

HR Insights, November 2020

The HR Hour with Anna Denton-Jones

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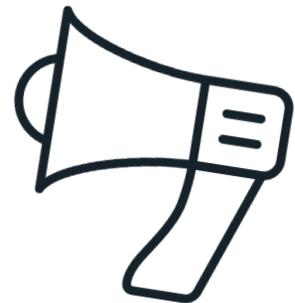
REFRESHING LAW

Down to Earth

Yolk's most recent HR Insights session with Anna Denton-Jones covered the latest HR updates as Covid-19 continues to impact employment & businesses, and we discussed the implications this is having on HR teams and employment law.

Want to listen to the full event? [Listen to the podcast here.](#)

What is the impact of Covid on Recruitment & Job-Seekers?



✓ *Effects*

Digital transformation across many organisations means more of the recruitment process is moving online. This has been putting applicants more in charge.

More people are taking advantage of online workshops and sessions. For example, employability sessions with Universities have seen more attendees than their previous face to face sessions. There are more opportunities to get your brand in front of candidates

Virtual interviewing may allow the interviewee to put across a more authentic version of themselves due to being in a more relaxed environment at home. Some candidates are not as nervous when compared to the usual process of sitting in an unfamiliar waiting room before the interview, followed by a formal meeting room with a panel. This of course comes down to personal preference and the candidate's home environment.

Uptick in hiring managers looking for temporary and contract staff over permanent roles.

✓ *Challenges*

Making training and induction meaningful when people are socially distanced and/or working from home.

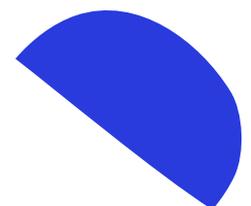
Question: What will the impact be on new graduates looking for a job? And how should HR graduates gain experience?

They should be proactive and chase down opportunities; be more vocal, let employers know what you have achieved, what you're looking for and when you're available. Unfortunately, at the moment to stand out from the crowd can require you to be pushier, even if it doesn't come naturally – take the initiative.

There is a worry for graduates that there are not as many opportunities available for them as a direct result of the recession. However, until furlough comes to an end, we won't see the final numbers on redundancies and job losses. It is important to remember it is not always as negative as the media portrays and there are sectors where there are jobs.

Question: Can employers use the 80% government furlough contribution towards notice pay in January 2021 for those employees whose jobs are redundant in that month?

It's been announced that from December 1st 2020 you are not able to bring a claim for support from HRMC if you have issued the employee with notice. This will affect employer's plans going forward.



Working from home

Wales' guidance has been more stable and has clearly been encouraging working from home and for organisations to facilitate this wherever possible. We are starting to see disagreements between employers and employees about returning to the workplace.

Another point to bear in mind is that the list of those who should be shielding is constantly being updated. For example, recently added to the list are adults with down syndrome and people on dialysis/those with long-term kidney disease.

For those not aware, there is a workplace assessment tool being provided by the Welsh Government designed to help employees and employers with juggling all of these issues.

[Click here for
Workplace
Assessment Tool](#)

Question: How should you deal with employees who are refusing to return to work when asked?

When this arises, you will need to investigate the context. Are they in a public facing role? What is their personal health position? Who do they live with, are they vulnerable? Can they work from home?

It is recommended to take it in small steps with those people who are concerned with the return to work. It can be a very anxious and scary time, especially for those who have been strictly living and working at home for this entire time. It could be worth setting up an initial coffee meeting in the office to show them the new safety measures rather than a day of work/ shift. That way they can also see other colleagues back in the work environment to help assimilate them.

Another suggestion is to involve them with the discussions and the coordination of the safety measures – bring them into the project. If they are particularly concerned about certain elements they can help guide the team on what should be getting implemented and what worries them as an individual as it could be a worry for others who haven't voiced it yet.

In certain cases, you might need to get medical advice on their return to work and find out what measures are required to facilitate their return to work. What specific adjustments should you be making? In one recent example, an employee was provided with their own room so they didn't need to mingle with the other office workers and didn't cross paths with others.

Ultimately you may have tried everything and it's not working. This is when it could become a disciplinary issue. Because of the risk of s44 and s100 Employment Rights Act 1996 claims, a judge will want to see that you have 'bent over backwards' to provide as much support for their return before you start discussing penalties.

What we don't have at the moment is the benefit of seeing what the judicial lines are for such cases as it is such a new issue. Judges will understand that there is a limit to what an employer can do.

