employee and employment perspective, the key changes are:

- It will no longer be adequate to have a blanket clause in contracts of employment which states that an employee is deemed to give consent to the lawful processing of their data. Instead, we will need to demonstrate that consent has been explicitly given for each processing purpose of the data in question. We will have to show that consent is freely given and that the consent is

informed. Finally, an employee will have the capacity to withdraw consent at any time.

- The rights of employees to request access to data are to change. The type of information they can request is more extensive and the time taken to provide information is reduced from 40 days to one month. The right to charge a fee is removed.
- In certain circumstances, individuals can request that their personal data is permanently deleted.
- If there is a data breach, an employer will be obliged to notify the Information Commissioner's Office without undue delay and, where feasible, within 72 hours of the breach. The exception will be when a breach is unlikely to result in a risk to the individuals concerned.

It will be necessary to review contracts of employment as well as related policies and procedures. MCM will be in contact with our clients to discuss and agree the best way forward to ensure compliance with the final legislation.

Shared Parental Leave Unpopular Because Of Complex Rules

Fewer than 7,500 men took shared parental leave (SPL) last year which is the latest evidence that the scheme is still failing to gain acceptance and popularity with parents since it was introduced in April 2015.

Figures from HMRC, which were released under a freedom of information request submitted by People Management, revealed that 7,100 men received shared parental pay in the 2016-17 tax year.

SPL allows new parents to split up to 52 weeks of leave between them to care for their child. The HMRC figures do not track men who took a period of SPL without receiving pay. The scheme was designed to give new parents more choice and flexibility about taking leave to look after a new baby. It is being suggested that the complexity of the rules and the financial gap between statutory maternity pay and statutory shared parental pay in the early weeks of are dissuading people from taking advantage of the benefits.

The results reinforce the findings of previous studies. Research undertaken by the Chartered Institute of Personnel and Development last December found that just 5% of fathers and 8% of mothers had taken SPL.

Margot James, junior minister in the Department for Business, Energy and Industrial Strategy (BEIS), recently wrote to MP Jo Swinson to say the government will be evaluating SPL in 2018, which is likely to include commissioning a survey to measure take-up so far.

Although SPL has not proved popular, men are taking advantage of other schemes available to allow them to some time off to care for their new-born children. In 2016-17, 221,000 men received statutory paternity pay, a modest increase of 5.7 per cent compared with 209,000 in 2013-14.

Taking Care With Employment References

Employer attitudes to obtaining references on prospective employees vary considerably. Some will not bother because past experience shows that they have proved unreliable. Others will ensure that full references are checked thoroughly and without exception.

To further complicate matters, extra care is required following a tribunal ruling that a man had been discriminated against after his ex-employer made comments linked to his sickness absence in a reference.

Mr P Mefful claimed he suffered victimisation and disability discrimination after his former employer, Citizens Advice Merton & Lambeth gave him a reference which resulted in a job offer being withdrawn.

During the course of his employment, Mr Mefful had two lengthy periods of absence – one in 2009 and 2010 after he and his partner lost a baby, and a further stint in 2012 for shoulder pain and hearing loss in his right ear.

Mr Mefful was made redundant and brought a separate case, arguing that his dismissal was unfair and that he had been discriminated against because of his disability. Citizens Advice Merton & Lambeth has since conceded that the dismissal was unfair, but the disability discrimination claim is ongoing.

After a three-year period of unemployment, Mr Mefful was offered a job in 2015 and his former employer was approached for a reference. However, after receiving the reference, the job offer was withdrawn.

In the reference, Citizens Advice Merton & Lambeth noted it would not re-employ Mr Mefful later explaining at tribunal that this comment was linked to his sickness absence.

However, the tribunal found that the employer's records on Mr Mefful's absences were overestimated to a "substantial degree" and, therefore, his potential employer had been provided with inaccurate figures.

Mr Mefful also provided the tribunal with evidence which supported the fact that he had performed well in his role, which was not challenged during cross-examination.

Citizens Advice Merton & Lambeth contended that, even though the reference did comment on Mr

Mefful's sickness absence, it was "true, accurate and fair" and did not arise from discrimination or the earlier tribunal he had brought.

The tribunal ruled that the organisation had "failed to provide any favourable information about Mr Mefful personally or about his performance... This amounted to a detriment and it created what appeared to be an entirely false and misleading impression of his successful eight-year career."

This case shows that giving references is fraught with danger for employers which is why many organisations have adopted a policy of confirming only dates of employment and role held. By doing so, they avoid any potential liabilities.

There may be times when there is an obligation to provide more information. In such circumstances, you must ensure that all of the details provided are balanced and factually correct.

Core Skills of Management Development Programme

We thought that we would give you advanced notice that we will be running our Core Skills of Management Development Programme later this year on 14th, 15th and 16th November.

We have a number of bookings already for the workshop which, as usual, will be held at Highgate House in Northamptonshire – a central location convenient for daily travel for many but which also has comfortable accommodation with great facilities.

You may know that Core Skills has consistently received highly favourable comments on the quality of its content as well as the subsequent improvement in the performance of delegates in their management and supervisory roles. The programme is designed to be highly participative, providing plenty of opportunity for practice, discussion and feedback.

If you would like further information on the content of the programme and/or its suitability for a member of your team please do not hesitate to call Mandy McMahon on 01832 734300 or email her at mandy@mcmconsultants.co.uk.

And Finally....Humour and the General Election!

After being overwhelmed by the focus of the media on the serious side of the General Election, we thought that you might enjoy some of the more eccentric workplace pledges from past elections...

The Eccentric Party's manifesto proposed "eight hours of spare time, eight hours of rest and eight hours of sleep" each day. This year it wanted to ban work before noon.

Replacing the pensions triple lock with an actual padlock was a cornerstone policy this year for the

Monster Raving Loony Party. It had called previously for dedicated pogo stick lanes for commuters.

A 90% income tax failed to win votes for the Dungeons, Death and Taxes Party in 2005. It wanted the money to fund the annexation of France.

CURE (Citizens for Undead Rights and Equality) ran a single-issue campaign in 2010 – greater rights for zombies including raising the minimum retirement age to beyond death.

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