



Latest HR news from Mark David HR

Mental Health Awareness Week

This week is mental health awareness week.

I have reported on the need for employers to monitor the mental health of their employees many times over the years and with everything that has been going on during the pandemic now is a good time to take stock of what you can do if anyone is showing signs of anxiety, stress or depression.

Mental ill-health is the biggest cause of lost time at work in the UK. It makes good business sense to identify and deal with it.

According to the Health and safety Executive “Whether work is causing the health issue or aggravating it, employers have a legal responsibility to help their employees. Work-related mental health issues must to be assessed to measure the levels of risk to staff. Where a risk is identified, steps must be taken to remove it or reduce it as far as reasonably practicable”.

If you notice or suspect that an employee is showing any signs of stress or depression have a word with them and try and find out what the causes are and how you can help. Being proactive may stop the problem getting worse and if it requires professional help you may be able to refer them to someone who can help such as their GP, MIND or ManHealth.

ManHealth is a client of mine who provide a wide range of advice about lifestyle changes which can help improve mental health and they operate webchat facilities and group sessions where experienced counsellors provide help and support . All of their staff have experienced mental health problems so they know what they are talking about.

ManHealth also offer training on employers premises to raise awareness for employees and managers.

ManHealth is based in Shildon Co Durham and can be contacted on 01388 320023 or info@manhelath.org.uk



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Are you prepared for IR35 changes ?



In April new rules came into play for clients who engage the services of self employed contractors.

The off-payroll working rules can apply if a worker (sometimes known as a contractor) provides their services through their own limited company or another type of intermediary to the client. The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same Income Tax and National Insurance contributions as employees. These rules are sometimes known as 'IR35'.

The client is the organisation who is or will be receiving the services of a contractor. The

client will be responsible for determining if the off-payroll working rules apply.

Worryingly 38% of employers are not prepared for IR35 according to a survey by Grant Thornton.

All public sector authorities and medium and large-sized private sector clients will be responsible for deciding if the rules apply.

If a worker provides services to a small client in the private sector, the worker's intermediary will remain responsible for deciding the worker's employment status and if the rules apply.

"38% of employers are not prepared for IR35"



No job no job

In January 2021 Pimlico Plumbers made the headlines by planning to rewrite all of its workers' contracts to require them to be vaccinated against coronavirus.

This was a very brave decision but it is not something which I recommend for any of my clients. There is high risk that such a move would be discriminatory and unenforceable under current legislation.

On Wednesday this week the Justice Secretary Robert Buckland said it was unlikely bosses could make existing workers have vaccines under their current contracts.

David Samuels, legal director at law firm Lewis Silkin, said that there is nothing legally to stop a business from placing a "no job, no job" clause in contracts for new hires.

Whilst it may be possible to insert a clause in employment contracts for new employees employers will have to make sure that the applicant is not exempt or unable to have a job.

It may also disproportionately affect younger people who have not yet been offered a job. And may be discriminatory for pregnant women or people who have strong philosophical beliefs.

Some care home employers have said they will be implementing no job no job policies for new entrants and Pimlico Plumbers are intending to do the same.

My advice is don't do anything until the legal arguments have been decided (probably by a court or tribunal).



Andrew Pilling owner of Pilling Financial

IFA opens new office in Morpeth

A well established IFA has opened new offices in Morpeth.

Based at Owen House, Sanderson Arcade, Morpeth NE61 1NS the practice is headed by Andrew Pilling, an independent financial adviser (IFA) who brings over 25 years experience in financial planning. They are truly independent advisers and dedicated to provide a customer service which is tailored to meet your individual needs.

As a firm of Independent Financial Advisers with a focus on retirement planning, family financial planning and savings and investment advice, they are able to help you at any stage of your life.

I have known Andrew for many years . He specialises in looking after the finances of his clients so when he asked me look after his businesses HR needs by providing him with contracts of employment and a handbook of employment policies and procedures I was happy to oblige.

Andrew can be contacted on 01670 504 651 or hello@pillingfinancial.co.uk

Long Covid.

One in ten people with coronavirus could have long term debilitating symptoms.

Six months of health problems is common amongst this group of people.

Breathing difficulties, aches and pains in joints , headaches and general fatigue have all been cited as symptoms of long covid.

If any of your employees present with such symptoms you will need to deal with each case on its merits and find an individual solution .

A blanket absence policy will not suffice in such circumstances as no two case will be the same.

Having a sensitive one to one with the employee will be essential to determine how to manage the situation.

