ActifHR

Where people matter...

August 2018 Update

Welcome to this month's update - where we discuss the latest guidance and legislation.

In this Edition we report on:

- Do you have a clear Social Media Policy?
- Confidentiality and Protecting the Employer's Reputation
- On-call Employees'. Do you pay them while they sleep?

Do you have a clear Social Media Policy?

In a recent Tribunal case, an employee's dismissal over derogatory comments she made on Facebook which identified a business, was found to be fair, despite her having a clean disciplinary record.

Setting out clear expectations for employees' in a social media policy (while recognising individual rights) is important. It reminds employees' that social media activity is not necessarily private if an employee identifies themselves with the employer, and its business.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

Employers are in a strong position to discipline staff if they breach such a policy. It also reminds employees' that online conduct can affect the employer's reputation and can even amount to gross misconduct.

An efficient social media policy will need to fit with the other main employment policies such as anti-harassment, bullying policies and disciplinary procedures. Ensure you regularly review said policies, so they remain relevant and up to date, as the use of social media changes swiftly.

Staff training is essential with any social media policy so ensure you provide clear training, especially at the induction stage. Managers should also be trained on what monitoring is appropriate, and on how to enforce any social media policies. Monitoring should be conducted without breaching employees' privacy rights, which can be a balancing act, so be clear that you monitor the systems.

Employers: This is a reminder that you should have a good policy in place to safeguard your business and reputation.

Contact us: We can assist with drafting a social media policy, inductions and training.

Confidentiality and Protecting the Employer's Reputation

It may surprise you that junior staff are not the only ones who can breach confidentiality by mistake, and be a liability. Frequently it is senior managers, who should know better, and often cause more damage by casual comments.

A Senior Director was involved in a recent case, where the Financial Conduct Authority imposed a fine of approximately £40,000 on the employee for disclosing client confidential information over WhatsApp. He did this to impress a friend apparently, who was also a client.

Company information such as supplier contracts are often confidential information, which should not be appearing on social media. In training and induction, it is essential to remind all staff about the dangers of over-sharing such information informally on messaging services.

More often employees' still do not view their use of applications such as WhatsApp as a breach of confidentiality, as they think of these as an informal way of contact. However, this breaches their employment contract by disclosing confidential information to a third party. It may also be a breach of data protection, as well as causing reputational damage and significant embarrassment for the employer.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

It is very risky to ignore ambiguous statements made about the company or its clients on social media by employees at whatever level. Companies should respond duly in accordance with policies in place, this will also depend on what has been said. Acting quickly to remove a post and finding out who has shared it is vital to limit damage.

Employers: Inform employees about what monitoring arrangements are in place, which shouldn't be excessive, and must be justified.

Contact us: If you are concerned that staff may have breached confidentiality, we can help.

On-call employees'. Do you pay them while they sleep?

The much-awaited decision of the Court of Appeal (CA) in the case *of Royal Mencap Society v. Tomlinson-Blake* has just been handed down. The CA overturned the ruling of the Employment Appeal Tribunal (EAT) which found that carers working sleep-in shifts were entitled to the National Minimum Wage (NMW) for every hour of their shift. It was irrelevant if they were either awake and carrying out duties, or sleeping. It was because they were required to be at their place of work overnight.

By overturning this decision, the CA has finally found that sleep-in workers are only entitled to the NMW when they are awake and "actually working". This now clarifies that such workers are not entitled to the NMW when they are asleep as they are then only "available for work".

Therefore, only time spent awake and "actually working" should be included in the calculation of NMW payment, even if a worker by agreement sleeps at or near a place of work and the employer provides suitable facilities for sleeping.

This approach is limited to the facts of sleep-in workers who are contractually obliged to spend the night at or near their workplace. It is on the expectation that they will sleep for all or most of the period but may be woken if required to undertake some specific work task.

Employers: This decision has been welcomed by employers, particularly in the care sector who are now not obliged to make significant back payments.

Contact us: We can help advise on Working Time Regulations and National Minimum Wage.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

Caroline Robertson, CEO

Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

SILVERSTONE TECHNOLOGY CLUSTER

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

You are receiving this e-mail from ActifHR Limited as you are either a client of ActifHR Limited or have consented to receiving these updates, being one of the lawful basis to process under the General Data Protection Regulations. To stop receiving these emails, please send a return email with 'unsubscribe' in the title.

Disclaimer: This newsletter is provided for general information only and does not constitute legal or other professional advice. If you require advice on a specific Human Resource issue please contact caroline.robertson@actifhr.co.uk. ActifHR Limited accepts no responsibility for any loss which may arise from reliance on information contained in this newsletter.

Tel: 01327 317537
M: 07947567661
E: caroline.robertson@actifhr.co.uk/info@actifhr.co.uk
ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX