

IN DEPTH

October 2021 Newsletter

Elcons Employment Law Consultants Ltd

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Recent and Forthcoming **Changes**

There have been no recent changes since May 2021 (please refer back to our Newsletters from April 2021 and July 2021) but below we outline what to expect in the future:

11 November 2021

Mandatory Covid-19 vaccinations come into effect for people working in or entering CQC-registered care homes unless medically exempt.

1 December 2021

ACAS Early Conciliation forms are to be amended so that multiple respondents can be provided on a single form.

TBC

- Ensuring that tips and gratuities are distributed to staff.
- Increase in the length of time needed in order for there to be a break in the continuity of service from one week to four weeks.
- A right for workers to be able to request a more stable contract.
- Protection for whistle-blowers when applying for roles in the children's social care sector.

Watch this space...

- Consultations are currently being held to determine whether to extend mandatory covid-19 vaccinations to NHS staff and other medical/social care staff.
- It is expected that in 2023, the Government will introduce 'Neonatal Leave' whereby an additional 12 weeks' paid leave for employees whose babies spend an extended period of time in neonatal care.
- There are currently discussions about whether to make it a 'day one' right to make a flexible working request.

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December/January Bank Holidays

With Jo already having received her first Christmas card (yes.... at the end of September!!!!), and with mince pies already on sale in the shops, we thought we would mention the upcoming Bank Holidays 2021/2022!!!

Please be aware that Christmas falls on a weekend this year, making Christmas Day a Saturday and Boxing Day a Sunday. This means that the following two days, Monday the 27th December and Tuesday 28th December are the substitute Bank Holidays.

New Year's Day will fall on a Saturday too, therefore Monday 3rd January will also be a Bank Holiday.
Merry Christmas!!



What are the protected characteristics and why are they important?

The nine Protected Characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race/Ethnicity
- Religion or belief (political views may be included)
- Sex/gender
- Sexual Orientation

It is unlawful to discriminate directly or indirectly on any

of these grounds. There is no service qualification required for an employee to bring a claim for discrimination to Employment Tribunal. So, if you are looking to dismiss an employee with less than 2 years' service (who cannot bring a claim for unfair dismissal), if there is a protected characteristic involved, you need to be very careful. Furthermore, claims linked to discrimination can be brought **BEFORE** you employ someone and where an employer discriminates during the recruitment process, putting people with a Protected

Characteristic at a direct or indirect disadvantage, a claim can be raised and may be won. Should you have queries, please call your Advisor **BEFORE** you take any action.



FURLOUGH ENDED ON 30TH SEPTEMBER 2021

What will companies do then?



Companies have been using the Furlough Scheme since Spring 2020, around 18 months of assistance offered by the Government to keep businesses solvent and people employed.

Generally, it has been effective, however it has now come to an end so what can businesses do now? Initially, you will need to let your employees know that they will be back to work on 1st October and whether they will be expected to work in the workplace or from home. This will need full discussion as a lot of people are wary of coming back to the workplace.

Very importantly, make sure that the workplace is Covid secure and you continue monitoring this! However, if you have concerns about the viability of the business once you lose this support, there are a few options and this all depends on your sector, employees, current workload/profit etc. You could consider any of the following.

Hours

Discuss reduction in hours with your employees, as some may volunteer (as they have been used to not working for a while), this may suit the business and your employees! It could be on a temporary or permanent basis.

Holidays

Are your employees up to date on taking their annual leave? If not encourage them to do so during quiet times - you can even enforce them by giving twice as much notice as the annual leave.

Multi Skilling

Encourage your employees to 'upskill' by learning each other's roles so when there are holidays/sickness you don't have to pay for temps or not get the work done.

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Reduce or Ring Fence Pay

Employees will often be happy with a slight drop in pay, or no pay rise rather than lose their jobs – however always be aware that this should come from the top down to show it isn't only the 'workers' that are taking the heat.

Layoff/Short Hours Working

If you have a lay off clause in your employee's contracts (which Elcons always recommend) then you could consider temporary lay off for part or all of your employee's hours whilst business gets back on track. You only need to pay £30 Statutory Guarantee Pay for the first 5 full days without work then nothing for hours/days not worked for up to 3 months, this can then be repeated for a further 3 months if required and still 'temporary'.



