



## EMPLOYMENT NEWSLETTER OCTOBER - 2018

### 1. Workers' rights following a 'no deal' Brexit

The Government has confirmed that there will be no change to workers' rights and protections in the event of a 'no deal' Brexit. They will continue to have the same rights as they do now, such as flexible working and parental leave.

The EU (Withdrawal) Act 2018 will translate EU legislation into UK law, with some minor amendments to reflect the fact that the UK will no longer be a member of the EU.

There may, however, be some implications for workers' rights in the event of employer insolvency. For example, employees that work in an EU country for a UK based employer might not always be protected under the national guarantee established in that country. European works councils might also be affected. No new requests to set up a European works council will be able to be made but provisions will be put in place to allow existing councils to continue.

### 2. Time spent working while commuting

The Institution of Occupational Safety and Health (IOSH) has urged employers to encourage their staff to cycle to work on a regular basis. IOSH is encouraging employers to promote cycling to work as a healthy lifestyle choice and a boost to wellbeing and productivity.

According to a survey by insurer VitalityHealth, the University of Cambridge and RAND Europe, workers who did not cycle regularly lost, on average, six additional days per year of productive working time due to ill-health

related absence and presenteeism. However, the study revealed that 30% of employers did not provide bicycle storage facilities and 32% did not have access to lockers or showers.

### 3. Caste is not a protected characteristic

The Government has decided that caste should not be a protected characteristic in its own right. This decision follows a public consultation seeking views on how to ensure that there is appropriate and proportional legal protection against unlawful discrimination because of a person's caste.

The Equality Act 2010 already covers race, which includes colour, nationality and ethnic/national origins. Anyone wishing to bring a claim because of their caste will have to rely on previous case law, which has held that caste discrimination amounts to discrimination on grounds of decent, which constitutes direct race discrimination based on ethnic origin.

### 4. Toolkit on closing the gender pay gap

The Women's Business Council has published a toolkit entitled "Men as Change Agents" on closing the gender pay gap. [Click here to view the toolkit.](#)

The toolkit is aimed at business leaders and CEOs of FTSE 350 companies to assist them in closing the gender pay gap. The toolkit recommends the promotion of flexible and agile working, encouraging utilisation of shared parental leave and the creation of talent pipelines to aid the progression of women to more senior roles.



## 5. Parental bereavement leave and pay

The Parental Bereavement (Leave and Pay) Act 2018 provides new statutory entitlements for bereaved parents.

The Act will give all employed parents a statutory right to two weeks' leave if they lose a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy. Employed parents will also be able to claim statutory parental bereavement pay for this period, if they meet the relevant eligibility criteria (which are similar to the eligibility criteria for statutory paternity pay).

It is expected that these new rights will come into force in 2020.

## 6. Electronic signatures are valid

The Law Commission has confirmed that electronic signatures can be used to sign formal legal contracts such as contracts of employment.

This clarification follows recent judgments of the Court of Appeal and the High Court which have decided that electronic methods of signing a document, such as by typing a name in an email or by clicking on an 'I accept' button are valid where there is an intention to authenticate the document.

## 7. Guidance on references

Acas has published new guidance on employment references:

<http://www.acas.org.uk/index.aspx?articleid=5072>

This guidance explains what an employment reference is, whether one has to be provided, what one can include and when employment references are needed. It also includes guidance on job offers and references, whether an employer can give a bad reference and guidance on resolving problems with references.

## 8. Employee had not resigned

The Employment Appeal Tribunal (EAT) has held that an employee who gave notice anticipating an internal transfer (which did not proceed) had not resigned from her employment. ended when she declined to shake hands with a male interviewer.

Ms Levy applied for a role in a different department in the hospital where she worked and was offered the role subject to pre-engagement checks. She then handed a letter to her manager stating "please accept one month's notice from the above date". Her manager wrote back to her accepting her "resignation".

Ms Levy's new role was withdrawn due to her poor absence record. She sought to retract her resignation but her manager refused to accept the retraction. Ms Levy therefore brought a claim for unfair dismissal in the Employment Tribunal.

### What does this mean?

The Tribunal held that Ms Levy has been dismissed and that her words of "resignation" in her letter to her manager were not clear and unambiguous. It also held that, even if the words had been clear and unambiguous, the context in which they were used meant there were special circumstances which required them to be construed objectively, having regard to all the circumstances of the case. This should have led Ms Levy's manager to conclude that her letter was simply informing him of her intention to accept what was then a conditional offer of a new role. It was not a termination of her employment.

The Hospitals Trust appealed to the EAT which held that the Tribunal had been entitled to find that the reference to giving notice was related to Ms Levy's role in the department in which she worked and not a resignation from the hospital's employment. Viewed objectively, this was what the manager had reasonably understood when he received her letter.

### What should employers do?

The key to this case was that the employer thought it was not obliged to accept a retraction of a resignation. Employers should note that this is only the case where there has been a valid notice of resignation given (which was not the case in this case). Although it can be tempting, employers should be careful not to accept the "resignation" of a difficult or problematic employee and they should carefully assess whether there has actually been a valid resignation.

Case reference: East Kent Hospitals University NHS Foundation Trust v Levy

## Background



**Find out more**

Please contact us to discuss your requirements or to find



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