



# Solutions

Monthly Newsletter | May 2023

## Hot topics

As Mental Health Awareness week commences on 15th May the new ACAS guidance on [making reasonable adjustments for mental health](#) and [managing work related stress](#) could not be more timely. Whilst neither have statutory force, it can be useful for you to show that you have considered and followed the ACAS guidance when approaching difficult issues. ACAS offer guidance to both employees and employers and are a good starting point for both parties when looking to understand the impact of an individual's mental health at work and what adjustments might be appropriate. When taking into account any reasonable adjustment it is important to consider what might be possible given the individual's role and what might the impact of the reasonable adjustments be on their ability to do the job to a satisfactory level.

If you require any support with managing absence in the workplace or making reasonable adjustments the HR Solutions team could offer the necessary documentation and advice.

### Getting the basics right

In the first instance it is important for you to determine the type of contract you wish to enter into with an individual. Will they be an employee, consultant or contractor? Once this is determined do you have the correct documentation for each type of agreement?

If you have employees it is essential that you are getting the basics right to ensure that the different legal rights have been met. During the recruitment process it

is likely that you have retained personal information for each of your candidates, but do you have Privacy Notices in place to ensure that how this data is handled is clear to the individual? This is often a step that is missed and could cause issues further down line.

All employers in the UK have a responsibility to prevent illegal working by completing Right to Work checks prior to an individual's first day of employment. Ensuring that the correct checks are completed, and records maintained can help prevent any sanctions should it be found that an employee does not have the legal right to work in the UK.

Once an offer of employment is made it is vital that the individual has received their Written Terms and Conditions on their first day of employment, if not before, along with access to the your Employee Handbook and a Privacy Notice in relation to their data handling.

If you have not had your employments contracts reviewed since April 2020 then it would be advisable for this to take place at the earliest opportunity. HR Solutions are able to review and update existing documents, or draft new template Contracts of Employment, Employee Handbooks and Privacy Notices (pre and post employment).

For alternative contracts such as a Directors Agreement, Consultant or Contractor agreement we are able to advise if your existing contracts sufficiently protect both parties, or introduce new documentation to reduce risk.

# Employment Law Cases



## **Bathgate v Technip UK Ltd [2022] EAT 155 and the impact to Settlement agreements.**

In October 2022 the binding decision of the Employment Appeal Tribunal (EAT) had held that a settlement agreement cannot waive future claims that have not arisen at the date the agreement was signed.

Settlement agreements (previously named compromise agreements) can be a very effective tool used in a number of different employment scenarios. In this instance Mr Bathgate took voluntary enhanced redundancy and signed a settlement agreement in January 2017. In return his employer agreed to make enhanced payments for settling any claim.

One of the payments was not calculated at the point that the agreement was signed but confirmed that it would be calculated in line with a Collective Agreement in place. This agreement however only applied to staff under the age of 61 and Mr Bathgate was 61 at the time of signing. Ultimately the employer decided not to make this payment to Mr Bathgate. In response, Mr Bathgate made a claim arguing that by not making the agreed payment it amounted to age discrimination. The Tribunal held that he could not proceed with the claim as he had waived his right to make any age discrimination claims under the settlement agreement.

Mr Bathgate appealed and the EAT disagreed with the original tribunal decision noting that the waiving of his right to sue for age discrimination took place prior to knowing whether he had a claim or not. The EAT therefore decided that in accordance with the relevant legislation, settlement agreements could not settle future claims that have not arisen at the date of the original agreement.

### **What does this mean for you?**

The recent EAT decision is different from what was previously understood from case law. It is therefore essential that you are aware of the risk of future risk of litigation. It would be advisable for you to take advice on the specific circumstances to ensure that the particular claims now and in the future are identified. You may already have a template in place for Settlement Agreements and it would be advisable for this to be reviewed and updated where necessary. HR Solutions are able to review existing documents or draft new documents should you require this.

**Please see below some examples of the work that we have completed recently.**

 **Milton Keynes**

Modern Slavery Statement update

 **Maidstone**

On site support at a Without Prejudice Meeting and completion of a Settlement Agreement

 **London**

Contract of Employment, Employee Handbook and Privacy Notice

 **Maidenhead**

Update to contract of employment



**How we can help?**

If you have any clients who you think may require HR support, please contact us at [HRsolutions@mhllp.co.uk](mailto:HRsolutions@mhllp.co.uk) to discuss how we could assist them (please do not send enquiries to our individual email addresses).

We can provide support on an hourly, fixed-fee or retainer basis so there are a number of options available for clients according to their needs; as you can see from the above examples, we can assist with a large project or a one-off piece of advice.



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