Workers

Look at temporary workers, self-employed contractors etc and consider removing these to ensure the work is there for your loyal long serving staff – a cheaper and better solution than losing those skills.

Cost Cutting

Seems an obvious one, but often little things are not considered eg. no new company cars (stick with the old ones), look at every supplier and see if you can 'shave' a little off etc.

Restructure

Look at the current structure of the business, could you improve on it by perhaps losing a layer or moving employees from a quiet part of the business to a busy one. This would require consultation but may save jobs.

Redundancy

As a final resort, look at making some redundancies as although it isn't ideal, it is better than losing the business and everyone's jobs!



Most of the above would need careful handling, a process and letters, so do speak to your advisor before starting along these paths!

Compulsory Covid Vaccines in CQC Registered Care Homes



At the beginning of August 2021, during the second year of the Covid-19 pandemic, the Government announced that from the 11th November 2021 it would be a mandatory requirement for staff employed in CQC-registered care homes (requiring nursing or personal care), to be fully vaccinated against covid-19 unless they are exempt. This gave a 16-week grace period to organise employees. This requirement also extends to others visiting the homes who deliver services for example hairdressers, building contractors and podiatrists. Homes failing to act in compliance with the new legislation, could face regulatory action from the CQC.

The new legislation passed enforcing this change can be found at: <https://www.legislation.gov.uk/ukxi/2021/891/contents/made>

What does this mean for your employees?

This means that all employees are required to receive full vaccination (both doses where a double dose is required) on or before 11th November. You are required to collate evidence of their vaccination cards or gain shared access with your employees to the online app to evidence their vaccination.

Failure to vaccinate

Should employees fail to vaccinate or provide evidence of exemption, you will be required to investigate and potentially dismiss a person from a position.

Monitoring

1. We advise you have a deadline pre-dating the 11th November
2. After the deadline you bring staff in who have not provided evidence, one at a time to an investigation meeting. You do not need to give warning of an investigation nor does the employee have right of accompaniment – you are required to write minutes for this meeting – please contact your advisor for a template or further advice. If no evidence can be given, advice is to suspend (suspension may attract full pay) pending completion of investigation – during this time you could give further time for vaccination or evidence of such. Speak to your advisor if there are potential points of mitigation.
3. A failure to evidence within a further set timescale should result in a disciplinary hearing invite with potential for dismissal under SOSR (some other substantial reason). A full process will need to be followed in line with length of service and your disciplinary procedure.

Exemptions

If an employee has an allergy or condition that the Green Book lists (COVID-19: the green book, chapter 14a) as a reason not to administer a vaccine they are required to request evidence from their GP/allergy specialist and to present this to you as evidence of exemption.

If you have any questions on any of the above, please contact your advisor.

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Religious holidays and discrimination!

Is it discriminatory to enforce a close down at Christmas but make employees work during Eid?

The simple answer is no..... but as usual, with employment law, there is more to it than that!

If your employment contracts/Handbook state that the company will close down over the Christmas period and employees must put aside some of the annual holiday entitlement for it, then that can be enforceable, as sometimes it just isn't worth keeping the business running during such a quiet time between Bank Holidays!

Plus, if you have allowed your normal quota of employees to take holidays during Eid and cannot allow anymore, then you may refuse further

requests. Again, this should be covered in your contracts/Handbook wherein the annual leave policy will outline that holidays will be granted on a first come, first served basis and will consider the operational needs of the business.

Always be sure that you can evidence your decisions, and that these are consistent, fair and fit a business case rationale which those reviewing in light of your decisions can easily make sense of.

If in doubt, telephone your Elcons Advisor as all situations should be advised on their own specific details. 01422 822842, we are available 24/7 365 days a year.

Annual Leave Entitlements and Notice to take Annual Leave.

During the coronavirus (COVID -19) pandemic in 2020 specific measures were brought in to deal with holiday and absence caused by the coronavirus (COVID-19).

