Employment &BusinessBrief

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Relationships in the workplace

With many people working long hours, it is no surprise that a number of relationships start in the workplace. How you deal with this as an employer should therefore be given some consideration and policies reviewed and updated if necessary.

In November it was well publicised that the chief executive officer of McDonald's, Steve Easterbrook had left the business after the board of directors determined that the relationship he had with a work colleague was against company policy. This widely publicised episode was certainly embarrassing for the business, so was their approach to relationships in the workplace the right one?

In the McDonald's case their policy prohibited relationships between managers and their staff to ensure there was no abuse of authority in the workplace, so the board's implementation of the policy and for Mr Easterbrook to stand down was the right decision.

It is certainly important that employers follow their own policy, especially with much greater awareness of sexual harassment in the workplace since the #MeToo movement began. It is therefore advisable for all businesses to have a written policy and guidelines for all staff regarding workplace relationships and the policy should be implemented equally for all staff.

Work relationships may not typically cause a problem, but an employer could be at risk to claims of harassment and or sex discrimination if a workplace relationship went on to end badly.

Employers should also consider the effect a relationship in the workplace could have on other employees, especially a relationship between a manager and one of their team, and the wider perception of issues such as fairness, confidentiality and impartiality.

Guidelines might for example stipulate that employees should not allow a personal relationship with a colleague to influence their conduct at work and include a requirement for disclosure of any work relationship, that may give rise to a conflict of interest or breach of confidentiality.

The difficulty for an employer might arise if they decided to dismiss an employee for being in breach of this type of policy and they might alternatively want to consider other options to dismissal such as offering an internal transfer.

Fertility treatment and sick pay

The latest figures published by the Human Fertilisation and Embryology Authority show there were 54,000 patients receiving fertility treatment in the UK. There has also been a growth in the numbers of single women and same sex couples who are also receiving it. A question which often arises for employers is should any employees who are receiving this type of medical treatment be entitled to sick pay?

Fertility treatment can be a long and arduous process with different effects on different people, however it is not of itself incapacity for sick pay purposes. The treatment can make a person ill both physically and or mentally as it can be very stressful, and for these reasons they might be signed off by their doctor. In those circumstances the employer must treat this as sickness absence and ensure the employee receives statutory and any contractual sick pay in accordance with its normal rules.

There are currently no statutory rights for an employee to receive time off with or without pay to undertake a course of fertility treatment. It is important to note that from an employment rights perspective, a woman undergoing IVF is deemed to be pregnant from the point of implantation and it usually takes up to two weeks after this process to determine if the implantation has been successful. Employees are protected from the point of implantation from pregnancy and maternity discrimination and have the right to time off for antenatal care.

Employers should make it clear in their employment policies and employment contracts whether they offer contractual sick pay and if so what the terms of this are. It is recommended that there is a separate sickness policy, which includes specific scenarios such as fertility treatment. This will then offer a clear policy and manage expectations as to if and how much contractual sick pay is payable to the employee.

Around 78% of women in the UK aged 25-54 are in the workforce and the majority of employers spend a lot of time and money hoping to attract and retain the best staff in their businesses. It is worth employers considering the broader message they send to an employee and others in the workforce if they are not supportive to individual needs of their staff.

Fast track disciplinary and performance policies

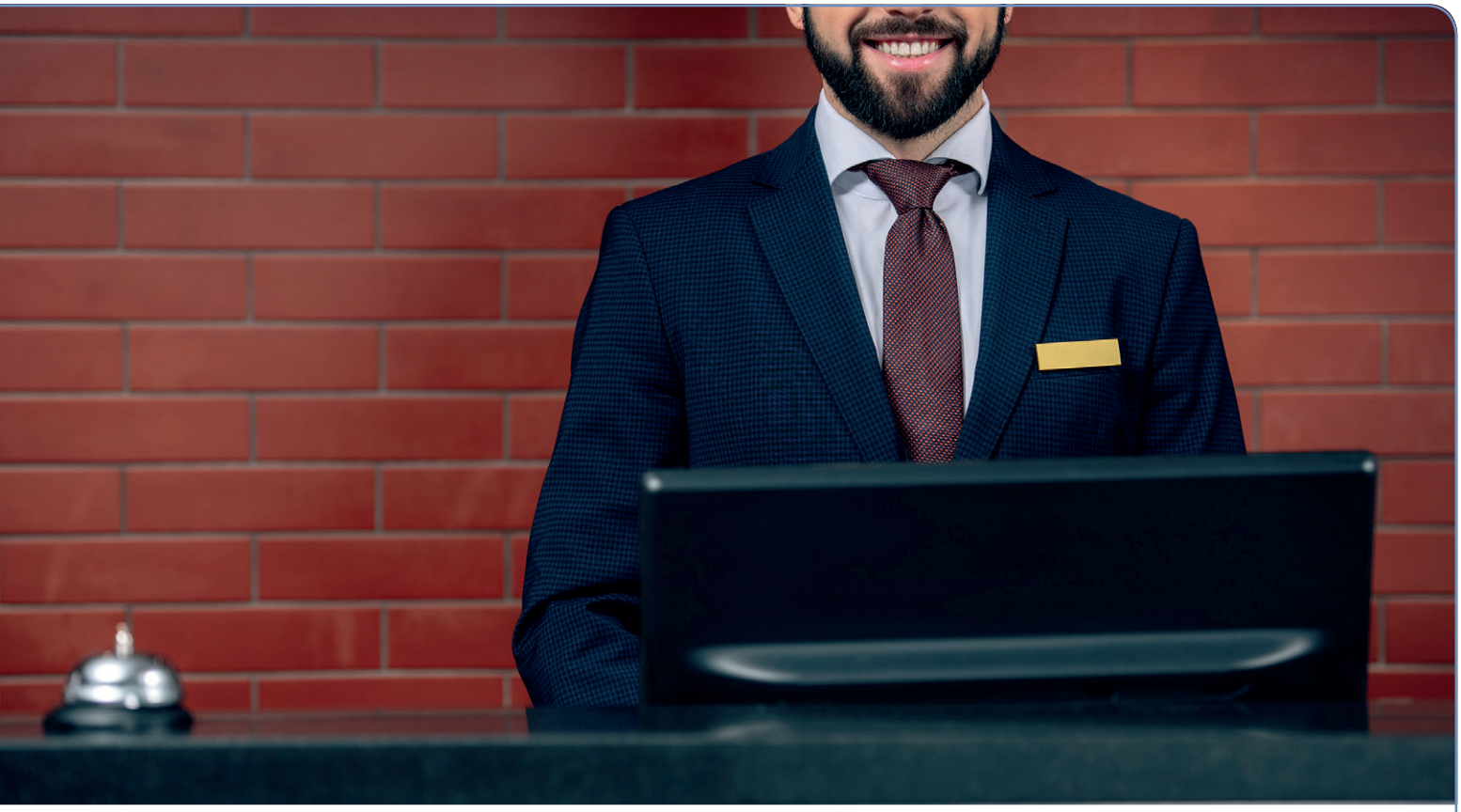
Some organisations are building in a fast-track option into their disciplinary and performance policies to expedite matters and avoid all the formalities. This is typically being used in cases of more minor misconduct and where the employee fully admits fault, accepts the outcome, and is happy to avoid a full hearing.

Minor misconduct issues (for example timekeeping issues) can be dealt with informally in accordance with the Acas Code of Practice on Disciplinary and Grievance Procedures. However, an informal procedure must not be used where the misconduct, if proven, could result in dismissal. In addition, a formal warning given without following a disciplinary procedure is likely to be in breach of the Acas Code.

ACAS say "An admission is likely to shape the investigation that the employer then follows but may not remove the need for further investigation to be undertaken. For example, an investigation might reveal mitigating circumstances that lessen the level of culpability."

Accordingly, even where an employee admits guilt, an investigation and hearing is likely to be needed.

Turning to performance issues, an employee must be informed of the problem (see paragraph 9 of the Acas Code) and, except in cases of gross negligence, be given an opportunity to improve. As such, it will very rarely be appropriate to fast track a performance management procedure. However, it may be possible to instigate a pre-termination negotiation; offering a settlement deal as an alternative to performance management.



News in brief

IR35

Businesses are being urged to continue preparations for the 2020 roll out of changes to IR35 despite the fact that it may be delayed due to the election and Brexit issues. All three main parties pledged that this was very much on their radar. IR35 for those not involved is designed to reduce tax avoidance by contractors who HMRC believe to be "disguised employees" – people who work in a similar way to full-time employees but bill for their services via their limited companies to make their business as tax efficient as possible.

