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THE CHANGING FACE OF EMPLOYMENT – ARE YOU READY FOR IT?



IN THIS ISSUE

- The Changing face of Employment – Are You Ready for It?
- Solving the Nursery Training Conundrum
- Tattoo Taboo
- Are Men Naturally Hotter Than Women?
- Maternity Myths!
- Tackling difficult conversations in the workplace
- The bare necessities: Streamlining your HR processes
- Time to talk – workplace mediation in workplace conflict situations
- Appraisals and objective-setting – the way forward?

Having worked in the employment law arena for nearly 20 years there have been quite a few changes in employment and HR. However one of the biggest changes we have seen in the last five years is the changing attitude a growing number of employees are taking when faced with any challenges at work.

Employers need to be prepared to deal with this changing face in employment and HR otherwise they risk leaving themselves exposed unnecessarily to potentially costly ET claims.

Lack of Responsibility

The main changes we have encountered arise from the change in attitude in respect of responsibility. In the past employees may have recognised or accepted they are underperforming and seek new work before they go through a formal process. Now we are encountering situations more frequently where the employee appears to be in denial and won't even acknowledge issues/concerns have been raised with them before.

Let others Fight My Battles

In addition, when the employer tries to bring formal action to discipline the employee or to help improve their performance, the employees are seeking external assistance to defend their positions at a much earlier stage than ever before.

We are increasingly encountering situations where the employee will go off sick and/or engage a solicitor to become involved to fight

the battle for the employee - as they will often see it. More often than not the employee thinks that by doing so the employer will back off and not take any action further. Alternatively they may think this is the start of an exit process and seek help from a solicitor to negotiate for them and try to maximise their exit package.

How Do You Manage This Situation Effectively?

Solicitors will often send aggressive, lengthy letters to the employer, accusing them of all sorts of misdemeanours and highlighting their technical failings. Sometimes family members will write to the employer allegedly on behalf of the employee. Some employers will panic and respond without taking advice.

“ SOLICITORS WILL OFTEN SEND AGGRESSIVE, LENGTHY LETTERS TO THE EMPLOYER, ACCUSING THEM OF ALL SORTS OF MISDEMEANOURS. ”

Tip 1 – Don't respond to the solicitor's letter without taking specialist advice first.

Tip 2 – Don't respond to the solicitor's letter or the family members' letter in any event as your relationship as an employer is with the

employee. You could also be breaching the duty of confidentiality you owe the employee by doing so!

Depending on the circumstances, the best approach may well be not to respond to the letter but forward it onto the employee explaining you will not be corresponding with their solicitor on internal employment issues.

Tip 3 – The letter from the solicitor or from the family member may be a useful trigger to start exit discussions with the employee themselves but be careful!

You may be able to use the letter you receive as a trigger to enter into a Without Prejudice conversation with the employee to agree an exit package. However you do need to be very careful on how you handle these conversations to avoid a successful claim for constructive unfair dismissal. Take advice on how to approach this or engage one of the HR Consultants from HR Advise Me to manage the process for you.

At all times avoid knee jerk reactions to letters from employees complaining about their treatment or everyone else doing that on the employee's behalf.

Email: info@lochlaw.co.uk

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SOLVING THE NURSERY TRAINING CONUNDRUM



Since the tragic death of Millie Thompson and the subsequent campaign by her parents, the nursery industry has been trying to come to grips with the training that is required to meet or surpass the recommendations currently in place. Many nurseries are spending considerable amounts of money ensuring that all their staff have a paediatric first aid course when that's not necessary.

The Statutory Framework for Early Years Foundation Stage (DFE-00337-2014), published in March 2014 and became effective on 1st September 2014 (Paragraph 3.25) states:

'At least one person who has a current Paediatric First Aid certificate must be on the premises and available at all times when children are present, and must accompany children on outings. Childminders, and any assistant who might be in sole charge of the children for any period of time, must hold a current Paediatric First Aid certificate.

Paediatric First Aid Training (see addendum 18) must be relevant for workers caring for young children and where relevant babies. Providers

should take into account the number of children, staff and layout of premises to ensure that a Paediatric First Aider is able to respond to emergencies quickly'.

