



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

June 2019



WELCOME TO THE THIRD NEWSLETTER FOR 2019

In This Issue

Our newsletter is issued to you quarterly to ensure that you can be kept up to date with employment issues. We will offer helpful hints on how to handle situations within the workplace, but never be afraid to give us a call for both guidance and support. All newsletters are on our website ensuring easy access to current information just click on the newsletter you wish to view.

This Quarter the focus is on the changes in law which may affect your business.

- Following on from Mental Awareness Week...
- Information Update on Employment Issues
- Are you GDPR Compliant or could you be about to Receive a Fine?

We think you'll find the articles very interesting. Please call us on 01442 870742 to discuss any of these articles and see how we can help you and your business more effectively in the field of Human Resources. Alternatively have a look at our website www.workmattershr.co.uk and email us from there or on carolinebrode@gmail.com.

As part of the GDPR we are mindful of the fact that you can choose to receive our e-newsletter. If you are happy to continue to do so no further action is required or if you no longer wish to receive our e-newsletter please reply to this email with 'unsubscribe' in the title and we will remove you from our list or go to our website and there is a removal button in our April newsletter – thank you.

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FOLLOWING ON FROM MENTAL HEALTH AWARENESS WEEK

What is Mental Health?

Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make choices.

Mental ill health can range from feeling 'a bit down' to common disorders such as anxiety and depression to more severe and far less common conditions such as bipolar disorder or schizophrenia.

Most people's mental health will not just be continuously good. Usually it will rise and fall depending on pressures and/or experiences in their life. A person may therefore feel in good mental health generally but also experience stress or anxiety from time to time.

Why is Understanding and Addressing Mental Health Important?

People that feel good about themselves often work productively, interact well with colleagues and make a valuable contribution to the workplace.

A recent Chartered Institute of Personnel and Development study highlighted the impact that mental ill health can have on organisations. The study found that:

37% of sufferers are more likely to get into conflict with colleagues

57% find it harder to juggle multiple tasks

80% find it difficult to concentrate

62% take longer to do tasks

50% are potentially less patient with customers/clients.

The study also found that, for the first time, stress is the major cause of long-term absence in manual and non-manual workers.

Promoting Positive Mental Health in the Workplace

Promoting positive mental health in your workplace can be hugely beneficial. Staff with good mental health are more likely to perform well, have good attendance levels and be engaged in their work.

Managing Staff Experiencing Mental Ill Health

Managers should be confident in supporting staff experiencing mental ill health. It is important that managers are able to spot the signs of mental ill health, know how to approach conversations sensitively and how they can support staff experiencing mental ill health.

Dealing with Stress in the Workplace

Reducing work-related stress can be hugely beneficial to an employer – reducing absence levels and improving overall performance. Employers also have a legal obligation to ensure the health, safety and welfare of their employees.

Organisations should be thinking about the causes of workplace stress, how to reduce them in their workplace and how best to support staff when they do experience stress.

Acas research shows that two thirds of employees suffered stress and/or anxiety in the past year.

FOLLOWING ON FROM MENTAL HEALTH AWARENESS WEEK continued...

Workplace Anxiety and Work Related Anxiety

Anxiety is a feeling of worry, fear, nervousness or unease about something. Employers and managers should understand what can cause anxiety and what signs may indicate a team member is experiencing anxiety.

Where to go for Further Support if you are Experiencing Mental Ill Health

If you or one of your employees is experiencing mental ill health there is help and support for you.

- Access to Work can provide advice and an assessment of workplace needs if you have a disability or a long-term health condition, and are already in work or about to start. Grants may be available to help cover the cost of workplace adaptations to enable you to carry out your job without being at a disadvantage. For more information, go to www.gov.uk/access-to-work.

- Improved Access to Psychological Therapies (IAPT) / Wellbeing Services exist in all localities but there's not a single point of access. You should check with your GP surgery to see if this may be available near you.

- Mind is the leading mental health charity in England and Wales. Their helpline and website provide information and support to empower anyone experiencing mental ill health and general advice on mental health-related law. For more information, go to www.mind.org.uk or call 0300 123 3393.