Regulation 13(9) of the Working Time Regulations 1998, generally does not permit statutory annual leave to be carried over from one year to the next. However, changes due to the pandemic, with effect from 9pm on 26 March 2020 meant that: Employees who had not taken all of their statutory annual leave entitlement due to COVID-19 will now be able to carry it over into the next 2 leave years. Some companies have been less affected and have been able to continue with employees taking leave as normal. Where this is the case, now is the time to ensure your employees have their annual leave booked and in place.

Use it or lose it

We are now in the last quarter of the year. Now is the time to consider who has annual leave left and who needs to be booking this in order to ensure that an unnecessary backlog of annual leave does not carry forward into the next holiday year. There is also an obligation on employers to ensure their workers take their statutory entitlement in any one holiday year, failure to do so could result in a financial penalty. Memos are a great way of highlighting this to your employees and to keep a record of what has been distributed and communicated.

Should you require a memo reminding employees to book remaining leave, please do not hesitate to contact your advisor on 01422 822 842.

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Wintery weather and having an inclement weather plan...

Well, to be honest we don't understand the weather here at Elcons but word on the web implies we're in for a winter of storms and extreme weather conditions so we recommend that now is the time to review or introduce an inclement weather policy and a business contingency plan... something you may now be better at than ever given the pandemic..!

Inclement weather is severe or harsh weather. This could be for example: high winds, heavy snow, heavy rain which could lead to floods. Some of the most common problems encountered are:

- Businesses cannot open (key holders not present/premises flooded or inaccessible)
- Businesses can open but may not be fully operational
- Normal duties are not possible to carry out
- Deliveries cannot be made
- Public transport is affected
- Childcare providers are closed
- Driving conditions are dangerous

Inclement weather can have a financial detriment on both business owners and employees. By having a clear policy in place, it will ensure everyone is aware of what will happen should issues arise.

Your duty of care

Under health and safety legislation, employers have a duty to ensure the health, safety and wellbeing of their employees. You can express that you expect employees to make "reasonable efforts" to attend work, however, you should not encourage employees to travel in dangerous



conditions or put themselves or anyone else at risk trying come to work. You should take the necessary precautions before allowing employees to carry out any work in severe weather conditions, such as completing risk assessments and ensuring sufficient PPE is provided for the specific conditions.

What your policy should look like?

Employees who cannot get into work

There is no automatic legal entitlement for employees to stay away from work or remain at home on full or reduced pay due to inclement weather, unless this is because normal childcare arrangements have broken down due to the conditions. Any other reason would be classed as unauthorised leave, even if they have reported the absence to you.

