

Redwing Solutions'

January 2012 Newsletter



Welcome & Happy New Year!

... to Redwing Solutions' Summer Newsletter, Issue 7, in which we have up-to-date legal information, interesting articles which might prompt your thinking and also some advice to support you and your people in your businesses. It's quick to read and we hope you enjoy it!

Imogen.

Welcome to Claire our latest team member

Claire joined Redwing in October 2011 as our Administration Manager and HR Consultant. With over 10 years' HR experience within various sectors including food storage and distribution, broadcast and media and marketing communications she will be supporting Redwing in the development of new office systems as well as offering HR support and guidance for our clients.



Queen's Jubilee 2012



As you are no doubt aware, there is an extra public holiday in 2012, much in the same way there was one in 2011 for the Royal wedding. The Queen's Jubilee on 5th June 2012 is a Tuesday and depending on how you word your terms and conditions of employment, you can either decide to grant an extra day off or require your staff to take another day of fixed holiday. If you express your entitlement as 5.6 weeks inclusive of public and bank holidays you can include it. If you say 20 plus bank and public you can't. If you decide to open for business as

usual, and many will, your staff can't demand to be off work. If they wish to be off they would apply to have holiday in the usual way.

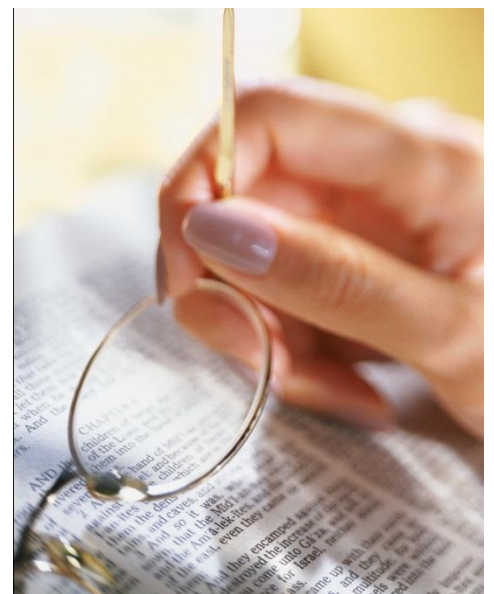
How to gather evidence for tribunal

We hope you'll never need to prepare for an employment tribunal, but if you do you'll be glad if you have always gathered information in a way that would allow you to prepare for the scrutiny of your evidence by a third party. Here are some tips on key points you should consider:

1. Whatever the nature of the claim, it is important that the employer can show that a fair and thorough investigation took place. Ensure you are familiar with the ACAS Code of Practice in Discipline and Grievance and the separate guidance notes, the ACAS Guide to Discipline and Grievances at Work.
2. Recognise the value of physical evidence. Employer was seen by X doing Y. Is there a CCTV record, have you got a job description showing that they don't do Y? Is this listed in your Handbook as a GM offence? Are there any photographs of warning signs etc?
3. Check credibility of your evidence. The way evidence is collected and recorded will affect its credibility. If a disciplinary hearing takes place, the tribunal will want to see that the employer has put the facts and issues fairly and objectively to the employee.
4. Prefer facts to opinion. Look for facts and where not available, seek and further investigate to try and establish the facts.
5. Keep fantastic records. Timelines and good record keeping protect your employer and your sanity! Keep records meticulously. Minutes, emails, attendance notes, records of telephone calls, copies of correspondence and any interaction with the employee. Records are also great at refreshing the memory in preparing witness statements.

Managing without the Default Retirement Age

Since 1st October 2011, it is not legal for an employer to use a default retirement age as a general rule across its workforce. The decision to end this default age of 65 years last year was introduced with a great fanfare as a positive move for worker's rights. Unfortunately as we remain affected by the economic downturn, not being able to retire a worker means an employer has to manage the worker's capability. Not always a comfortable place if you are the worker! Let's take one case study which may reassure you when handling capability cases.



Richard & Bob

Richard is 25 years old and is returning to work after a long work related absence. The manager sets Richard sales targets at half those of the rest of the team for the first few months of his return. Bob who is in his 50's works in the sales team as well. Bob is dismissed on capability grounds after failing to reach his sales targets and claims age discrimination and points to Richard. The employer is able to show that although this may appear discriminatory he can explain the difference in targets as a legitimate and proportionate way of reintroducing staff who have been absent from work for a long period and would be applied equally to all staff on returning to work, regardless of their age. To address performance in the workplace you will always benefit from a clear, unambiguous policy. For your capability procedure please visit our website www.thehrshop.co.uk

Workshops planned for the coming months

Here you'll find a selection of the workshops to be delivered at our location in Redditch over the coming months.

