

August 2019 Employment Law Bulletin

Welcome to our Employment Law Bulletin for August 2019.

This month's bulletin contains our recent press releases from Sally Morris, Darryll Thomas and Kate Jones about covert recordings, the recent heatwave, employee engagement and sexual harassment in the workplace.

Employers warned on secret staff smartphone recordings


Employers are being warned their disciplinary procedures may be out of date when it comes to the rights of staff covertly recording conversations. The alert has been issued as the increasing use of smartphones means more staff are recording conversations at work, sometimes for malicious reasons, and employers may not be able to stop them unless they have appropriately drafted policies and procedures in place.

A recent ruling by the Employment Appeal Tribunal has provided long-awaited clarification about whether staff can be dismissed for secretly recording conversations without their colleagues' consent. The Tribunal has found that unless covert recordings are mentioned in disciplinary procedures, they may not be considered acts of gross misconduct.

Employers need to consider updating their disciplinary procedures to take account of covert recordings, which are becoming more and more common as smartphone apps make it easy to record conversations in high quality audio.

Although the Tribunal said it is good practice for anyone to reveal their intentions to record a meeting and seek consent, it won't automatically be considered an act of gross misconduct. It needs to be included in the disciplinary procedure, something employers rarely include because many have rules dating back to before smartphones were such an integral part of people's lives. That means they may not be able to lawfully dismiss a worker who has recorded a colleague without consent.

Some staff record meetings with their bosses if they want to use the conversation in evidence during grievance procedures or Tribunal Proceedings. Others may record conversations with their colleagues because of a personal dispute or for malicious reasons. There are protections for whistleblowers and those who make covert recordings to expose wrongdoing. However, unless the act of covert recording is categorised as an example of gross misconduct, then there is very little an employer can do. Those procedures need to be reviewed and updated before it's too late.



Rising temperatures outside and in the workplace

We have enjoyed another great run of hot weather with pockets of high temperatures and wall to wall sunshine. The downside has meant employees travelling to work and working in hot uncomfortable conditions.

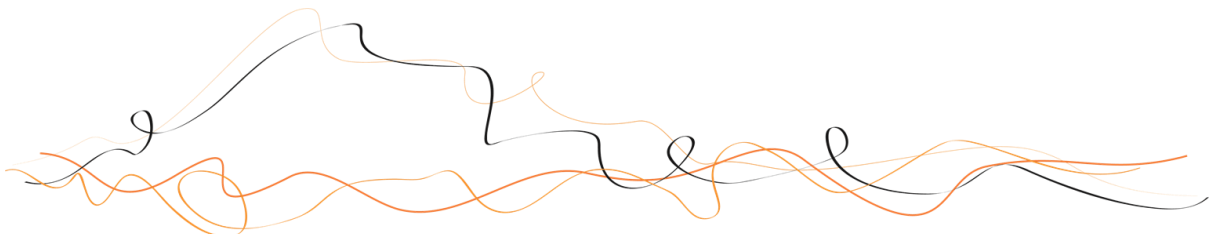
It's not widely known but the TUC, led by Frances O'Grady, is pushing to make it illegal for companies to keep people at work indoors if the temperature is above 30c. They are also calling for more protections for people who work outdoors. This is a debate which will rumble on but as things stand, current Workplace Regulations state that the temperature in the workplace needs to be reasonable. However, there is no maximum temperature threshold and what is reasonable will depend on the nature of the workplace and the work being carried out.

What is clear however is that during hot weather, employers should always provide clean, fresh air as well as keeping temperatures at a comfortable level. However, if a significant number of employees are complaining about the heat, a risk assessment should be carried out, the results acted upon and then should be communicated to employees.

Dress code is another grey area but while employers are under no obligation to relax their dress code, some may allow workers to wear more casual clothes, or allow dress down days so employees are more comfortable travelling to and during work. This is a little more difficult for customer-facing roles which often needs a uniform, something a variety of companies are addressing by introducing a range of summer workwear which gives options for staff. This can remove any doubt or debate.

Another big factor to consider is how hot weather can affect vulnerable workers, such as those who are pregnant or on medication. This can make them feel tired and it is good practice for managers to offer them more frequent rest breaks and ensure they receive as much fresh air as possible.