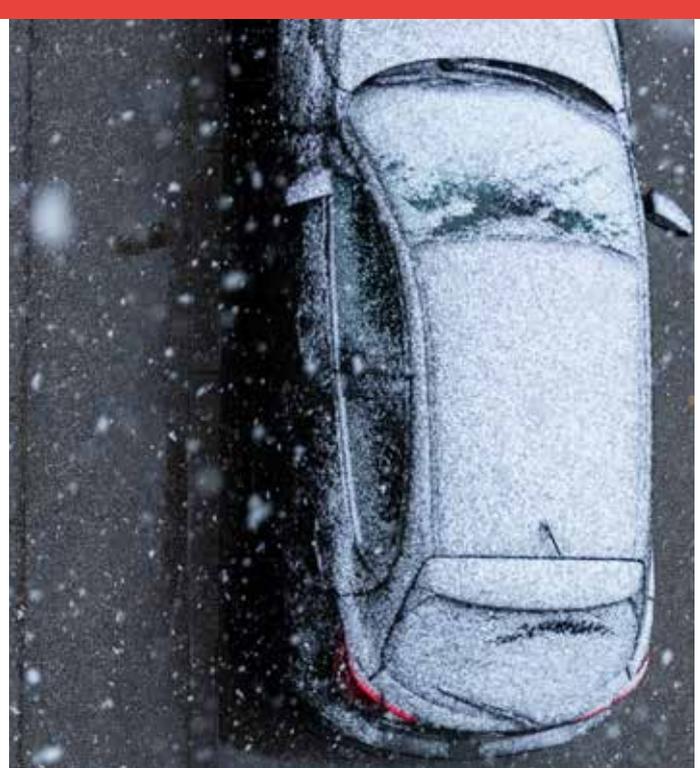
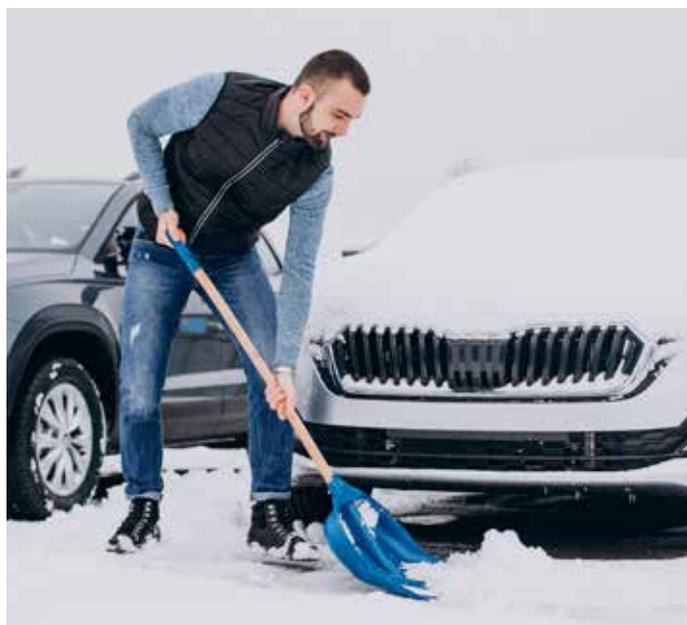
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When it comes to pay for those who cannot make it in to work, the choice is yours. You could have a clause in your policy which states you will pay up to X number of days to employees who can genuinely not make it into the workplace due to inclement weather. However, you may not be in a financial position to offer this, so instead you may offer employees unpaid leave or the opportunity to use annual leave. There are no set rules however consistency and fairness are always required. Inconsistency could potentially leave your business open to grievances and discrimination claims.

The most common options offered by employers are:

- To take this time as annual holiday leave
- To make up the time at a later date
- To take the time as unpaid leave
- To work from home subject to your job role

Absence reporting procedures for this policy should be the same as any lateness or absence reporting procedure you have in place. Your policy should clearly state who the employee needs to contact, should issues getting to work arise. The employee should expect to explain the reasons why they cannot attend work and advise on how long they anticipate their absence to last. Employees are to remain in contact with the company during their absence and give regular updates.



When you have to close the business

You will have a lot of things to consider when thinking of closing your business due to inclement weather. How much of a financial impact closing will have on the business for example. For most companies who decide to have a shutdown, it is due to deliveries not being able to be made, managers not being able to make it in to work, customers not being able to get out of their homes or really severe driving conditions where you do not want to put your employees at risk.

When you have made the decision to close or send employees home, you would normally pay your employees full pay as you are taking away their option to work. If, however, you have a lay-off clause in your contracts, you could look at implementing this for the time you will be unable to provide work to your employees, please discuss this option with your advisor.

If you feel an inclement weather clause is something you need but you are not sure how to construct it, please get in touch with your advisor at Elcons and we will be happy to draft this policy for you. Please be advised that if you already have an employee handbook drafted by us, this clause is likely to be in there already!



Christmas parties are back and so are the HR headaches

The staff Christmas party is a time to get-together and have fun. Preparation is key, so, set it up, have a go, sit back and relax with a Ho! Ho! Ho!

Are you having a Christmas party? If the answer is yes, an annual celebration, particularly amidst the pandemic will require careful planning. Here are a few tips to keep things in order:



- Consult with staff regarding options they feel comfortable with/indicate why you have decided on your chosen venue/activity – highlight considerations for travel and activity in light of covid.
- Remind staff via memo, ahead of the do, that a level of **appropriate behaviour** and respect towards each other is still required, including a respect for those who wish to remain cautious due to covid.
- Is your party **inclusive** – think about the label and whether it has religious connotations and inadvertently excludes groups of employees.
- **Management** to mind their tongues and not give bonuses or make promises whilst drunk!
- Understand a party organised in work time can be seen as **an extension of the workplace** (even if they are outside of normal working hours).
- Be mindful of your **Duty of Care!** (Employers may be held liable for incidents of harassment and be held responsible for employees' actions that take place at work-related social events and could even face tribunal claims from employees regarding such).
- **Supply alcohol** (if you wish) but be mindful that over supplying or having a free bar could be a recipe for disaster think about the location and whether **transport** should be provided.