Many of these transactional relationships are genuine, and there are plenty of sole trader limited companies operating in the UK. However, it is not uncommon for some organisations to pay people in this way so that they can avoid paying employers' National Insurance contributions or providing employment benefits.

To combat this, IR35 rules were designed to ensure that contractors working via their limited companies, deemed to be doing the same work of an employee, pay broadly the same tax. An HMRC inspector will determine this by applying an employment test to each case, which is based on the actual working practices, rather than any contract.

Do your workforce understand their wage slip?

CIPD report that according to a recent survey 60% of employees have never had their pay explained to them. They can usually say what amount they expect to land in their bank account at the end of the month, but do they understand tax, national insurance and pension contribution? We took part in a careers day to explain the vagaries of these issues to secondary school children. Perhaps such seminars should be extended to workforces!

Discrimination of no beards policy

An employment tribunal has held that a temporary work agency indirectly discriminated against a practising Sikh, when it refused to keep him on its books because he would not be able to shave his beard for religious reasons.

The work-seeker, Mr Sethi, adhered to Kesh (the requirement that body hair not be cut). He sought work with an agency that worked predominantly with five-star hotels. The agency had a "no beards" policy. The policy was concerned with appearance, not hygiene, and had purportedly been implemented in response to demands from the agency's clients.

When Mr Sethi advised the agency that he would be unable to cut his beard, he was told that facial hair was not allowed for "health and safety/ hygiene reasons" (although the agency's policy was concerned with appearance).

The tribunal held that the "no beards" policy placed Sikhs generally, and Mr Sethi in particular, at a particular disadvantage because of the Sikh practice of Kesh. The tribunal accepted that it was a legitimate aim for the agency to seek to comply with client requirements. However, it considered that the blanket "no beards" policy was not justified as a proportionate means of achieving that aim. There was no evidence that any client had been asked whether they would make an exception for a Sikh worker, and no evidence of what the agency's clients would in fact require when faced with a Sikh worker. In addition, not all the agency's hotel clients had a "no beards" requirement.

The principles in this case can be applied elsewhere in relation to indirect discrimination cases. Always consider carefully before implementing rules or requirements without due consideration as to whether it is a proportionate means of achieving your aim.

Corporate governance reporting requirements one year on

The new corporate governance reporting requirements imposed by the Companies (Miscellaneous Reporting) Regulations 2018 came into force on 1 January 2019. However, with the cycle of financial reporting, many businesses are now having to deal with these additional requirements for the first time, or as they have grown now fall into the reporting categories.

Here is a reminder of the responsibilities.

The 2018 Regulations have introduced a number of additional reporting requirements covering annual strategic reports, directors' reports, employee, supplier and customer engagement reporting, share price impact reporting, directors' remuneration report (including CEO pay ratio report for UK quoted companies) and/or information which is required to be listed on the company's website.

Under these regulations, the directors of a company who knowingly do not comply with them, or who are reckless as to their compliance, will be committing an offence.

The 2018 Regulations apply to financial reporting for financial years beginning on or after 1 January 2019, but whether they apply to your business depends:

- If it has more than 250 UK employees;
- If it is a quoted UK company. (A quoted company will either be listed on the UK Official List, the New York Stock Exchange, NASDAQ or a stock exchange in the European Economic Area. It does not include companies listed on the Alternative Investment Market);
- Is categorised as a large or very large company under the Companies Act 2006.

A large company will meet two or more of the following criteria:

- Annual turnover of more than £36 million;
- A balance sheet total of more than £18 million;
- Workforce totalling 250+ employees

A very large company will meet one of the following criteria:

- Have 2,000 or more employees globally;
- A turnover of more than £200 million and over £2 billion in net assets.

There is certainly a lot of changes here which will affect businesses in different ways. For guidance on how your business will be affected now or in the future, get in touch.

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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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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 2018	April 2019
Apprentices	£3.70	£3.90
16-17	£4.20	£4.35
18-20	£5.90	£6.15
21-24	£7.38	£7.70
25+	£7.83	£8.21

Statutory Sick Pay (from April 2019)
Per week £94.25

Statutory Shared Parental/Maternity/ Paternity/Adoption Pay
(basic rate) (from April 2019) £148.68

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 under the Statutory Scheme for dismissals after 6th April 2019 at £525.00.