A helpful tip might be to document all the steps you have taken to see if you can do any more. Sometimes it is helpful to see it mapped out on one sheet of paper.

Question: Should we be changing contracts to reflect the place of work being from home?

We need to be cautious, as if things change again you will have the longer task of reverting everything back. If you state the place of work is home as a permanent base it will then have redundancy implications if you change it again. Also if home is the workplace then there would also be issues with expenses when they do come into the workplace. Our suggestion would be to keep the place of work as the office address, and offer working from home in line with policy so that you have flexibility i.e. "Your office base is XXX, but you will be entitled to work from home in accordance with our work from home policy from time to time."



Well-being

Everyone has been challenged in this area this year. Those working in HR are particularly tired, we started at a sprint at the start of the year and it's not stopped. As predictions keep saying, be careful of burn out in January in 2021, don't forget to be kind to yourself.

Lots of organisations are now recognising well-being as an issue now and those who were behind the curve are now catching up.

A number of suggestions came from the HR attendees who highlighted some of the initiatives and ideas they've implemented in their organisations. These included:

- ✔ **A designated well-being hour once a week:** an hour that somebody can put into their diary whenever they want outside of the usual lunch break. It's an hour for the employee to take for themselves, i.e. go for a walk, visit a family member etc.
- ✔ **Offering 2 well-being days,** something seen happening in the banking industry
- ✔ **We run regular well-being meetings on zoom** for employees to chat, make contact, talk about non-work stuff and have a laugh. **We are also putting together a virtual Xmas party** with food and games. We also **ensure that people take annual leave** so they can step back from work properly. At the moment many are only taking odd hours instead of full days.
- ✔ We introduced **Happy Hour, to encourage people to come away from their computer**, all managers have been advised that unless urgent, no emails and calls to be placed in happy hour. We also have **a mental health first aider** available to support any employee and candidates.
- ✔ We asked staff where we should target well-being and they asked us to **focus on 'making connections with each other' and having fun**. People are missing the social interaction and we have focused on that. We have 'tea and netter' sessions that people across the organisation join for a chat and we have also have some fun event planned in the run up to Xmas. This is amongst other themed support around isolation, financial well-being and looking after ourselves physically and mentally.
- ✔ We're offering an **additional 3 days annual leave** to add to Christmas Holidays.
- ✔ **We appointed 2 well-being officers** to offer confidential chats with colleagues and get coaching support. We also have drop in sessions weekly which work as informal catch ups

Question: We are looking to create a disability leave policy, firstly to support employees but also to manage the impact absence can have on the business.

Whilst we understand there will be a wide variation in how many days could be considered reasonable time off under this policy, are there any suggested trigger points that managers could work to?

This isn't recommended. Whilst it is laudable to have as part of your sickness absence policy something on disability to encourage people to discuss their disabilities with you and be positive about making adjustments, we cannot pin ourselves to what trigger point should be used in particular situations.

Disabilities will differ from person to person and condition to condition – you need to get medical advice in each case on how much absence someone might be expected to need with their particular condition. Some people won't need your ordinary trigger points adjusting at all, others will.

Domestic Violence

The Welsh Government have been running an awareness campaign this year for domestic violence, as well as the CIPD and Commission for the Equality of Human Rights releasing a joint guidance booklet aimed at employers on this issue.

The definition used of domestic violence by the government is very broad and isn't just about violent behaviour. It talks about any controlling, coercive or threatening behaviour that can encompass physical, sexual, financial and emotional elements.

How does this effect HR? A recent statistic issued says that **75%** of people experiencing domestic violence say that it follows them into work, in some shape or form. This could be getting restrained from going to work, or it can be physically being followed to work, or the perpetrator turning up at work and causing problems for colleagues. It could be text messages/ calls and monitoring of devices and what they're doing.

It is believed that 1 in 4 women will experience some kind of abuse at some point in their lifetime.

A comment from an attendee was that sufferers also have difficulty joining with social activities and have stresses there. Something to remember is that work can be an escape from domestic issues, so overachieving can also be a warning sign.

When we start looking at that, we can see how that impacts the employers. It's not a problem for the employer to solve outright, but it is something that could be impacting the employment relationship and we have a part to play in making society zero tolerant of domestic violence as well as signposting the support being offered to sufferers.

The UN has spoken out about employers who are providing financial support to people as well and how helpful that is.