The key aspect of this statement is 'at least one person'. Many nurseries are spending considerable amounts of money ensuring that all their staff have a full paediatric first aid course. In reality though there only needs to be one fully qualified paediatric first aid provider at all times when children are present.

In order to meet the expectations of parents, provide appropriate protection of your business and offer a level of care which surpasses the requirements of Ofsted, EYFS and the HSE, nursery owners will want to show they are providing a level of care which exceeds the minimum requirement.

However the cost for training courses combined with the hidden costs of the loss of employees' time to attend the course, can make achieving that level of training within the nursery potentially cost prohibitive. There are ways though to reduce these costs. To do this the big question for the nursery industry is:

Do all nursery workers have to have a full paediatric First Aid Certificate? Or is there an alternative that could provide a more cost effective way of protecting the children while, ensuring there is a level of training that surpasses parental expectations and industry guidelines but at the same time protects the nursery from expensive litigation in the event of an adverse event?

Loch Training has developed the solution - a low cost effective program which will surpass the industry recommendations and at the same time provide all your staff with the training that will allow them to deal with paediatric emergency situations.

For more details on these and other training courses we provide at Loch Training please contact Bruce Jenner on 01892 574960, or email him at bruce.jenner@lochtraining.co.uk.

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TATTOO TABOO



Tattoos are ever growing in popularity and although they were once thought of as the preserve of a minority they are now increasingly common, especially amongst younger employees.

Perhaps as a result, we are increasingly being contacted by clients for advice surrounding tattoos. We are commonly asked whether an employer can dismiss, or refuse to employ, an employee because they have a tattoo. Employees may sometimes cover up what are otherwise obvious tattoos at interview stage before revealing them later when they start employment. Alternatively an existing employee could turn up at work one day with a new, highly visible tattoo they wish to proudly display.

Despite tattoos being commonplace, surveys suggest that a significant number of employers would still be concerned about visible tattoos and that this may affect their decision to employ a prospective candidate. The nature of the job and the ethos of the business are usually major factors in this.

There is no legislation in the UK which prevents employers from refusing to employ employees, or to dismiss them, as a result of having a tattoo. Under the Equality Act 2010 (the primary basis for discrimination claims), tattoos and body piercings are specifically excluded from the definition of "severe disfigurements". Otherwise a tattooed employee would have had some basis on which to bring a disability discrimination claim.

However, there is some scope for an employee to bring a discrimination claim if they are able to successfully demonstrate that they were treated less favourably as a result

of a tattoo which was directly attributable to, and a necessary expression of, their religion or belief. There is also the possibility because tattoos are more prevalent in younger employees, there is a potential claim for indirect age discrimination under the Equality Act 2010.

Existing employees with over 2 years' continuous service also have the right not to be unfairly dismissed. Therefore an employer would have to act fairly and reasonably when dismissing them. If such an employee was dismissed, solely as a result of having a new tattoo being deemed inappropriate, there would be a risk of a successful unfair dismissal claim and the employer would need to be able to justify their decision to dismiss.

The best way for an employer to reduce these risks is to ensure that they have policies and procedures in place specifying what is expected and required of employees if tattoos are not considered suitable. If, for example an employer had a clear policy stating that visible tattoos had to be covered up at work and an employee with over two years' service persistently refused to do so, a subsequent dismissal has a much greater chance of being considered fair. It is important for employers to be clear and to adopt a consistent approach to avoid disputes and potential litigation.

Have you reviewed your policies and procedures lately? If not contact Pam Loch at info@lochlaw.co.uk or call 01892 773970.

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ARE MEN NATURALLY HOTTER THAN WOMEN?

A study by two Dutch scientists has offered the answer to the longstanding question of why men want the air conditioning on sooner in the Summer while women slip on their cardigans when it's on?

According to research women feel the cold more readily. One of the sample tests which the researchers carried out suggested that women are comfortable at a temperature which is 2.5 centigrade warmer than men, between 24 to 25 centigrade.

According to Professor Paul Thornalley, of Warwick Medical School, a variation in average metabolic rate and body heat production between men and women may explain why there is a difference. The body's metabolism is responsible for growth and the production of energy, including heat. On average women have a lower metabolic rate than men.