These are just some examples but more than anything, employers should be understanding to any problems raised due to hot weather and must adopt a flexible approach. That flexibility can be achieved through good planning by business owners and HR teams, and having a range of options agreed and in place.





Employee engagement – why a happy and productive workforce equals growth

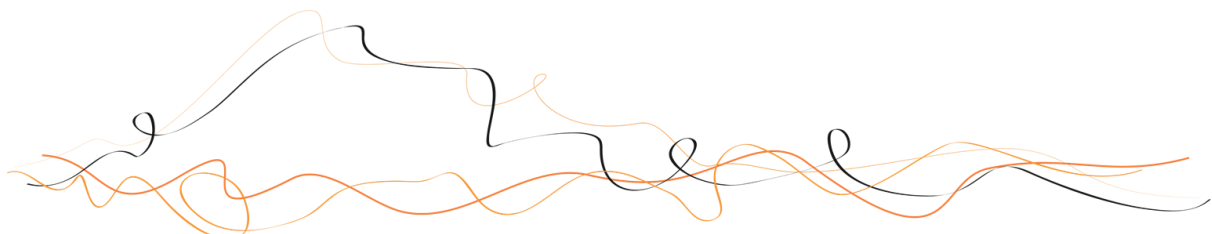
There is no doubt that tactics introduced by any business to improve morale will ensure that its people feel valued and will ultimately result in staff retention.

That may sound simple but it is a sad fact that every day thousands of businesses across the UK fail to focus on consistent and meaningful employee engagement. Employee engagement can cover a multitude of areas, including internal communications, but in a nutshell it is all about creating the right conditions for employees to thrive and give their best every day, ensuring staff are committed and brought-in to a company's vision, mission and values, ensuring staff are motivated to contribute to organisational success and giving staff an enhanced sense of their wellbeing.

The success of every organisation relies on its people as the foundation. Get the people bit right and you are likely to have motivated, productive staff and a more successful business. Get it wrong, and you will be faced with poor levels of motivation and high levels of absence. Your business will lack that creative spark, particularly when it comes to interacting with your customers.

To help, you should also consider the following legal approaches are taken care of:

- Providing favourable and fair terms and conditions to employees. You may wish to consider reviewing holiday entitlement, hours of work or sick pay
- Ensuring you conduct annual salary reviews and ensure salaries are competitive
- Consider offering benefits and incentive schemes to all employees.
- To avoid equal pay claims ensure men and women are treated the same.
- Training can help encourage employee development which in turn may provide increased satisfaction about progress and development at work.
- Ensure that managers provide regular feedback and conduct appraisals to provide an opportunity to encourage good performance and discuss any concerns.





Sexual harassment in the workplace

Since 2017 there has been a marked increase in sexual harassment related news, with social media and email becoming two constant channels for harassment in the workplace.

Too often this type of behaviour is tolerated and while the person who sexually harasses someone is liable, employers can also be held responsible for acts of sexual harassment by their employees. This underlines why businesses should have clear processes in place.

Recent cases, such as the allegations made against Harvey Weinstein, have caused concern over Non-Disclosure Agreements (NDAs). A new warning notice makes it clear that if an employee is not represented by a solicitor, then the solicitors acting for the business will be responsible for ensuring there is no unfair advantage and must prove that the NDA does not include obvious unenforceable clauses.

It is a minefield which all businesses must make sure they step through very carefully.

Employment Workshops at mfg Solicitors

Our Employment Workshops take place at our Kidderminster office at Adam House, Birmingham Road, Kidderminster, DY10 2SH from 9am until 12pm when a light lunch will be served, and are £15 per person.

The dates and topics of our upcoming Employment Workshops are as follows:

- 19th September – Disciplinary Management in Practice
- 14th November – Protecting your Business

To register, please email our Marketing Manager at elizabeth.armstrong@mfgsolicitors.com.

Contact mfg Solicitors

The Employment team at mfg Solicitors are specialists with a significant amount of experience assisting clients with their employment and HR issues, ensuring that the advice to businesses is commercial, practical and relevant to their individual requirements.

If you have any employment or HR issue, please do not hesitate to contact Sally Morris on 01905 610410 or at sally.morris@mfgsolicitors.com.

