

HR

Solutions

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Hot Topics

Exclusivity clauses - from 5 December 2022, the ban on exclusivity clauses which prohibit workers on Zero Hours Contracts from working for another employer was extended to workers on other contracts who earn less than the Lower Earnings Limit. Average weekly earnings for this purpose are calculated over a 52-week period for workers on permanent contracts, and over the expected duration of the contract for other workers.

Workers who earn less than the Lower Earnings Limit have the right not to be unfairly dismissed or subjected to any other detrimental treatment for breaching an exclusivity term in their contract. There is no qualifying period of service necessary to bring a claim in the employment tribunal on this basis.

HR Solutions can draft compliant Zero Hours Contracts and advise you as to whether the ban on exclusivity clauses will apply to other workers.

Employee / Candidate Checks - HR Solutions can conduct a wide range of Employee / Candidate Checks on your behalf.

For example: Employment History; Academic Qualifications; Professional Membership / Qualifications; Professional References; and Right to Work Checks. These are available worldwide, not just in the UK.

We liaise directly with the employee / candidate, keep you informed of progress throughout the process, and forward a final report to you upon completion.

Prices vary from check to check and from country to country; please therefore ask us for a quote if you are interested in this service.

Power cuts - the National Grid has warned that power cuts may be necessary during the early months of 2023 due to the ongoing situation in the Ukraine combined with the cold weather which has been predicted. Whilst it is hoped that such power cuts are unlikely, there could be implications for employers.

Employees should only be required to come to work during a power cut if there is going to be sufficient light and warmth in the workplace. Employers should also consider if staff will be able to get home safely i.e. if streetlighting is affected. Of course, depending on the role, it may be impossible for people to work if there is no power, internet connectivity etc. Employers could ask people to work from home if power cuts are either localised or sporadic, but only if they are going to have sufficient lighting, power and connectivity in their own homes. Conversely, employees may wish to come into the workplace if heating, lighting and power is available there but not at home. Employers should therefore be prepared to be flexible during these months, including in respect of working hours, particularly if employees have children who may be sent home from school at short notice because of power cuts there.

If employees are otherwise available to work and are only prevented from doing so because of a power cut during their working hours, they are still legally entitled to be paid. Employers can avoid this by using Short Time Working / Lay Off clauses in their Contracts of Employment. This then gives them the legal right to temporarily reduce employees' hours of work or to lay them off for a short period of time (subject to statutory guarantee payments). Before utilising these options, however, employers should carefully consider whether their employees are already struggling financially due to the cost of living crisis.

Alternatively, employees may be required to take annual leave during power cut periods; however, there are statutory minimum notice requirements which may be difficult to meet if the timing of power cuts is not known.

HR Solutions can advise you on Short Time Working / Lay Off clauses, and statutory notice requirements in respect of annual leave.



Employment Tribunals

A Contractor who claimed that supporting a football team constituted a “philosophical belief” for the purposes of the Equality Act 2010 has lost his Employment Tribunal claim.

In Mr E McClung vs Doosan Babcock Limited, Mr McClung, whose Unfair Dismissal claim had already been struck out due to his self-employed status, alleged that Doosan Babcock denied him work because he was a supporter of Glasgow Rangers whilst the manager in charge of offering work was a Celtic fan.

The Tribunal found that Mr McClung's support for Rangers was not a belief about a weighty or substantial aspect of human life; had no larger consequences for humanity as a whole; and was not adequately worthy of respect in a democratic society (!).

As is well known, there are strong links between religion and the divide between Rangers and Celtic fans, and it perhaps would have been interesting if Mr McClung had brought a claim on the basis of actual religious discrimination, rather than likening his support to that of a philosophical belief. In fact, Mr McClung specifically stated that he went to Rangers' matches rather than attending church so that option was not open to him.

HR Solutions can advise you on unlawful discrimination, and also on how to deal with disputes in the workplace even if they are not caused by discriminatory factors.

