

Workplace Newsletter

Keeping you up to date with all things Employment Law, HR & Work-Based

March 2020



Don't forget: spring clean your employment contracts by 6 April!

Reviewing template employment contracts may not be top of the 'to do list' for businesses at the moment but if you plan to recruit new staff after 6 April you need to at least get it in the top 5.

What is changing?

Section 1 of the Employment Rights Act 1996 sets out the basic employment particulars that must currently be provided to employees.

From 6 April, the following additional information must be provided:

- the days of the week the individual is required to work including whether working hours may be variable and how any variation will be determined;
- any paid leave (other than sickness or holiday) e.g. statutory paid family leave;
- details of all remuneration and benefits (not just sick pay and pension);
- any probationary period, including any conditions and duration; and
- any training entitlement, including whether training is mandatory and/or must be paid for by worker.

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Coronavirus update

key information for businesses facing various COVID-19 challenges.

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Collective redundancy consultation overview

Redundancies are inevitable from time to time. Where these involve 20 or more employees the business must carry out collective (as well as individual) consultation, following a set process and timescale.

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New immigration system announced

Since our update last month, the Government has laid its new immigration bill before Parliament. The new immigration system will apply, from 1 January 2021.

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Welcome

Coronavirus continues to dominate the headlines this month and we've been hearing from a lot of you with questions about it.

We've included our latest key tips here but please do get in touch about your particular issues. In the meantime, stay healthy and check out what else is happening in the world of employment.



outset.

Spring clean your Employment contracts action points [p2>](#)

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The majority of the particulars must be provided in a single document. However, the document can refer the individual to another 'reasonably accessible' document for terms relating to:

- incapacity and sick pay;
- any paid leave entitlement additional to annual leave, e.g. maternity/paternity leave;
- pensions/pension scheme; and
- certain information about disciplinary and grievance procedures.

Who does this affect?

The new requirements will apply to all workers, not just employees, who join on/after 6 April 2020.

Although the document given to workers will be similar to that given to employees, there will be some important differences.

Care should be taken not to issue a statement to a worker that inadvertently suggests the individual has employment status, e.g. stating a disciplinary procedure applies to a worker where it did not do so before.

When must the details be given to the employee/worker?

This will be a 'day one' right and the majority of the particulars must be provided on or before the employee/worker starts work, not within 2 months (the current timeframe).

However, the following terms may be provided in a supplementary statement(s) no later than 2 months after the start date:

- pensions/pension schemes;
- collective agreements;
- any training entitlements (but terms relating to mandatory training, must be given on day one); and
- a note giving information about disciplinary and grievance procedures

How does this affect existing employees?

You do not have to re-issue contracts to employees employed prior to 6 April 2020. However, existing employees can request a statement containing this additional information. Employers have a month to respond.

What happens if our contract doesn't comply?

Failure to comply can expose employers to compensation of 2-4 weeks' pay per worker/employee (but only where the worker/employee also brings another successful claim).



Our first roundtable event 2020

We recently hosted our first roundtable event of 2020. We talked about the Employment Tribunal ruling which gave vegans protection from discrimination.

It was a great format to discuss the various issues arising out of that decision which attracted a lot of media attention.

We updated LinkedIn with a summary following the event and sparked our own taste of attention as the post went viral – currently standing at over 18,800 views, 189 comments and over 100 reactions!

It was a lot to keep up with, but we look forward to our next roundtable on mental health being just as thought provoking.



Don't forget to check out our LinkedIn page and join our Question of the Week discussions – share your experiences and learn from others. We also post regular technical and information pieces.

Make sure you're following our LinkedIn page @Outset_UK.



Action points

- 1 Check all additional information is included in employment contracts.
- 2 Check all information required to be in a single document is included in the employment contract (not spread over offer letter/contract/policies)
- 3 Ensure that employment contracts are issued to new joiners prior to commencement of employment or on day one.
- 4 Be ready to deal with queries from existing employees where they request up to date particulars after 6 April 2020.
- 5 Review your wider employment documentation as appropriate, including staff handbooks and intranets, because this is where some of the relevant details may currently be found.

