

 HR

Solutions

Monthly Newsletter August 2022



Hot Topics

Sickness Absence and Agile Working

It is important for you to consider the relationship between hybrid working and sickness absence. With your employees not being in the workplace every day, attitudes to sickness absence have changed. An employee may feel too unwell to commute but feel well enough to work at home. In the past, employees would attend at the workplace when they were clearly sick; they were ok to work but they would be coughing and spluttering over their colleagues... so that's a real benefit of agile or hybrid working!

You must, however, make it clear that your employees should not work unless they feel able to. Just because they aren't coming into the workplace doesn't mean they're not allowed to be ill and have to work from home if they are not fit to do so.

Your employees should also be reminded that the usual sickness absence reporting procedure still applies, even if it's a day that they would normally be working at home. If an employee is too poorly to work, this needs to be reported in the normal way so that you are aware, can make any necessary arrangements for cover, and it can be logged as such.

How it's reported is also important: your employees should not be required to do this via electronic reporting which means that they have to log in to their work systems. This runs the risk that they will start checking their work emails and messages, and doing other bits and pieces which they should not be doing if they are sick. Similarly, they should not be required to speak to their line manager on a video call via Teams or Zoom; if an employee is ill, they will not want to be on camera!

Your employee should still phone their manager rather than text or email from their private email as that means having the conversation and not "hiding" behind an electronic message. It also means the manager can get any essential information from them, ask what work needs to be covered etc. There should be flexibility around that i.e. if the employee is genuinely too ill to phone and doesn't have anyone else to do so on their behalf, but phoning should be the norm.

Another consideration regarding sickness and hybrid working is if you suggest to an employee that they switch around their days attending the workplace so that they work at home when they are sick and then come in on another day once they have recovered. This is acceptable as a suggestion but the employee shouldn't be penalised for being ill and made to come in on another day. In addition, it's not always practical for an employee to change their arrangements at short notice, particularly if they have child care or other care arrangements to consider. Whilst you can state in their hybrid working policy that an employee may sometimes be expected in the workplace on a day that they would normally work at home, for example to attend essential training which has to be done in-person; they should give reasonable notice of that, not require them to come in at very short notice.

HR Solutions can draft agile / hybrid working policies for you, and also advise you on sickness absence management.



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Supreme Court Ruling

Holiday Entitlement and Holiday Pay

The Supreme Court case of *Harpur Trust v Brazel [2022]* has clarified the law in relation to pro-rated holiday entitlement.

The case was about a Part-Year worker who had a continuing contract but did not work every week of the year. The decision affects Part-Year workers, Zero-Hour workers, Seasonal workers and potentially Annualised Hours and Casual workers; it does not affect part-time workers who are contracted to work every week.

The Supreme Court judgment is that anyone on a Part Year, Casual, Zero-Hours or Annualised Hours continuing contract who does not work every week in a year is entitled to 5.6 weeks' holiday, not a pro-rated entitlement.

This means that you will no longer be able to pay holiday to such workers at the 12.07% rate. Holiday pay will also need to be paid at the 52-week average.

How has this happened?

The Working Time Directive contained the 'conformity principle' meaning that anyone working less than full time, be that hours per week or weeks per year, would have a pro-rated entitlement. When the Directive was enacted in the UK as the Working Time Regulations, this was not included. Therefore, the Regulations state that all workers are entitled to 5.6 weeks' leave per year. The Working Time Directive does not prevent a more generous provision being made by domestic law. The UK could have amended the domestic legislation but chose not to.

What are the implications for you?

You should amend your Part Year, Zero Hours and Season workers continuing contracts to remove references to the 12.07% holiday entitlement or to the pro rating of holiday entitlement. Your existing staff on these contracts should be issued with an Amendment to Contract, and you should do this within one month.

You should also review your employees on Part-Time and Annualised Hours contracts to highlight anyone who does not work every week.

Your employees on these contracts will be entitled to 5.6 weeks' holiday per year from now on. Holiday pay will then be based on their average weekly pay over the previous 52 weeks, excluding any weeks which they did not work and taking into account the remuneration of earlier weeks to bring the total up the 52 weeks (if the worker has not worked for you for 52 weeks, then an average of the weeks worked should be used).

You should implement this promptly to correctly pay workers holiday entitlement thus reducing the likelihood of claims for backdated holiday (there is a three-month time limit for such claims). Otherwise, you could face costly Tribunal claims.

Casual worker contracts which provide for no continuity of service between assignments will not be affected as these are not continuing contracts. Your employees on Fixed Term contracts will similarly be unaffected.

HR Solutions can review your Contracts of Employment and advise you on the correct calculation of holiday entitlement and pay going forward.

Please see below some examples of the work that HR Solutions have completed recently.

Office

Office

Type of work

Colchester

We advised the client in respect of a potential Gross Misconduct offence. We advised on the Investigation, the collation of the evidence, and process of suspending the employee. Once presented with the evidence, the employee chose to resign with immediate effect prior to the Disciplinary Meeting being held.

London

We worked with an Immigration lawyer and UK Visas and Immigration to resolve an issue regarding a migrant worker who needed to delay her work start date by more than 28 days (this is in breach of the Immigration Rules for a Skilled Worker).

Milton Keynes

Right to Work in the UK checks undertaken for a US company employing people in the UK

London

Background checks for a prospective employee NB we can undertake a variety of checks (employment, credit, qualification, criminal record) for our clients, not just for the UK but for a wide range of countries.

If you have any issue on which you think you may require HR support, **please contact us at HRsolutions@mhllp.co.uk** to discuss how we could assist you.

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



HRsolutions@mhllp.co.uk

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