Apparently, the difference in metabolic rates is because men have more fat free body mass than women. Major body organs, including the liver, brain, skeletal muscle, kidneys and heart are where most energy is consumed. This higher proportion of body mass which is able to produce heat means that on average men don't feel the cold as easily as women. As a result this means that men have a lower tolerance for hot weather because their bodies produce more heat so that they get warmer quicker.

But, as Professor Thornalley point outs, not every person is the same. Some men have lower metabolic rates than some women, and so in some cases it may be Dave in IT reaching for a jumper more readily than Ellie in the boardroom.

Others have suggested there could be less scientific reasons for the general gender divide over heat - while some women wear lightweight dresses in August, most men are still stuck in their suits and ties!

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MATERNITY MYTHS!



Employers are often reluctant to take any management action where an employee is pregnant or on maternity leave. This should not prevent you managing your staff and making changes to your business during this period, says Caroline Denbow.

Myth 1

There's no way you can make a pregnant employee redundant. Not true. Although employees have a right not to be dismissed because they are on pregnancy or maternity leave (and any such dismissal would be regarded as automatically unfair), this doesn't preclude employers from including a pregnant employee or employee on maternity leave in a consultation process if a genuine redundancy situation exists. It is essential, however, that key steps are taken such as excluding from the selection process any absences from work which are in any way connected with the employee's pregnancy or maternity leave and making adjustments if criteria are based on financial performance over a certain period of time.

It's also important to be as objective as possible to avoid claims from staff who may feel that a pregnant employee has been treated more favourably than they have. This happened in *De Belin v Eversheds Legal Services Ltd.* where a male employee brought

a successful claim based on the score of his female co-worker being artificially inflated to take account of her maternity leave.

Myth 2

I have to pay an employee while they're on maternity leave and give them all of their benefits. It's true to say that employees are usually entitled to non-cash benefits they would normally receive (such as a company car, private medical insurance cover etc.). However, the following cash benefits are not payable to employees on maternity leave:

- salary – the employee is only entitled to statutory maternity pay
- overtime payments
- shift bonuses
- attendance allowances
- London weighting
- contractual bonuses e.g (unless the payment relates to work carried out when the employee was not on maternity leave)
- commission.

It's worth noting that employees may not be entitled to any payment at all if they were not employed by you during the qualifying week (i.e. the 15th week before the expected week of childbirth). In this situation, you would complete an SMP1 form to enable them to claim Maternity Allowance from the Government.

Myth 3

There's no way I could ask an employee to come in to work for a day or two if they're on maternity leave to help us out. Not necessarily. A mother's maternity pay expires when she officially returns to work. However the law provides for an employee to work (and be paid) for 10 'keeping in touch days' throughout the period of statutory maternity leave which can be useful if you're planning a team-building day or some mandatory training. 'Keeping in touch days' should be agreed by mutual consent and pay arrangements discussed and agreed with the individual. The law provides that they must be paid at least the national minimum wage; although many employers will offer a day's pay at the employee's usual rate.

For more information on maternity rights and the practical application of the law and best-practice in this area, contact HR Advise Me: ask@hradvise.me, or call 01892 773970.

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TACKLING DIFFICULT CONVERSATIONS IN THE WORKPLACE



As a manager, do you dread having difficult conversations with staff at work? Would you rather delegate the conversation to someone else or do you just try to avoid the situation completely?

In a recent survey by the Chartered Management Institute, the results showed that the most difficult conversations that people in Wales face are those in the workplace. The top three difficult topics of conversation were negative feedback at work, pay and tackling a colleague's inappropriate behaviour.

The research showed very clearly that despite the frequency of difficult conversations at work, employees and managers alike do not have the coping strategies, training and confidence to have them. Almost half of the respondents in the survey said that they mumble, stutter or trip over their words, whilst 41% clam up and 37% let emotions take over from the facts.

Difficult conversations can include addressing poor performance or conduct, dealing with employees' personal problems, investigating complaints and grievances or dealing with delicate situations including refusing requests for annual leave or flexible working. Tackling these conversations can be daunting but there are common mistakes that many managers

make including approaching the conversations from a negative perspective, avoiding the conversation altogether and delivering bad news by email rather than speaking face to face. However, deciding to ignore the issue will normally just delay the inevitable and may mean the problem escalates to become a much bigger problem requiring more management time and resources to resolve.