- The NHS has a website that offers information and practical advice for anyone experiencing mental ill health. For more information, go to www.nhs.uk/livewell/mentalhealth.

- Remploy offers a free and confidential Workplace Mental Health Support Service if you are absent from work or finding work difficult because of a mental health condition. It aims to help people remain in (or return to) their role. For more information, go to www.remploy.co.uk or call 0300 4568114.

- Rethink Mental Illness is the largest national voluntary sector provider of mental health services, offering support groups, advice and information on mental health problems. For more information, go to www.rethink.org or call 0300 5000 927.
- Trade unions – if you are a trade union member, you can seek help and guidance from your trade union representative.



INFORMATION UPDATE ON EMPLOYMENT ISSUES

Regularly Worked Voluntary Overtime should be Included in Holiday Pay Calculation

In **East of England Ambulance Service NHS Trust v Flowers and ors**, the employees presented claims for unlawful deductions from wages contending that the calculation of their holiday pay should take non-guaranteed overtime (NGO) and voluntary overtime (VO) into account. They argued that their contractual terms required both types of overtime to be included, i.e. Clause 13.9 reads: "Pay during annual leave will include regularly paid supplements, including ... payment for work outside normal hours".

In addition, the Working Time Directive (WTD) had been breached because the ECJ had ruled that the WTD requires that workers receive their 'normal' remuneration during their statutory holiday period. The Court of Appeal agreed with the EAT that both claims were valid. Under Clause 13.9, the employees had a contractual entitlement to have NGO and VO taken into account when calculating their holiday pay and there was no basis for distinguishing between either. As for EU law, NGO and VO can be taken into account provided that the pattern of work extends for a sufficient period of time and payments for each type of overtime are sufficiently regular so as to amount to 'normal' remuneration.

£150,000 Settlement for Seven Years of Pay Inequality

A bank employee receiving pay and benefits worth £31,610 less per year for doing the same job as her male counterpart accepted a £150,000 settlement three days before an ET hearing. Employed between 1 September 2010 and 15 November 2017, Miss Williams' (W) starting salary was £45,000, but her male counterpart received £65,000. W's benefits package was 15% of base salary, but her male colleague received 25%. After raising a grievance in June 2017, W was made redundant. W was offered £150,000 to settle the case in October 2018 if she agreed to a gagging clause, but she refused. The case settled after the gagging clause condition was dropped.

INFORMATION UPDATE ON EMPLOYMENT ISSUES continued...

Bill Introduced to Provide New Protections for Pregnant Women and New Mums

The Chair of the Women and Equalities Committee, Maria Miller MP, has introduced The Pregnancy and Maternity (Redundancy Protection) Bill 2019 in the House of Commons. The Bill seeks to prohibit redundancy during pregnancy and maternity leave and for six months after the end of the pregnancy or leave, except in specified circumstances, and for connected purposes. In 2016 the Committee demanded urgent action to address the 'shocking' increase in workplace pregnancy discrimination over the past decade. Miller has criticised the lack of progress made and as neither new parents nor the economy can afford to wait any longer for pregnant women and new mums to get proper protection from redundancy the Bill has been introduced with cross-party support.

Sexual Harassment Case Involving Sexual Advances at a Firm's 'Do' Settles for £270,000

An alleged sexual harassment claim brought by a female investment associate against City firm IMF involving alleged unwelcome sexual advances by one of the male executive directors has settled for £270,000. Personnel Today report that Nathalie Abildgaard alleged that on a work trip to Spain several IMF employees went to a nightclub in Madrid to celebrate the closing of a deal. During the evening, one IMF executive director allegedly made unwelcome sexual advances towards Abildgaard, including sending her text messages inviting her to his hotel room, telling her that "if I was 20 years younger, I would have been all over you" and "I know more about sex. I can teach you a lot of things."