Coronavirus update

Last month we provided some information for employers battling issues related to the Coronavirus. As things continue to develop we'd like to highlight some key information for businesses facing various COVID-19 challenges (correct as at 9am 12 March 2020):

The current level of risk to the public is **moderate** (source: NHS)

Symptoms are: a cough, high temperature, shortness of breath

(source: NHS)

A person **does not** need to self-isolate unless advised by NHS 111, a medical professional or Public Health England (PHE) (source: NHS)

A person only need contact NHS 111 if: they think they have the virus, have travelled to a high risk area in the last 14 days or have been in close contact with someone with coronavirus (source: NHS)

Call 111 or use the online service:

<https://111.nhs.uk/covid-19>

Emergency temporary coronavirus legislation has been proposed which will entitle those who need to self-isolate (as above) to SSP from day one (rather than usually day 4) (source: Gov)

Employers do not need to pay sick pay unless the employee has been medically advised, as above, to self-isolate. In other words, if an employee chooses themselves to self-isolate but that is not based on medical advice they would not be entitled to sick pay

If an employer requires an employee to remain at home, but the employee is otherwise ready and willing to work, then the employee is entitled to full pay

For businesses with fewer than 250 employees, **the Government will reimburse the cost of providing 14 days of SSP in full**

Businesses with up to £41m turnover will be able to **apply for a loan of up to £1.2m** covering up to 80% of any losses with no fees

700,000 smaller businesses will receive a £3k cash grant from Local Authorities

Every day at 2pm the Government publishes updated data online of the number of confirmed cases (see link below)

Useful sources of information:

NHS advice:

<https://www.nhs.uk/conditions/coronavirus-covid-19/>

Government advice and information:

<https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>

Government travel advice:

<https://www.gov.uk/guidance/travel-advice-novel-coronavirus>



Collective Redundancy Consultation Overview

Business changes resulting in redundancy are inevitable from time to time. Where these involve 20 or more employees the business must carry out collective (as well as individual) consultation, following a set process and timescale.

This can be daunting for both employers and employees but ensuring compliance with the duty to collectively consult under section 188 of Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) is key.

Overview of TULRCA requirements

When does the duty arise?

Where the employer proposes to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

(NB redundancy for this purpose includes dismissal and re-engagement on new contractual terms, i.e. changing terms and conditions of employment)

Who must the employer inform and consult?

'Appropriate representatives' of the affected employees (includes those affected by dismissals or measures in connection with dismissals).

The Secretary of State must also be notified.

Who are 'appropriate representatives'?

Trade union representatives where a trade union is recognised in relation to affected employees.

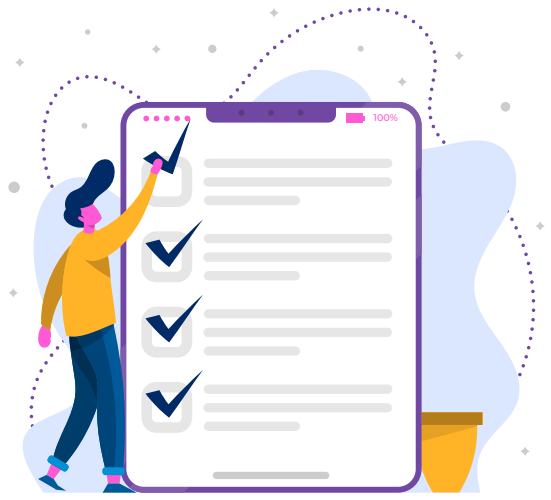
Otherwise, either:

- representatives directly elected by the affected employees, or
- an appropriate standing body of representatives

[Read more p4>](#)

Overview of TULRCA requirements continued











<p>How does consultation begin?</p>	<p>With the provision of statutory information on the proposals to the appropriate representatives.</p> <p>The Secretary of State must also be notified (usually using form HR1).</p>
<p>What information must be provided?</p>	<ul style="list-style-type: none"> • The reasons for the proposed dismissals • The numbers and descriptions of employees whom it is proposed to dismiss as redundant • The total number of employees of any such description employed by the employer at the establishment in question • The proposed method of selecting employees who may be dismissed • The proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect • The proposed method of calculating the amount of any redundancy payments to be made (over and above SRP) • 'Suitable information' about the use of agency workers
<p>When must consultation begin?</p>	<p>In good time, but at least:</p> <ul style="list-style-type: none"> • 45 days before the first dismissal takes effect where 100 or more redundancies are proposed; • 30 days before the first dismissal takes effect where 20-99 redundancies are proposed
<p>What must consultation cover?</p>	<p>As a minimum, consultation must be undertaken with a view to reaching agreement on:</p> <ul style="list-style-type: none"> • ways and means of avoiding the dismissals; • reducing the number of dismissals; and • mitigating their consequences
<p>What is the penalty for breach of the duty?</p>	<p>A protective award of up to 90 days' gross pay per dismissed employee (based on seriousness of employer's default, not loss of earnings).</p> <p>Failure to notify Secretary of State is a criminal offence - liable on summary conviction to an unlimited fine.</p>
<p>How does collective consultation tie in with individual consultation?</p>	<p>Individual consultation must still take place and may run concurrently with the collective consultation process.</p> <p>Consultation with affected employees on the reasons for the proposed redundancies, the selection criteria/their application to employees and alternative employment are key to establishing the fairness of any dismissal.</p>



Ten tips for effective consultation

The impact of a restructure on the workforce and business productivity/continuity can be mitigated by thorough planning and effective consultation.