So what can you do to make these conversations easier? The most important things to do are:

- prepare for the meeting;
- be clear about what the issues are;
- decide what you need to achieve from the meeting; and
- review the relevant policies.

The reality of difficult conversations is that an employee's response to a conversation raising performance concerns, or perhaps issues in relation to their conduct can be very emotional for them and you need to be prepared to deal with this. It may be as simple as offering the employee a tissue and then giving them time to collect their thoughts. It's important though not to rush to fill any silences with words of comfort or assurances that could be misconstrued and may give the employee the wrong or confused message.

In businesses which are smaller or where there are close family relationships, these conversations can often be extremely difficult. It can therefore be more effective and cost efficient for an external third party to carry out a difficult meeting on the company's behalf. This could include investigating grievances, chairing a disciplinary meeting or running a redundancy consultation process. Our HR Consultants at HR Advise Me have the skills and experience can tackle these difficult conversations for you and can also be an invaluable resource to support your management team. We can also run training sessions to equip your managers with the knowledge and confidence to tackle these conversations themselves and improve their management skills.

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THE BARE NECESSITIES: STREAMLINING YOUR HR PROCESSES



Here we explore five ways in which HR Advise Me can support you and ensure that you are well equipped when problems arise.

The most common problems organisations face when tackling a difficult HR issue are – the lack of an infrastructure to manage processes, and accurate records of discussions and events that took place leading up to a 'crisis point'. Here are some ways in which HR Advise Me can support you to reduce the risk of being caught out when things take a turn for the unexpected...

(i) Contracts of Employment

Ensuring you have up to date compliant Contracts of Employment is critical. Your contracts should cover all of the key terms and conditions of employment including post-termination restrictions to ensure that your business interests are protected.

(ii) Employee Handbook

A straightforward and commercially-focused Employee Handbook works in tandem with the Contracts to provide and cover all of the salient policies to provide a no-nonsense framework for you to manage your staff. We can customise your Handbook to suit the individual needs of your organisation to the extent that you choose.

Read more about Contracts of Employment and Employee Handbooks: www.hradvise.me/what-we-do/contracts-policy-documents-and-handbooks/

(iii) breatheHR

How often have you let a couple of sickness absences slip by unrecorded only to find that before you know where you are the problem has escalated into something much more serious? Do you struggle keeping track of your employee's annual leave on spreadsheets and whiteboards? Do you get bogged down in the administration of staff changing their personal details – or do you even know whether-or-not your records are up-to-date?

Struggle no more! breatheHR is a simple, intuitive online tool through which employees can update their personal details, record sickness absences, request annual leave for you to approve. The user-friendly mobile app means that it can all be done on the move at the touch of a screen. In addition, if you wish, HR Advise Me can monitor key management information, such as sickness absence, remotely leaving you free to focus on [winning?] your business.

Contact HR Advise Me for a demonstration of breatheHR today: www.hradvise.me/what-we-do/breathe-hr-online-employee-management-system/

(iv) The art of communication: coaching, appraisals, difficult conversations...

It's never too early to tackle a situation or have a conversation with an employee. Regular feedback is important. If you would prefer not to have those difficult conversations, the HR Consultants from HR Advise Me can do that for you. Their experienced coaches can also help you develop your staff to meet their full potential.

Read more about the support we can provide with appraisals: www.hradvise.me/what-we-do/appraisal-performance-management/ and improving poor performance: www.hradvise.me/what-we-do/managing-performance-improvement/

(v) Proactive Absence Management (PAM)

HR Advise Me's HR Medical Specialist can help you sort out those difficult absence cases, knowing exactly what questions to ask and working with you to plan a way forward in each individual case.

Read more about Proactive Absence Management: www.hradvise.me/proactive-absence-management-2/

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TIME TO TALK – WORKPLACE MEDIATION IN WORKPLACE CONFLICT SITUATIONS



Faced with a seemingly intractable situation with employees at loggerheads? Workplace mediation could be the solution.

What is workplace mediation?

Workplace mediation is a process of conflict resolution where a neutral third party is invited to intervene to assist with the constructive resolution of that conflict. It is disguised to be a structured process which creates a safe environment where two parties can communicate and work towards the restoration of an effective working relationship.