Upcoming Training

We hold weekly Wednesday morning (10am – 12noon) online training sessions for clients included in your advice packages. These are cameras on, interactive sessions. Please contact Rachel to book on rachelh@elcons.co.uk

AN INTRODUCTION TO EMPLOYMENT LAW AND BEST PRACTICE This course takes us back to the basics of Employment Law, covering recruitment, management of employees and the need to follow 'best practice' through to termination of employment	13th Oct 2021	2nd Feb 2022
THE DISCIPLINARY PROCESS A closer look at the disciplinary process – this course is ideal for managers who have authority to act in disciplinary matters. It covers the legalities, investigations and appeals, as well as the need to follow ACAS guidelines.	20th Oct 2021	9th Feb 2022
MANAGING PERFORMANCE On this course we aim to develop managers in managing their employee's performance through the appraisal process.	27th Oct 2021	16th Feb 2022
MANAGING ABSENTEEISM Thousands of pounds are lost each year due to employees being absent from work. On this course we look at how to manage absenteeism, including employees on long term sick.	3rd Nov 2021	23rd Feb 2022
REDUNDANCY, SHORT TIME WORKING AND LAY OFF This course looks in greater detail at the reasons for redundancy and how to manage the process from start to finish.	10th Nov 2021	2nd Mar 2022
RECRUITMENT AND SELECTION PROCESS A guide to selecting the right people for your business.	17th Nov 2021	9th Mar 2022
AVOIDING DISCRIMINATION CLAIMS Employers are wide open to a discrimination claim even before an individual is employed. In this course we take a closer look at the protected characteristics and give best practice guidance on how to avoid a discrimination claim.	24th Nov 2021	16th Mar 2022
FAMILY FRIENDLY ENTITLEMENTS This course is designed to give you an overview of the various topics within family friendly entitlements, such as Maternity, Paternity, Adoption Leave and Shared Parental Leave. During the course we talk about eligibility, entitlements and payments.	1st Dec 2021	23rd Mar 2022
AN INTRODUCTION TO DEVELOPING MANAGEMENT CAPABILITIES This session covers: Effective employee management - Support & Challenge model, Effective investigation skills., Negotiation Skills, Conflict Management – Resistance behaviours, learn what they are and how every manager can use these to grow and develop the business.	8th Dec 2021	30th Mar 2022
CONDUCTING WORKPLACE INVESTIGATIONS: An interactive session to help you understand your obligations in relation to workplace investigations, the ACAS Code which guides process and key stages of the investigation process.	15th Dec 2021	6th Apr 2022
RESIGNATIONS... and all the catches How to analyse the risk of a resignation, how to apply notice periods, PILON, Garden Leave, post termination restrictions and deductions. A comprehensive guide to the end of the employment relationship.	22nd Dec 2021	13th Apr 2022
DEVELOPING & COACHING TEAMS Identifying behaviours and characteristics of a Team. Gaining insight in to developing a team and analysing its effectiveness using a variety of diagnostic tools. Looking at the managerial role for coaching and shaping a team	12th Jan 2022	20th April 2022
MANAGING CHANGE This course looks at what changes you may have to make within the business e.g. restructure, amending role/terms & conditions, changes within the sector/processes etc and what steps you should take to get there safely whilst helping employees to accept and embrace the change.	29th Sept 2021	19th Jan 2022
GRIEVANCE TRAINING - NEW This session highlights the formal and informal process steps, essential ingredients and the quirks of grievances. This session will broaden understanding of the importance of the grievance process and how to get it right first time every time.	6th Oct 2021	26th Jan 2022