Innovation Plan Published for the Modernisation of Tribunals

The Senior President of the Tribunals has published an innovation plan for the modernisation of employment tribunals in 2019-2020. The three key initiatives planned for 2019 are: (1) to give judges, panel members and users access to a digital case record and provide judges and case workers with the facility to case manage online; (2) identify

and provide the digital evidence presentation needs and the live video hearing needs of the users and judicial office holders; and (3) to digitally record all hearings to provide one of the means by which open access to justice i.e. the scrutiny of public hearings, is facilitated and provide a record independent of the judge and panel members which is capable, where appropriate, of transcription.

£2,600 Awarded after Female Driver Told she should be "Back at Home and in the Kitchen"

In **Nixon v Royal Mail Group Limited**, Ms Nixon (N) is a driver, whose line manager was Mr Mistry (M). An ET upheld N's claim of sexual harassment related to sex in respect of two incidents:

- (1) where M had pulled her hair and
- (2) stated that she should be "back at home and in the kitchen".

With regard (1), the ET stated that "... the reality is that boys pulling girls' hair has been an act of sexual harassment since most of us were children in the playground ... therefore this particular effort at creating discomfort or humiliation was clearly related to gender". As for (2), Royal Mail conceded that the reference to N being at home and in the kitchen clearly relates to her gender and that this was an act of harassment. The ET awarded N £2,600 compensation for injury to feelings.

MD's Repeated Requests for a Massage and Saying He'd 'Tried It on' Was Harassment

In **Groman v (1) Universal Science (UK) Limited; (2) Stratford**, Ms G, booked a two-bed flat to be able to attend a trade show. The MD, Mr S, indicated he would be attending and would share the accommodation. When S and G returned to the flat, S asked G for a shoulder massage twice and asked her to sleep with him. She indicated this was totally inappropriate. Six months later, S again asked G for a shoulder massage, which she declined telling him that it was inappropriate, but he repeated the request on several occasions. Then, at a charity dinner, S answered a question as to whether he and G were a couple by saying

that he had tried at least 20 times but G had rejected him. G resigned and raised a grievance which was rejected on the basis that there was no evidence to support the allegations of sexual harassment. An ET found that the employer did not look fairly and objectively into the allegations and were quick to reach conclusions that they were unfounded. Any reasonable investigation would have uncovered the relevant evidence and G's sexual harassment complaint was upheld.

New Rules Introduced to Widen Access to Offender Work Placement Scheme

The Ministry of Justice has announced that 230 additional businesses have joined the work placement scheme to hire ex-offenders and new release on temporary licence rules will widen access to employment. A year after the New Futures Network scheme was introduced, 81% of firms say that employing offenders has helped their business and 79% of people think that businesses employing ex-offenders are making a positive contribution to society. A rule change will now allow prison Governors greater autonomy to grant Release on Temporary Licence to offenders following a rigorous risk assessment. This will allow offenders more opportunities to work and train with employers while serving their sentence and increase their chances of securing an immediate job on release.

Workers in the UK are Putting in the Longest Hours in the EU According to New TUC Analysis

A new analysis by the TUC shows that workers in the UK are putting in the longest hours in the EU. Full-time employees in Britain worked an average of 42 hours a week in 2018, nearly two hours more than the EU average – equivalent to an extra two and a half weeks a year. The TUC says that Britain's "long-hours culture" is not having a positive impact on productivity, e.g. full-time employees in Germany work 1.8 hours a week less than those in the UK but are 14.6% more productive and in Denmark – the EU country with the shortest hours – workers put in over four hours less than UK workers, but productivity in Denmark is 23.5% higher.

INFORMATION UPDATE ON EMPLOYMENT ISSUES continued...

TUC Survey Shows 68% LGBT People Report being Sexually Harassed at Work

New research published by the TUC shows nearly 7 in 10 (68%) lesbian, gay, bisexual and trans (LGBT) people report being sexually harassed at work. The study found that: (1) 42% of LGBT people said colleagues made unwelcome comments or asked unwelcome questions about their sex life; (2) 27% reported receiving unwelcome verbal sexual advances; and, (3) 66% said they did not tell their employer about the harassment, and a quarter said they didn't report it because they were afraid of being 'outed' at work. The consequences included 16% saying the sexual harassment at work affected their mental health or they had left their job as a result. The TUC is calling for the law to be changed to put the responsibility for preventing harassment on employers, not victims.