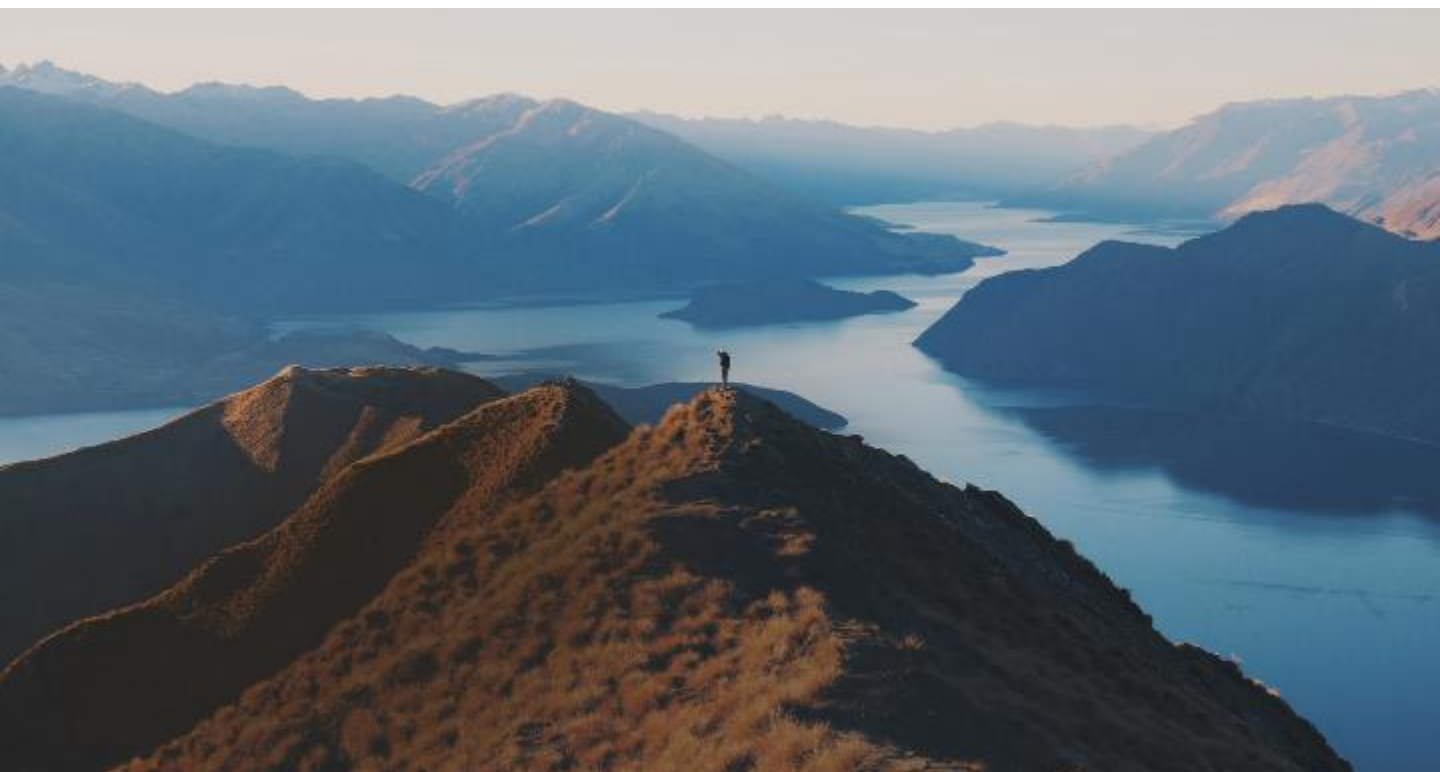
An employee who threatened to rip a colleague's beard off his face was found to have been unfairly dismissed.

In Mr S Mullen v Greater Glasgow Health Board, Mr Mullen, who had worked for the NHS for nearly 20 years, was dismissed after an altercation with a colleague about using his cup. Mr Mullen was angry that someone had used his cup as when he took it off the shelf, some liquid fell out of it and onto him. He confronted his colleague, Mr Hutchinson, and during the altercation told him that he was going to “rip his f***ing beard off his f***ing face”. Mr Hutchinson raised a complaint and Mr Mullen was summarily dismissed for Gross Misconduct.

The Employment Tribunal found that there was a lack of transparency as to whether the grievance or disciplinary policies were being followed, and that the five months it took to investigate and conclude the process was an unreasonable length of time. There were also procedural errors as Mr Mullen was asked about the incident without having been informed of Mr Hutchinson's allegations. All of this rendered the dismissal unfair.

This case highlights the importance of following a fair disciplinary procedure, regardless of the offence committed by the employee. On the face of it (pun intended), threatening to pull a colleague's beard off would constitute a Gross Misconduct offence, rendering the employee liable to summary dismissal. The employer's failure to follow a fair procedure including the time take to conduct the process, however, resulted in a finding of Unfair Dismissal.

HR Solutions can advise you on the correct legal process to follow in disciplinary proceedings, including potential Gross Misconduct.



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

Office

Type of work

Milton Keynes	Advice on redundancy / relocation including the provision of template letters
Peterborough	Right to Work check
London	Right to Work check
Milton Keynes	Contract Amendment and Privacy Notice
London	Report on statutory family-friendly leave in the UK and enhanced provisions

If you 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 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.



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