Employees may be fine one day and unable to work the following day which will cause frustration for them and their employer.

Patience and empathy will be required and a discussion around flexible hours may be appropriate in some cases.

Need to investigate

A recent employment tribunal case has once again demonstrated the need for employers to investigate before dismissing an employee.

Did he or didn't he?

Ensure clarity when someone resigns. Vagueness can be costly.

Not the dreaded appraisal

All employers need high performing employees.

Badly thought through performance management schemes do more harm than good.

Unfairly dismissed

A lecturer who's aggressive style when writing messages to colleagues was unfairly dismissed a tribunal has found.

Dr Binoy Sobnack was complained about by colleagues and the employer dismissed him.

The tribunal found that "there had not been so much as the beginning of an investigation to ascertain if the allegations were untrue".

The Judge reduced the claimants basic award by 25% due to his own contribution to his dismissal. His messages were deemed to have been "brusque, blunt and unnecessarily aggressive in tone"

He was nevertheless awarded £15000.

The ACAS Code on Discipline and Grievance recommends that every disciplinary matter is fully Investigated before any action, especially dismissal, is taken.

Tribunals are mandated to take this Code into account. An employer who fails to follow it risks having any award increased by up to 25%.

In this case the applicant's behaviour was contributory and he was penalized but the employer failed to investigate and was in breach of the Code.

Get resignations in writing

When an employee says they are not coming back to work make sure you get it in writing.

Recently an employer (who is now a client of mine) requested an employee to return from furlough. The employee said he wasn't going to return due to covid concerns.

The employer assured him that the workplace was safe but he still refused to return.

Months later the employee lodged a tribunal claim for unfair dismissal.

The employer was successful but the time effort and stress involved in defending the case was something which he could well have done without. He also had a rather large legal bill from his solicitor.

Performance management pitfalls

Most appraisal schemes fail within two years. Why is this?

- 1) Insufficient consideration is given to why they are needed
- 2) Employees and managers are not fully consulted on why they are required
- 3) They become focused on form filling rather than supporting employees to succeed
- 4) Targets and objectives are over complicated and difficult to measure
- 5) Review meetings end in acrimony
- 6) Everyone involved considers them a waste of time

Effective performance management can benefit all concerned. Avoid these common mistakes.

Say what you see?

When it comes to providing a reference this may not be good advice.

If you give opinions in a reference about an ex employee's poor performance which you cannot backup if challenged you could find your self in bother. A poor reference may result in an offer being withdrawn and an ex employee may be shown the reference.

It is wise to only provide facts in a reference. Avoid opinions whether good or bad.

It is the new employers responsibility to determine whether a candid ate is suitable. They have an opportunity to assess performance during induction and they have two years to decide if an employee is suitable without risking a tribunal.

So why offer opinions even if you are requested to do so on a standard reference request form?

Stick to the facts. Provide start date, job title, description of duties, hours of work , salary and place of work. The new employer should have ample opportunities to determine suitability at interview or when the employee commences.



“It is wise to only provide facts in a reference. Avoid opinions whether good or bad.”

Every picture tells a story

Do you carry out exit interviews when employees leave your organization?

You may want to consider it if you don't.

By sitting down with your employee and asking them for their reasons for leaving gives you a record which you can use if things turn ugly after they leave.

It has been known for ex employees to claim they were forced to leave due to the behavior of their employer. If you have a form which states they were happy in their employment or left for a good reason it is unlikely that a tribunal claim will succeed.

You can also use the feedback from exit interviews to determine whether there is a pattern emerging of why employees are leaving.

You can use this to alter your policies or remuneration package or look at ways of retaining employees.



Mark David HR Ltd

"We find that our customers prefer both our honest assessment of a situation and our ability to work with them to resolve the issue." Rob Grinter Director Mark David HR Ltd

Please tell your business contacts how we have helped your business.

A referral is the best way for us to attract new clients.

We would like to help them too.

New: Client HR discussion forum

Mark David HR is introducing a monthly Employment Law and HR catch-up sessions for clients which will be an informal, small group discussion lasting about an hour which will take place via Zoom. The sessions will provide an opportunity for a mix of employers to discuss the issues, challenges and opportunities employers are currently facing.

The idea is that employers can share their experiences and learn from each other.

Attendees will contribute as much or as little as they want. Some may want to take away some new ideas whilst other may want to share some sage advice for the benefit of others.

The meetings will start at 3.00pm and last about an hour.

I will be sending invitations out in due course.

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