

### General Data Protection Regulation

**Organisations are already familiar with their data protection responsibilities as detailed in the Data Protection Act 1998. By now, most, if not all of you will be aware that, from May 2018, the obligations will be extended under the General Data Protection Regulation.**

The changes will have implications on all aspects of the storage and processing of personal data but, in our role as a HR Consultancy, we are going to focus on the implications for employee data. It is important to get the details correct because fines for non-compliance go up to a maximum of €20 million or 4% of global turnover!

Typically, employers have relied upon employees' consent to data processing – usually by including an all-encompassing consent clause in their employment contracts. The new requirements on obtaining consent from individuals to their data being processed are much more stringent under the new GDPR regime.

Under the new GDPR, there are specific and strict requirements for consent to data processing to be acceptable, namely:

- Consent must be freely given, informed, specific and unambiguous;
- Consent must be presented in a manner which is clearly distinguishable from other matters, in an intelligible and easily accessible form, using clear and plain language;
- Consent must be as easy for an individual to withdraw (at any time) as it is to give.

The consequent implications for employers are as follows:

- Employers will be unable to rely upon general consent clauses to the processing of personal data in employment contracts because clauses of this nature will fall foul of the requirement that consent be freely given, due to the imbalance of negotiating power. In addition, it is likely that they will be distinguishable from other matters.
- There will be a need to identify other justifications or legal grounds for processing personal data permitted by the GDPR. It will be necessary to analyse what data processing is undertaken and to establish where specific consent will be required from an employee.

- Remember, an employee will be able to retract consent at any time and it is important to ensure that they are made aware of their rights.

MCM will be working with our clients between now and May to ensure that appropriate changes and adjustments are made which will include the following:

- Identify what data is being processed, why and for how long. We can then consider which of the legal grounds for processing apply to each of your processing activities.
- If broad consent clauses to cover the processing of personal data are included in employment contracts, they will need to be rewritten.
- If consent is necessary to process personal data, it may well be appropriate to prepare any consent provisions in a separate declaration which is not linked to the employee's acceptance of employment. The declaration will have to be detailed and explicit as to its purpose as well as specific to the organisation concerned.
- When employee consent is obtained, the employee must at all times be aware of his or her right to withdraw at any time and with no detrimental consequences.
- Ensure that all team members are informed of the changes that have been implemented.

The above is not the only HR-related change required as a result of GDPR. For example, all recruitment and selection processes involve personal data and so there will be obligations to meet when processing the data of prospective employees. MCM's clients will be given the appropriate guidance and support to ensure compliance.

### Fit For Work Referral Service Withdrawn

**The Department for Work and Pensions (DWP) has announced the closure of the Fit For Work Referral and Assessment Service because of low referral rates.**

The service was introduced in September 2015, and gave both employers and general practitioners the power to refer employees for a free occupational health assessment when they had been absent from work for four weeks or longer.

MCM believes it is unfortunate that this decision has been taken because the service provided valuable, professional guidance and support on occupational health matters. It was particularly useful for smaller employers who had no other access to expertise of this nature.

It appears that GPs did not support Fit For Work which was the reason why usage was low. Over the two years that it was available, not a single employee of any of MCM's clients was referred to the service by his or her GP.

DWP also announced that it will be overhauling its fit note scheme by extending certification powers to other healthcare professionals. To date, however, it has not yet confirmed who these professionals will be or whether they will be public or private providers.

## What Is 360° Feedback and Should You Be Using It?

**Firstly, 360° feedback is a method of obtaining feedback about a person which is used to assist their development as well as to review their performance. Whether you should be using it depends on a number of factors and, whilst it is a very valuable tool when used effectively, it needs to be considered carefully in the context of your own particular organisation.**

The basic premise of 360° feedback is that it is a confidential tool which is used to obtain individual views from a range of people who interact with the person in question. This is likely to include their manager, colleagues, their staff (if they manage people), their customers and suppliers as you feel appropriate.

A framework is devised focusing on the key skills that are critical to success in the role. This is then translated into a questionnaire with a range of responses and rating options for completion by those invited to provide a confidential opinion of the person in question.

The questionnaire is either completed online or on paper (depending on the level of technology employed) and analysed to provide both individual question responses as well as an analysis of the overall outcomes.

There are important elements that you need to get right:

- questionnaires need to be concise so that it does not discourage people from completing them;
- questions have to be carefully worded to enable clear responses;
- it is unlikely that everyone will be able to answer all questions because relationships will differ with the individual in question – so do

allow a 'not enough information' option to each question;

- leaving a space for 'other comments' is vital – often people have views about a person which do not necessarily fit a particular question and you do not want to miss out on vital insights they may have to share with you;
- use appropriate response scales e.g. frequency, effectiveness, agreement – they give an added depth to responses.

The key to the successful implementation of the resulting data is the ability to provide skilled feedback to the person about whom the data has been gathered (especially where the outcomes are scored very low). The feedback process will allow the creation of a subsequent development plan to develop and where necessary improve future performance.

360° feedback can be a very powerful management tool which can be used successfully to add great depth to the development of individuals but only if it is used appropriately and carefully. If you want to consider giving it a try, MCM would be delighted to discuss how we could help you ensure that the process is a success.

## Increases in National Living Wage and National Minimum Wage

**With effect from April 2018, the National Living Wage rate (which applies to all working people aged 25 and over) will increase from £7.50 to £7.83 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:

- £7.38 per hour – 21-24 years old;
- £5.90 per hour – 18-20 years old;
- £4.20 per hour – 16-17 years old;
- £3.70 for apprentices aged under 19 (or over 19 if in the first year of apprenticeship).

