



## Suspension of Employee during Disciplinary Process

For those whose Christmas parties did not go well, January is traditionally the time of year when issues arising at the Christmas party need to be addressed. Historically it has usually been the case that employers were advised to suspend an employee whilst an investigation took place, rather than making any hasty judgements.

Recent case law has involved a further consideration of suspension and employers must now be very careful about a kneejerk reaction of suspension, which can lead to a claim of constructive dismissal. Although suspension was usually described as a neutral act, in some cases it can be seen to be far from that. An employer must be satisfied that there is a potential threat to the business or other employees in that business, to justify a decision of suspension and where suspension does take place, it must be no longer than is absolutely necessary.

Employees should be informed that they have been suspended and the likely length of suspension. There should be a letter confirming this issue and specifying that it is not a prejudgement of any subsequent disciplinary action. Problems can arise where the nature of the employee's work is such that by being suspended, the employee is deprived of the opportunity of earning such things as shift premiums or commission or alternatively, they need to maintain the public profile as part of their ongoing development. It is often safest from the employer's point of view to have a contractual provision allowing for suspension but even where this exists, the employer should not suspend unless they have considered the effect on the employee of suspension and whether there are any alternatives. Any decisions or considerations should be fully documented in case they are challenged later.

Recent case law involving a teacher accused of misconduct with their students has established that suspending as soon as the allegation was raised constituted a repudiatory breach of the implied term of trust and confidence, entitling the teacher to resign and treat herself as constructively dismissed. At the point of suspension, the school had not asked the teacher for a response to the allegations nor considered any alternatives. The employer also did not explain why a fair investigation would be prejudiced if the teacher remained at work. Clearly this was a case that had very emotive issues concerning child welfare, but there are lessons to be learned for all employers. Never consider that there is no option but to do one thing without considering the full set of circumstances and the effect on both the business and the employee of taking such a step.

# Transparent business ownership

Is your company compliant with the latest regulations around transparency of ownership, under the People with Significant Control (PSC) regime, part of the implementation of the EU Fourth Money Laundering Directive (4MLD)?

The new rules were introduced last year as part of the Small Business, Enterprise and Employment Act 2015 and requires unlisted UK companies and LLPs to identify PSC over them, and to record their details in a statutory register. This should have been carried out by 26 June 2017, however many businesses may be unaware of the changes as they update on an annual basis.

Previously, any changes to the PSC register could be notified annually using the company's annual CS01 confirmation statement. The new process now requires notification of any change, allowing 14 days to update the firm's PSC register and a further 14 days to send the information to Companies House.

Listed companies used to be exempt from the PSC regime as they already reported changes under Chapter 5 of the FCA's Disclosure Rules and Transparency Rules (DTR5), however the changes introduced by 4MLD may mean AIM-listed companies lose their exemption. 4MLD does not expressly allow for companies listed on prescribed markets to be exempt, only for those on regulated markets such as the main market of the London Stock Exchange. Companies House has also announced that the DTR5 exemptions are changing, but it is still not clear what the impact will be on AIM companies.

The purpose of the PSC regime is to fight corporate crime, making it easier to find out who is controlling a company as part of a global initiative to tackle misuse of company structures. The EU's Fourth Money Laundering Directive requires member states to hold a central register showing current corporate beneficial ownership and this will now be more up to date with these changes.

Gullands Solicitors and Business Doctors invite you to

## Health & Safety – Good for Business

A free talk for directors and senior managers  
On Thursday 1<sup>st</sup> February 2018

4pm	Arrival and refreshments
4.30pm – 5.45pm	Presentations and Q & A
5.45pm – 7pm	Drinks and networking

At the Spitfire Lounge,  
Maidstone United Football Club,  
James Whatman Way, Maidstone, ME14 1LQ

RSVP: [I.smith@gullands.com](mailto:I.smith@gullands.com)

[www.gullands.com](http://www.gullands.com)  
[www.businessdoctors.co.uk/doctors/Maidstone](http://www.businessdoctors.co.uk/doctors/Maidstone)

### Did you know...

that good health & safety management can improve performance, productivity and profitability within your organisation?

### and

help your organisation have an improved standing with clients, suppliers and investors when you want to sell or pass it on?

### Speakers:

**Andrew Clarke** Associate Solicitor at Gullands Solicitors is noted in the Legal 500 for health & safety. Andrew acts for businesses and individuals in health and safety prosecutions, and also handles compliance issues, contracts and formal notices. Andrew also has over twenty years experience of dealing with personal injury claims.

**Peter Searle** worked for 34 years for Kier including 10 years as their Operations Director in Kent. Peter managed 135 employees and projects up to £50m. Having led recruitment, bid winning and restructuring processes, he understands all aspects of managing SMEs. An MBA in 2003, Peter judges the CIOB Construction Manager of the Year Award for CIOB. He was founding chairman of Constructing Excellence Kent Club now in its fourth successful year.

