



In association with



NEWSLETTER

JUNE 2006

In this month's newsletter we cover, Smoking in the Workplace, Your Questions answered, Absence league tables and Data Protection, Employment Tribunal Findings and information on HR manuals.

SMOKING IN THE WORKPLACE

The Commons has voted to outlaw smoking in all public places in England in 2007. The exact definition indicates a ban on an "enclosed place to which the public has access" albeit the details of the legislation have yet to be agreed. The exceptions to the ban will include private homes, residential homes, hospitals, prisons and hotel bedrooms.

The purpose of the ban is to improve the health and safety of employees but what does this mean to employers:

- Consultation with employees should begin now to create or review clear smoking rules.
- Review or creation of a smoking policy will be necessary.
- Review of the company disciplinary procedures will need to take place. For example, if there is a total smoking ban in the workplace any breach of this may be considered an act of gross misconduct.
- Company cars will be viewed as an enclosed workplace and as such smoking will be banned here.
- Company cars will need to display a sign indicating the area is smoke free.
- Failure to comply will result in a maximum fine of £2500.
- Failure to display "no smoking" signs will result in fines of approximately £200 to £1000.

A smoking policy is available from LYNC HR. Please contact lyn@lynchr.co.uk for more information.

Your Questions Answered

- At Lync HR Limited we want to help you manage your people effectively. We will share real questions and answers that have been brought to our attention, obviously not disclosing your identity.

This month we have a question that an employer asked us regarding disciplinary procedures:

Question: An employee has been invited to attend a disciplinary hearing. They have a verbal warning on their file that was issued over 6 months ago for the same offense. Can I refer to this warning when the new warning is issued and give the next level of penalty?

Answer: The previous reference can only be referred to if it is still valid (in time). All warnings should have an expiry date and at this time the warning should be removed from the employee's file. In this instance if the employee's previous warning is no longer valid you cannot and must not rely upon it. If however, the warning is still within time it can be relied upon and the next level of warning issued, in this case a first written warning.

ABSENCE LEAGUE TABLES and DATA PROTECTION

The Data Protection Act 1998 refers to the handling of information related to workers health. Such information includes worker sickness, injury and absence records. This information should not be made available to other workers unless the information is necessary for them to carry out their normal duties.

For example:

- a health and safety officer will need to access injury records in order to establish trends in injuries as a means to implement preventative measures.
- a payroll clerk need only know the length of the sickness to calculate the workers pay as opposed to the reason for the absence.

Employers:

- can publish departmental absence records. This must be collective information and not disclose individual workers.
- must only allow workers to access such records where this is needed to carry out their duties. The information obtained must be specific to the requirement and not disclose other information.
- cannot display individual workers absence records.
- must be concerned with the employee's fitness for the work that they are employed to do.
- must keep sickness and injury records separate to absence and accident reports.

Employment Tribunal Findings

Robinson-Steele versus RD Retails Services Ltd; Clarke versus Frank Staddon Ltd, Caulfield versus Hanson Clay Products Ltd

Rolled up holidays

"Rolled-up" holiday pay is when the holiday pay entitlement is included in the employee's normal rate of pay. When the employee takes holiday leave they receive no further payment for the time taken.

Rolling up employee's holiday pay entitlement into their normal hourly rate of pay has been a common practice amongst employers particularly in industries where the workforce is transient, eg, hotels, construction, etc.

The difficulty with the situation is that it can conflict with the Working Time Regulations in that employee's must receive annual leave of 20 days. Employee's who receive rolled up holiday pay may choose not to take the legal 20 days holiday leave as they lose out in monetary terms.

A decision regarding the situation is unlikely to be due until next year. However, in the meantime, it is crucial that employers who do continue to use the rolled-up holiday system ensure that their employees do take the legally required holiday leave in any year otherwise they will be in breach of the Working Time Regulations. Additionally, the amount of holiday pay must be clearly identifiable in the employee's pay.

To find out more about managing holidays you can refer to the **LYNC HR Holiday Procedure Pack** priced at £30 + vat which includes:

- Every employee is entitled to receive paid holiday leave each year.
The Holiday Procedure Pack (How to Manage Holidays) covers the statutory entitlement to holiday leave. The pack also includes associated forms.
 - Employee's holiday entitlement under the Working Time Directive and more.
 - How an employee makes an application for holiday leave.
 - How the company can refuse holiday leave.
 - How the company can enforce holiday leave.
 - How to deal with new employees and calculating their holiday entitlement.
 - How to deal with unauthorised holiday leave.
 - How to deal with employee sickness during the holiday leave.
 - How to deal with employees who returns to work late after holiday leave.
 - Holiday pay (including making backdated claims as a result of the Working Time Regulations).
 - How deal with holiday entitlement of employee leavers.
 - How to manage holiday entitlement of casual employee.

The Holiday Procedure Pack includes a **Holiday Request Form** for employees to complete when requesting holiday leave.

ALSO: The Holiday Policy statement ensures that the company complies with the Working Time Regulations. Management and employees (including new and leavers) responsibilities are covered to ensure that all fully understand holiday entitlement, holiday pay and sickness absence during holiday periods. This can be purchased separately to complement the Holiday Procedure Pack.

Archbald versus Fife Council; Ropthwell versus Pelikan Hardcopy Scotland Ltd; Southampton City College versus Randall; Smith versus Churchill Stairlifts PLC.

This case re-emphasises the need for employers to take a pro-active approach to their duties regarding making adjustments in the workplace for disabled employees as specified under the Disability Discrimination Act 1995.

Employers must:

- Consult medical records.
- Consider creating a new job.
- Make adjustments for job applicants who are disadvantaged.

To learn more about making adjustments and employers responsibilities under the Disability Discrimination Act 1998, send for the guide on **“How to Manage Employees with a Disability”**

The guide is priced £65 + vat and includes:

- **The Disability Procedure Pack** (How to Manage Employees with a Disability) covers the procedure to follow when managing disabled candidates applying for employment and managing disabled employees during employment.

The **Disability procedure** includes the following:

What a disability is.

Conducting annual appraisals.

Making adjustments to jobs.

Dealing with newly disabled employees.

Also includes a **disability appraisal form** incorporating a section to record any adjustments agreed with the employee (a list of adjustment suggestions is included).

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HR MANUALS

LYNC HR can provide you with manuals covering all areas of employment practice, legislation, forms, template letters and policies. These manuals are designed to provide you with easy to follow and easy to implement Human Resource (GR) documentation covering various aspects of employing people. It has been written for people who are responsible for employing and managing people:

This manual is one of a set of four available. The four cover the following:

- [HR Procedures](#) contained in [Folder 1a & 1b](#)
- [HR Policies](#) contained in [Folder 2](#)
- [Employment Forms](#) contained in [Folder 3](#)
- [Employment Letters](#) contained in [Folder 4](#)

The manual is divided into a number of sections which include:

- **Recruitment and Selection Management**
- **Contracts of Employment**
- **Attendance Management**
- **Performance Management**
- **Disciplinary, Grievance, Capability Management**
- **Termination of Employment**
- **Miscellaneous**

These are available under our Gold Service retainer – check out www.lynchr.co.uk for more information

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This newsletter is sent to you by-monthly and includes useful information about employment legislation changes and top tips on an employment subject in a concise form. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at: lyn@lynchr.co.uk

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