Workplace mediation is voluntary and so the mediator cannot force an employee or the employer to accept a solution - both the parties must agree on the way to resolve the dispute. The focus is on rebuilding relationships rather than apportioning blame.

Examples of common scenarios where mediation could be considered include:

- Where a conflict arises between a line manager and one of their reports, for example due to poor people management skills or a subtle change in role, responsibility or reporting line.
- Where a conflict arises between two employees of a similar grade, for example

due to a personality clash or due to an employee unintentionally "rubbing another up the wrong way".

- Where a conflict arises between a group of employees and management, for example due to communication problems.
- After a formal disciplinary or grievance process has finished, in order to rebuild relationships.

Why bother with it?

Workplace mediation has a number of advantages:

- **Cost.** Mediation can be an extremely cost effective way of resolving an employment issue and avoid those costs. Disputes can incur a variety of costs including the cost of HR and management time, lost employee productivity due to sickness absence, legal fees and financial awards if the dispute escalates to a formal grievance or to litigation. There are also the costs that cannot be quantified, such as loss of team morale and employees not working to their full potential).
- **Speed.** Mediation is usually a far quicker process than a formal disciplinary or grievance procedure. It can (and should be) arranged quickly. Mediation can be a

quick but effective response to a problem, preventing disputes from escalating.

- **Flexibility.** There is flexibility as to the mediator chosen, the process used and the stage of the dispute at which it is offered.
- **Confidentiality.** Anything said during the mediation is confidential and cannot be used in future legal proceedings without agreement from both parties. A successful mediation also avoids the employer's external reputation being damaged if the conflict spirals.
- **Outcome.** When used at the right time for the right dispute, mediation can be an extremely effective way of resolving disputes, as its success rate is high. It avoids escalation of the issue through formal grievance procedures, when the employee seeks legal advice and/or when an employment tribunal claim is initiated. It can maintain and repair relationships while giving a focus for the future.

Loch Mediation offers a complete workplace mediation service. For more information, please contact us: www.lochlawn.co.uk/contact-us/

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APPRAISALS AND OBJECTIVE-SETTING – THE WAY FORWARD?



Appraisals and objective-setting remain the time-honoured method of managing employees, but is the tide turning?

For the great majority of organisations, the annual appraisal process and objective-setting are long established and serve them well in terms of managing employees. However a number of others have questioned this conventional wisdom.

Here are some of alternative approaches being taken you may want to consider too -

- **Immediate feedback.** Companies such as Accenture, Deloitte, Gap and Netflix have ditched annual appraisals which they perceive as costly to administer, time-consuming and disengaging for employees. They have adopted a system of 'check ins', reviews after each project (some of which involve questions with simple 'yes' and 'no' answers) and a coaching style of management to provide more immediate feedback to employees.
- **Self-appraisal.** In situations where the traditional hierarchy of an organisation has been replaced by initiatives including self-

managed teams, the structure to carry out appraisals no longer exists. Instead 'self-appraisal' is being undertaken. Here, as the name suggests, an individual carries out a self assessment against a set of objectives and expectations which have been agreed within the team. At Google, staff rank their performance on a scale of 0.0 to 1.0. They are expected to consistently achieve a score of 0.6 to 0.7. Anybody who is consistently achieving a 1.0 is asked to set more challenging targets.

Research shows that self appraisal can provide the most accurate of assessments and the most appropriate and stringent of forward plans. It is usual for the appraisee to discuss his or her own conclusions and forward plans with several peers in the team (a form of 360-degree appraisal). Overall objectives are agreed across the team with senior management and the team agreeing individual objectives amongst themselves to allow self appraisal to begin.

- **Greater personalisation.** Traditional performance ratings have been said to trigger a threat response in the brain which prevents employees from taking in new

information and feedback – particularly if a rating is unexpected. Asking employees about their achievements in the past six months and focusing on areas of improvement can help to put them in the right headspace for learning. In addition, recognising that 'one size doesn't fit all' can be hugely motivational.

Ultimately, the success of adopting one of these different approaches depends on a cultural shift in the organisation and a consistent approach to applying them. Time will tell whether these new methods of performance management will catch on more widely.

To discuss these and other approaches to appraisal and objective-setting contact HR Advise Me: www.hradvise.me/what-we-do/appraisal-performance-management/

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