Our speakers will discuss HSE and IOD guidance which states:

Addressing health and safety should not be seen as a regulatory burden: it offers significant opportunities...

- reduced costs and reduced risks – employee absence and turnover rates are lower, accidents are fewer, the threat of legal action is lessened;
- improved standing among suppliers and partners;
- a better reputation for corporate responsibility among investors, customers and communities;
- increased productivity – employees are healthier, happier and better motivated.

Source Leading health & safety at Work HSE 417 (rev1) 6/13



# Relationships at Work

Much is written in the pre and post Christmas season about inappropriate relationships and behaviour at work, but what about those relationships that are consensual and ongoing.

Many people meet their life partner in the work place and there are no general legal rules preventing or governing relationships at work. However, the collision between these two worlds of private and public can be problematic from a management perspective and there are a number of concerns for employers.

If this is something which has or is likely to affect your organisation you may want to consider having a policy in place to regulate such relationships.

The key issue that needs to be addressed in this policy is defining what is a personal relationship, keeping it wide but not impractically so.

Employers will also want to respect the right of their staff to a private life, consequently it might not be proportionate to have an outright ban on romantic involvement.

It is however key that employers are made aware of any relationships so that they can make proportionate changes, like changing reporting lines and avoiding conflicts of interest.

Employers might like to also consider areas where personal relationships could present a legitimate management concern such as issues relating to discrimination and harassment, potential conflicts of interest between those managing others, and actual or perceived bias in recruitment or where one has the ability to impact on the pay of their partner.

It is important that management deals in an even-handed manner with both partners

so as not to give rise to a claim of sexual discrimination, and considers same sex relationships in a similar way to opposite sex relationships. Where those in the personal relationship are in the same team or in a subordinate work relationship it is important to ensure that the policy refers to everybody conducting themselves in a professional manner at work at all times and stating that any failure to achieve this could be a disciplinary matter.

## Gullands Solicitors in The Legal 500 and Chambers Directories 2017

Gullands Solicitors has once again been ranked highly in The Legal 500 Directory and Chambers Directories, the guides to law firms in the UK published 19 October and 1 November 2017. John Roberts, Managing Partner Comments: *"We are once again delighted that several of our practice areas and key individuals have been singled out for recognition in the directories, which are a useful guide to the providers of legal services here in the South East."*

There is a new entry for the Employment team in The Legal 500 directory:

**Employment, Tier 3** "Gullands Solicitors focuses on providing employment law advice to charities. Clients from the logistics, transport and construction sectors also feature on the roster. Amanda Finn heads the team; she specialises in advising on social media employee disputes. Associate and health and safety specialist Andrew Clarke is another key name in the team."

And in **Chambers & Partners**, Amanda Finn is singled out as a recognised practitioner in **The South, Employment**.

Partner Amanda Finn comments: *"I'm absolutely thrilled for our employment services to be recognised in both directories, this is a fantastic achievement."*



# Slavery

## Not an old-fashioned problem

It is interesting to us how many times when we mention the issue of slavery, many people consider that this is a historic problem and not one that they need to address their minds to today.

The fact is that many employers know who they are employing in their firm but have very little knowledge or control over their supply chains. Do you know where the person cleaning your offices gets their cleaners from and their terms and conditions? If you outsource IT or office admin skills, what are the terms and conditions of those workers?

The UK is taking steps to address the problem but there remains a concern that the current approaches being adopted are inadequate.

In a recent House of Lords debate, there was discussion about companies doing the absolute minimum to comply with their obligations.

The Government were asked if they would look at developing "infrastructure to enforce compliance" and to make it clear that non-reporting is not good enough.

Unfortunately, it will take time before such legislation is embedded and the Government has obviously more important things on its mind with regards to Brexit.

The Home Office has published guidance for businesses on meeting their statutory applications, which was updated in October 2017. At present compliance with these guidelines is, amongst other things, limited to those with annual turnover of £36m or more. For those who feel it is an important part of their ethos and want to do something about it, should look at the document with regards to writing a slavery and human trafficking statement which will be a public facing document to present the company's ethos to the wider market.

## Quick reference section

Statutory minimum notice periods:  
An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

### National Minimum Wage

	April 2017	April 2018
Apprentices	£3.50	£3.70
16-17	£4.05	£4.20
18-20	£5.60	£5.90
21-24	£7.05	£7.38
25+	£7.50	£7.83

### Statutory Sick Pay (from April 2017)

Per week £89.35  
Proposed April 2018: £92.05

### Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2017) £140.98  
Proposed April 2018: £145.18

### Statutory Holiday

5.6 weeks for a full time employee.  
This can include bank and public holidays.

### Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years.  
Maximum week's pay is capped for dismissals after 6<sup>th</sup> April 2017 under the Statutory Scheme at £489.00

## CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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