## It Pays to Verify Candidates' CV Claims

**Employers are being encouraged to undertake closer checks on candidate CVs, and qualifications in particular, after an investigation revealed significant fraudulent behaviour which may have tricked British businesses over a number of years.**

Axact, an IT company, has been accused of issuing more than 3,000 fake qualifications to UK-based buyers in 2013 and 2014 alone.

Master's degrees, doctorates and PhDs were all sold from hundreds of bogus online universities operated by the company, according to an investigation undertaken by BBC Radio 4. It is estimated that Axact

has earned millions of pounds from their questionable activities.

The report has also led to questions about whether employers have been doing enough to check the authenticity of CVs, including qualifications, jobs undertaken and the achievements claimed in previous roles.

Research undertaken by the Risk Advisory Group found that 38% of the CVs it analysed from 25-32 year-olds had been falsified. In addition, a poll of 400 people carried out by HR and administration recruitment specialists, OfficeTeam, said the most popular areas for dishonest information or exaggerated claims were work experience (58%), education or qualifications (41%), technical skills (40%) and duties performed in previous employment (30%).

So, do employers take what they are told by candidates as the truth too easily? If employers are not checking, does that encourage people to exaggerate or mislead even more?

References are a means of verifying the information you have been given but there are also professional screening agencies, and some recruitment consultants will verify applicants before putting them forward for a job, or once a job offer is made. There is also an organisation called Higher Education Degree Datacheck (HEDD) – a secure, government-run online portal which verifies the degree qualifications of UK graduates.

Remember also that if employees or prospective employees have been found to falsify information, then you may have a legal case relating to fraud. There have been actions in the past where individuals have been convicted and even imprisoned for CV fraud. If job candidates realised that they were running this level of risk, they might not be as keen to embellish their CV's!

## **Statutory Payment Rates for 2018/19 Confirmed**

**The new rates for statutory maternity pay (SMP), statutory adoption pay (SAP), statutory paternity pay (SPP), statutory shared parental pay (ShPP) and statutory sick pay (SSP) for the 2018/19 tax year have been confirmed by the Government.**

The standard weekly rates of SMP, SAP, SPP and ShPP will increase from £140.98 to £145.18 from 1<sup>st</sup> April 2018 and the weekly rate of SSP will increase from £89.35 to £92.05 from 6<sup>th</sup> April 2018.

The draft Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2018 confirms that the lower earnings limit, below which employees are not entitled to SMP, SAP, SPP, ShPP and SSP, will increase

from £113.00 to £116.00 per week from 6<sup>th</sup> April 2018.

## **Fee Abolition Results in 66% Increase in Employment Tribunal Applications**

Employment tribunals in England and Wales have reported that the number of claims rose 66% in the three months after fees were abolished in July last year.

Employment law experts have warned organisations to scrutinise their employment practices in light of today's (14 December) figures, published by the Courts Service, which revealed that the tribunals' outstanding caseload also rose 37% after London's Supreme Court found employment tribunal fees unlawful in July.

Following the Supreme Court's ruling in July that employment fees were unlawful, the Ministry of Justice took immediate steps to stop charging fees for tribunals, and put in place a fee refund scheme for claimants who had paid fees since their introduction in 2013.

However, Lord Chancellor David Lidington confirmed during a justice select committee meeting in November that the Government was still intending to charge a fee but it needed to be careful to ensure tribunals were still accessible and affordable.

How and when the Government plan to do this is unclear and appears fraught with difficulties, particularly when the Supreme Court has found the whole concept unlawful. Perhaps the statement made by the Lord Chancellor was an attempt by the Government to save face and the plan may never materialise.

## **Credibility of Workplace Pension Schemes at Risk Due to Increase in Costs?**

**The take-up of Workplace Pension Schemes has met little resistance since their introduction in 2012. However, attitudes might change as contribution rates are increased over the next two years.**

From April 2018, all employees enrolled in Workplace Pension Schemes must pay in a minimum of 3% of their annual salary, with employers contributing 2%. The current minimum levels are 1% for both employers and employees.

A year later, in 2019, the levels jump again, to reach 5% for employees and 3% for employers.

It is a significant cost increase for employers at a time when much work is being undertaken to control overhead and other costs. However, the pension cost increase for employers might not materialise because employees may decide to withdraw from the schemes

when they realise that their contributions will increase by 500% over the next 16 months.

A recent survey indicated that 62% of auto-enrolled employees are unaware of the approaching increases. New figures from Aviva have found that 4% of employees have already decided to leave their scheme in April 2018, while a further 12% are actively considering doing so.

We all know that pensions are key to the future security of our employees but when personal budgets are tight at a time when inflation is rising, it must be tempting to take a break from contributing into a scheme.

Last month, the Government also announced that the age at which employees will enter a Workplace Pension will also be lowered. From the mid-2020's, every employee aged 18 or over will be able to save into a workplace pension, as opposed to the present age of 22. The move will affect an additional 900,000 people.

## **And Finally...The British and Their Tea Breaks**

**Apparently, the average British worker spends 109 hours a year taking tea breaks at work! In a survey undertaken by Appliances Direct, it was found that the average tea break lasted seven minutes.**

A separate survey has also revealed some of the more unusual excuses given to avoid making the tea for their colleagues:

- I'm allergic to steam;
- The electricity costs too much;
- I've just painted my fingernails;
- I have heat-sensitive hands;
- I can't find the kettle;
- I don't know how the kettle works;
- I'm allergic to teaspoons.

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