



More change for Care...

Allison Grant, Head of Employment



More change for Care...

- National Living Wage – 1 April 2016
- Look back at 2015
- What to expect in 2016
- Training

National Living Wage

- 1 Oct 2015 NMW = £6.70
- 1 April 2016 NLW = £7.20
- All workers > 25
- Set at 50p and rise annually in April
- Gov plans to increase NLW to £9 by 2020 = 6% increase year on year
- Staffing accounts for 60% of care
- Cost sector £1bn by 2020
- Financial penalty 200%

National Living Wage

FUNDING?

As local authorities have a legal obligation under the 2014 Care Act to cover the costs of care, probable they will factor in payment of the living wage as a requirement into their procurement process...

Look back at 2015 – ACAS Code amended

- March 2015 – ACAS Code on disc/grievance procedures amended, employee's choice of companion not need to be reasonable
- S10 Emp Relations Act 1999 – worker entitled to be accompanied to a grievance/disc meeting by TU repr or colleague of choice.
- Silent on employer's ability to refuse a worker's requested companion.

Look back at 2015 – ACAS Code amended

- 2009 ACAS Code stated worker's request had to be 'reasonable'
- *Toal* case pointed out the law does not use the word 'reasonable' and worker's right an absolute right
- ACAS amended Code, an updated 2015 Code. Still uses the word 'reasonable', it is the request itself that must be reasonable, not the requested companion

Look back at 2015 – Misconduct Procedure

- Disciplining employees can be a minefield
- 2 cases acted as a reminder (*Biggin Hill Airport v Derwich* and *R Newbound v Thames Water Utilities*)

Look back at 2015 - *Newbound*

- Dismissal for gross misconduct. 34 year career, clean record, inspection of a sewer not use specified breathing equip, a recent policy
- CofA gave clear guide that employers must consider all background circumstances prior to dismissing an employee, no matter how serious
- Employer should not have considered the incident in isolation and given regard to the length of service and clean disc record (all the circumstances)
- During disc process weight should have been given to how recent the policy was that employer relying on and whether ingrained in functioning of company

Look back at 2015 – *Biggin Hill*

- A closer look at what to do when procedural flaws in first tier of disc process
- Employee dismissed for bullying and inappropriate use of work computer
- Employee appealed against dismissal on basis had not had sight of witness statements during investigation (not seen until appeal)

Look back at 2015 – *Biggin Hill*

- ET found dismissal unfair – not been given witness statements and insufficient time to prepare case
- EAT overturned ET decision – dismissal fair as had been told the allegations could be gross misconduct in suspension letter, and had been given all notes/statements 6 days prior to appeal hearing.

Misconduct Procedure Practical tips

- Ensure you have a good misconduct procedure policy in place. Set out procedure to follow in clear stages
- Make sure you know how to follow a fair procedure including knowing that a flawed disc process may be rectified at appeal stage

Misconduct Procedure Practical tips

- Anyone chairing an initial disciplinary meeting or appeal meeting should not only fully consider all relevant circumstances – including how long employee has been employed, their previous disc record, how similar conduct issues treated and the skills and ability of employee – but also whether procedure/policy has been correctly followed

Look back at 2015

- 26 May 2015 – exclusivity clauses in zero hour contracts banned. Means clause which prohibits worker from working elsewhere is unenforceable
- 10 Oct 2015 – highest increase in NMW for 7 years
- Parental leave now available to parents or adopters of any child > 18

Look back at 2015 – Travelling time

- ECJ ruled that workers without a fixed office should count travelling to and from home to attend their first and last appointments of the day as working time
- Care workers affected by ruling, travelling to, and between, appointments already subject to scrutiny in a case brought against MidHomeCare for breaching NMW

Look back at 2015 – FFW service

- Gov. Fit for Work service: tackling the sickness culture
- FFW service run by Health Management, occupational health company
- A free advice line to assist employers with issues relating to sickness absence
- A free occupational health assessment referral for an employee absent from work for 4 weeks or is likely to be absent for 4 weeks
- Return to Work Plan
- Help the employer determine a prognosis, treatment requirements, likely length of sickness absence, employee's fitness to carry out normal duties, any adjustments to working practice and accommodating treatment

Look back at 2015 – FFW service

- A process in place to address sickness absence at an early stage
- Aims to equip employers with more information to plan for and accommodate an employee's absence from and return to work
- In theory, the FFW service should help reduce the common scenario of an employee handing in sick note after sick note, with no indication of actually receiving treatment or a plan to return to work
- FFW service only allows for one assessment in a 12 month period
- Employee can refuse consent to FFW service or a private medical examination – review contract and handbook...

What to expect in 2016

- Zero hour contracts – new regs on 11 Jan 2016 provide for a remedy for workers against employers who use exclusivity clauses. Right not to be unfairly dismissed and right not to be subjected to a detriment for failing to comply with an exclusivity clause

What to expect in 2016

- National Living Wage
- Gender pay gap reporting - > 250 employees
- Statutory rates and limits:
- Maternity, paternity, adoption and parental leave frozen at existing rates (lower of £139.58 p/w or 90% of average weekly earnings)
- Sick pay frozen at £88.45 p/w
- Consultation on grandparental leave and pay (extension to shared parental leave)

Training

- Regulated businesses, such as Care Homes and Domestic Care Agencies, need to consider the requirement to ensure employees and workers are trained to the standard required by the governing body and to Regulatory standards
- A training policy or a training agreement to take control of training?

More change for Care...

Allison Grant

Partner & Head of Employment

Direct Dial: 0207 822 4125

Mobile: 0789 1103 189

Email: allison.grant@healys.com

Thank you for our discussion!