If you are preparing for a potential redundancy situation the checklist below may provide a useful starting point:

-  Establish the business case
-  Consider alternatives to redundancy
-  Establish proposed numbers of affected employees and timescale
-  Consider allocation of responsibilities for different aspects of the consultation
-  Make arrangements for employee representatives to be elected if necessary
-  Identify appropriate selection pools
-  Identify the proposed selection criteria
-  Establish redundancy terms
-  Identify possible outplacement and other support to be provided
-  Develop a proposed timetable for consultation.



Recent Case Decisions

Can an employer dismiss an employee for fear of reputational risk?

Lafferty v Nuffield Health

Lafferty was a hospital porter whose role involved transporting anaesthetised patients. He was charged with a serious sexual offence, unconnected to work. Both he and the police reported the charge to his employer who dismissed him for fear of risk to its reputation for continuing to employ him when he has access to vulnerable patients, should he be convicted.

The Employment Appeals Tribunal determined that in this instance, the dismissal was fair. Lafferty's job gave him the opportunity to commit the crime he was accused of and there was a risk of damage to the employer's reputation in light of recent scandals in the sector.

Where a dismissal is based on unproven criminal charges each case will turn on its own facts, however this demonstrates how a tribunal will assess whether it was reasonable of the employer to be concerned about potential reputational risk.

Is the knowledge of someone who is not the dismissing manager relevant?

Uddin v London Borough of Ealing

Uddin was accused of sexually assaulting a female colleague, who reported the incident to the police. The employer conducted an investigation and the female employee then withdrew her policy complaint. The disciplinary manager did not know she had withdrawn her police complaint (although the investigating officer did know), and proceeded to dismiss Uddin.

The Appeals Tribunal found that the dismissal was unfair – the investigating officer had failed to share vital information with the decision maker which fundamentally undermined the fairness of the dismissal process.

This case highlights the importance of managers involved in a disciplinary process to share information with key decision makers. Ignorance will not be a valid defence!



Believe it or not...

Work phrases like “think outside the box” and “pushing the envelope” can start to sound pretty cringe worthy. Perhaps spice it up with some of these workplace phrases from around the world:

Now it's about the sausage!

German for ‘the final stages of a project’

Sliding in on a shrimp sandwich.

Swedish for ‘to have things easy’

What does gingerbread have to do with a windmill?

Polish for ‘what does one task have to do with another?’

Smash the file. In Spain means ‘to put a project to one side’

Keeping father happy.

An Indonesian phrase, to ‘hide bad news from the boss’



New Immigration System announced

Since our update last month, the Government has laid its new immigration bill before Parliament.

The new immigration system will apply, from 1 January 2021, equally to all non-British nationals who do not otherwise have permission to work in the UK (for example, under the Settled Status scheme). In other words, there will be no special treatment for EU nationals.

The key features are:

1. Free movement for EU nationals will end
2. There will be a points based sponsorship system, so employers will require a sponsor licence
3. The minimum general salary threshold will be lowered from £30k to £25,600
4. Migrants will have to be paid the higher of the above, or the rate set for their particular occupation
5. A total of 70 points will be required but there is a limited 'trade' available for characteristics against a lower salary (but no lower than £20,480)
6. The skills threshold will be lowered to include medium as well as highly skilled workers (but not low skilled)
7. The majority of applicants will need a job offer and must be able to speak English
8. Highly skilled workers will be able to enter the UK without a job offer if endorsed by 'a relevant and competent body' and achieve the required level of points

The Government has specifically stated that it will not implement an immigration route for lower-skilled workers. This may have a significant impact on a number of businesses who rely heavily on EU workers.

Those companies should act now to implement plans and changes to their recruitment and business to ensure continuity and future growth isn't negatively impacted.

For those businesses who don't already hold a sponsor licence and consider that future recruitment will include the EU job market, act now. Applying for a sponsor licence is a time consuming process which is easy to get wrong – we're here to help.

For more information about applying for a sponsor licence get in touch with our specialist employment and immigration lawyer, Chloe Pereira, on 01622 606422 or via email: chloe.pereira@outsetuk.com