Autistic Employee Disadvantaged by Failure to Adjust Open Plan Workplace

In *Sherbourne v N Power Ltd*, an ET upheld S's claim that his employer indirectly discriminated against him on the grounds of his disability, i.e. autism, and failed to make reasonable adjustments to his working environment. S worked in an open plan setting with a busy walkway behind him, and building works going on around him, and he became overwhelmed and distracted. The flexible office environment also caused S problems meaning that he was not always at his own desk. As a result, S had a breakdown, went off sick and was diagnosed by his GP as suffering from an anxiety disorder. An ET found that discrimination had occurred because of a continuous management failure to take reasonable steps to understand S's disability and a failure to implement two sets of adjustments, i.e.

(1) four recommendations from the employer's in-house doctor to facilitate S's return to work, all of which the employer indicated were achievable; and,

(2) dismissing S without completing a management agreed combined welfare and capability procedure, which had included attempting to find S an alternative role.

People Regularly Working from Home up by 27% in Last Decade

TUC analysis shows 374,000 more employees are working from home than 10 years ago, a 27.7% increase in the number of homeworkers in the last decade. 1.7 million people now regularly work from home, of which almost twice as many men as women are homeworkers, 11.9% of managers work at home (more than any other group) and 230,000 disabled people work from home, giving them a greater access to the labour market. The TUC say while the significant increase in homeworking is encouraging there still needs to be a cultural shift for it to be accepted more widely with more employers recognising the benefits of the connected world in which we live.

ARE YOU GDPR COMPLIANT OR COULD YOU BE ABOUT TO RECEIVE A FINE?

While the ICO and FSB have worked together on a compliance-led approach, small firms must still obey the rules. Data controllers are required to pay a charge to the Information Commissioner's Office unless they are exempt.

The cost of your data protection fee depends on your size and turnover. There are three tiers of fee ranging from £40 and £2,900, but for most organisations it will be £40 or £60.

Some organisations for example charities and small occupational pension schemes only pay £40 regardless of their size and turnover.

You can use the free [fee-assessment tool](#) on the Information Commissioner's Office website to find out if and how much you will need to pay.

The Information Commissioner has recently been issuing fines to data controllers for their failure to pay the relevant fees, where relevant.

In a recent case, the IC issued a £4,000 fixed penalty to Farrow and Ball, a well-known paint supplier, for a failure to pay the relevant tier 3 data protection fee of £2,900.

Farrow and Ball appealed the decision on the basis that its failure to pay was an innocent mistake. It argued that the IC's reminder was sent while the relevant Farrow and Ball individual was on holiday. As a result the reminder was not identified as important internally. The fee was promptly paid once the default was discovered.

The matter progressed to tribunal and it found that Farrow and Ball had not provided a reasonable excuse for non-compliance. The tribunal concluded that a reasonable controller would have systems in place to comply with the 2018 Regulations and there was no particular difficulty which explained their departure from the expected standards of a reasonable

controller. The tribunal confirmed there was no evidence of financial hardship or other reason for the IC's discretion to be exercised differently.

In terms of the information available the following information from the ICO website gives clarity as to the requirements and levels of fines.

The ICO has issued the first fines for not paying the data protection fee to organisations across a range of sectors including business services, construction, finance, health and childcare.

All organisations, companies and sole traders that process personal data must pay an annual fee to the ICO unless they are exempt. Fines for not paying can be up to a maximum of £4,350.

This follows regulations which came into force alongside the new Data Protection Act on 25 May 2018.

ARE YOU GDPR COMPLIANT OR COULD YOU BE ABOUT TO RECEIVE A FINE? continued...

These first organisations have been fined for not renewing their fees following their expiry and more fines are set to follow. More than 900 notices of intent to fine have been issued by the ICO since September and more than 100 penalty notices are being issued in this first round.