We're looking into running a HR Insights session on this topic, if that would be of interest [please let us know](#).

DSARS – Data Subject Access Request

We've been reliant on guidance pre-GDPR which is slightly out of date, but there is a new ICO guidance to do with DSARs and supplying requested data. You will be aware of the 30-day period from when you receive the request as to when you have to supply the data you have been asked for. The new guidance now says if you do ask the data subject for more information about narrowing down their request to specific data rather than 'all data' this 'stops the clock' on that 30 days. This is helpful, but do not see this as a way to buy yourself more time and delay the DSARs process as you still need to act without delay.

It is advised to train your people on this issue. Remember to inform your managers/teams that everything recorded in writing whether that's email exchanges or WhatsApp conversations, can be requested.

"Bad Behaviour"

We are starting to see bad behaviours emerging from some employers as the pandemic goes on. We discussed HR having a duty to stamp out these and that employees will be monitoring how colleagues are treated and making decisions about their own loyalty. Your organisation's reputation is on the line, now more than ever, so it is important to be seen as standing up for what is right.

What about people whose jobs involve entering other people's houses where they have said they aren't comfortable and they have been threatened by the employer with disciplinary action?

The concern here is that these workers could become 'super spreaders' through no fault of their own as they are being forced into houses where they could potentially be at risk. The employer has a duty of care to them so should be implementing a protocol to reduce risks such as a series of questions to ask before the visit, upon the visit etc and backing them up that if they have concerns they don't do the work. If the employer doesn't do this the employee will have the protection of the law but as ever the employee is then asked to take the burden of challenging the employer.

Brexit

We're into the last few weeks before Brexit. People who are already here have until June 2021 to sort their settled status as an EU national here in the UK. However, from January, you will not be able to take in new people from Europe, unless they can tick the boxes on the points scheme which is being introduced.

It means many employers are having to look into the sponsorship route for employees. It can take at least 8 weeks just to get the sponsorship license so if you have employees in this situation, allow plenty of time to coordinate.

There's a lot of people who are not clear on what they need to be doing to ensure their settlement status. It is important to make sure you are educating and offering help to support them through the process. [Newfields Solicitors](#) in Cardiff have recently been granted funding from the Welsh Government to run webinars and clinics to help with this issue.

Question: Do we need to get proof of status from a voluntary trustee who works elsewhere?

If you are hiring new trustees make sure you are putting everyone through the same paperwork checks, not just those you think might be from the EU because that could be discriminatory. The usual status checks apply eg:- passport.

Public Sector

A new law came into force on 4th November in the Public Sector placing a cap of £95,000 on termination payments. However, there are number of mandatory and discretionary exceptions in the legislation and certain processes to go through. It will have to be examined on a case by case basis, working out what falls within that territory.

IR35

Question: What is the latest on IR35 please?

The position has always been that if a contractor is providing their services to you through a personal service company i.e. "Joe Bloggs Ltd", up until now the way the tax law has worked is that IR35 puts the responsibility on the "Joe Bloggs Ltd" to deduct PAYE from Joe Bloggs if the relationship between that entity and you the hiring organisation, looks like Joe Bloggs is an employee from a tax perspective. This has been the case for 20 years, just that not many people have done it.

The number of people working through this mechanism has increased massively over the last 20 years, and HMRC has estimated that they are missing out on vast sums of money through not sorting this. What they have done in the public sector a few years back was shift the responsibility from "Joe Bloggs Ltd" to the end user client (you.) In order to decide if this person should be getting taxed PAYE, the end user has to do something called a status determination test which essentially weighs up all the different factors and says whether this person looks like they are an employment relationship for tax purposes.

This was due to happen in the private sector in April 2020 but has been postponed until April 2021. In recent weeks HMRC have started gearing up ready.

Vaccinations

Question: With talk of a vaccine roll-out across the UK what is your take on the measures that employers should go to to make sure that their staff are vaccinated?

Vaccinating staff isn't something an organisation can legally make compulsory as even our government isn't able to make it compulsory across the population due to human rights legislation. Thus employers will have to sue the carrot rather than the stick educating about the benefits.

In terms of asking staff whether they have had it or not and running a 'vaccine audit', you will need to be clear why you are asking (legitimate purposes of risk assessing what people can be asked to do in the workplace) what you are doing with the data etc from a GDPR point of view.

Would you like to attend one of our future HR sessions?

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