The money collected from the data protection fee funds the ICO's work to uphold information rights such as investigations into data breaches and complaints, our popular advice line, and guidance and resources for organisations to help them understand and comply with their data protection obligations. The ICO has grown over the last two years to meet its wider data protection remit and responsibilities following GDPR. It now employs 670 staff.

Paul Arnold, Deputy Chief Executive Officer at the ICO, said:

"Following numerous attempts to collect the fees via our robust collection process, we are now left with no option but to issue fines to these organisations. They must now pay these fines within 28 days or risk further legal action.

"You are breaking the law if you process personal data or are responsible for processing it and do not pay the data protection fee to the ICO. We produce lots of guidance for organisations on our website to help them decide whether they need to pay and how they can do this."

Fines range from £400 to £4,000 depending on the size and turnover of the organisation. Aggravating factors may lead to an increase in the fine up to a maximum of £4,350. All fines recovered do not go to the ICO, they go to the Treasury's Consolidated Fund.

The data protection fee is set by Government which has a statutory duty to ensure the ICO is adequately funded, and is part of the Data Protection (Charges and Information) Regulations 2018. It came into force on 25 May to coincide with the new Data Protection Act (2018) and the General Data Protection Regulation. And it replaces the need to notify or register with the ICO.

Under the funding model, set by Government, organisations are divided into three tiers based on their size, turnover and whether it is a public authority or charity.

For very small organisations, the fee won't be any higher than the £35 they paid before May 2018 (if they take advantage of a £5 reduction for paying by direct debit).

Larger organisations will be required to pay £2,900. The fee is higher because these

organisations are likely to hold and process the largest volumes of data and therefore represent a greater level of risk.

If you're not sure whether you need to pay the fee, you should check the ICO's website which has lots of information and a very quick and easy self-assessment test.



Organisations that have a current registration (or notification) under the 1998 Act – prior to 25 May 2018 – do not have to pay the new fee until that registration has expired. You can check if your fee is due for renewal [here](#).

The fees and fines are:

Tier 1 – micro organisations.

Maximum turnover of £632,000 or no more than ten members of staff. Fee: £40 Fine: £400

Tier 2 – SMEs. Maximum turnover of £36million or no more than 250 members of staff. Fee: £60 Fine: £600

Tier 3 – large organisations. Those not meeting the criteria of Tiers 1 or 2. Fee: £2,900. Fine £4,000

There is a £5 discount for payments by direct debit.

Failure to pay the data protection fee is now a civil offence under the GDPR, previously this was a criminal offence under the Data Protection Act 1998.

The Information Commissioner's Office (ICO) is the UK's independent regulator for data protection and information rights law, upholding information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The ICO has specific responsibilities set out in the Data Protection Act 2018 (DPA2018), the General Data Protection Regulation (GDPR), the Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and Privacy and Electronic Communications Regulations 2003 (PECR).

The General Data Protection Regulation (GDPR) is a new data protection law which applies in

the UK from 25 May 2018. Its provisions are included in the Data Protection Act 2018. The Act also includes measures related to wider data protection reforms in areas not covered by the GDPR, such as law enforcement and security. The UK's decision to leave the EU will not affect the commencement of the GDPR.

The data protection principles in the GDPR evolved from the original DPA, and set out the main responsibilities for organisations. Article 5 of the GDPR requires that personal data shall be:

- Processed lawfully, fairly and in a transparent manner in relation to individuals;
- Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- Accurate and, where necessary, kept up to date;
- Kept in a form which permits identification of data subjects for no longer than is necessary;
- Processed using appropriate technical or organisational measures in a manner that ensures appropriate security of the personal data; and
- Article 5(2) requires that "the controller shall be responsible for, and be able to demonstrate, compliance with the principles."

For further advice and to discuss a review of any policies in relation to your organisation please contact us at Work Matters (HR) on carolinebrode@gmail.com.

Thank you for taking the time to read our Newsletter which I hope you found informative. An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly.

In the meantime please contact us if we can be of service to you or your company.

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in the early part of October 2019.