<u>Title</u>	<u>Aimed At</u>	<u>Dates & Costs</u>
HR for Administrators	HR Administrators, Office Managers, Administration Personnel	21 st , 28 th Feb, & 6 th March £350 plus VAT
Employment Law Update	Owners, Directors, Managers and HR personnel	21 st March £150 plus VAT
HR for Managers	Owners, Directors, Senior Managers, Finance Managers	18 April £150 plus VAT

To make a booking please email bookings@redwing-solutions.co.uk or call 01527 457150

Don't be tempted to swear at the boss, even if it's just once!

Employment Tribunal case – Mrs Doman v Royal Mail Ltd

The employer in this case was entitled to take a stern view of an isolated incident in which an employee lost her cool and swore at a team leader.

Mrs Doman had worked for Royal Mail since 2001. She was a customer service adviser. Her career there was "largely uneventful" and "enjoyable" until 3 February 2009, when she claimed that a dispute over her inability to get to work because of heavy snow changed her superiors' attitudes towards her and "ultimately led to her dismissal". Mrs Doman said that a dispute over how Mr Wynne, her manager, recorded the absence adversely affected her relationships in the workplace. She claimed that she was put on the company's capability procedure because Mr Wynne had "taken against her" after the dispute about her absence.

*On 27 April 2010, Mr Wynne was not present and Mrs Doman was reporting to an acting team leader, Ms Brammer. While Mrs Doman was making a phone call, Ms Brammer interrupted her on several occasions because she genuinely believed that Mrs Doman was having difficulties. Mrs Doman became upset by the interruptions and broke down in tears. On completion of the telephone conversation, there was a "frank exchange of views" that culminated in Mrs Doman telling Ms Brammer to "f*** off".*

The company suspended Mrs Doman and commenced a disciplinary investigation. All the relevant witnesses to the incident were interviewed and the witness statements were presented to Mrs Doman before her disciplinary hearing, at which the charge was that she had used foul and abusive language towards Ms Brammer. At the hearing, Mrs Doman did not deny that she had sworn at the manager. She confirmed that she regarded her swearing as "out of order", but could not say that she regretted it. The company decided to dismiss her, an outcome that was confirmed on appeal. Mrs Doman claimed unfair dismissal.

The employment tribunal had no doubt that the bad language was directed at Ms Brammer and not "flung out into the ether". It noted that at least one colleague who heard the outburst was "shocked" at hearing this language used in the workplace. The evidence before the tribunal was that bad language was not tolerated in this workplace.

Mrs Doman argued that her swearing was out of character and came after a prolonged period of stress brought on by her treatment since the dispute that started on 3 February 2009. However, the tribunal noted that, although Mrs Doman's actions were probably out of character, she had not told anyone at the company that she was feeling under pressure. She had not at any time raised a formal grievance or used stress to explain her actions.

The tribunal did have some criticisms about a lack of communication during Mrs Doman's suspension and the appeal officer bringing his own "emotive" views on Mrs Doman into his decision. However, the tribunal did not believe that these were sufficient to make the dismissal unfair. It was not disputed that Mrs Doman had told an acting manager to "f*** off".

The tribunal concluded that the company had, by a "very slim margin", shown that the dismissal was within the range of reasonable responses. The tribunal concluded that, even if it had come to a decision that the company was acting outside the range of reasonable responses, it would have drastically reduced any compensation awarded to Mrs Doman. She had contributed to her own dismissal "by a factor in excess of 90%".

Things to think about...

Employers are not expected to have to tolerate an employee swearing at a manager or a colleague, even if it is an isolated occurrence. However, employers might take a more lenient approach if an employee uses bad language that is not directed at a particular person.

Employers should bear in mind that an uncharacteristic outburst by a normally well-behaved employee might have other factors behind it, for example stress brought on by overwork or bullying of that person.

Note from the Editor.....Smart phone, friend or foe?

Whilst I can still remember telling someone off for playing solitaire when they should be working now the temptation is in their pocket or handbag.

In 2009 an insurance worker was dismissed after surfing Facebook whilst off sick. Not a problem you would think, until you realise she had told her employer that she could not work in front of a computer because she needed to lie in the dark!



Whilst many employers will allow their staff reasonable access to internet during breaks and further define an internet policy setting out acceptable parameters for internet and email use during work time.

Increasingly the employer has had to 'turn off' access to social media sites such as Facebook as they are addictive and too tempting even for a busy, motivated worker.

The problem we face now is that social media is accessed via the smart phone not the PC. How do you say to someone that you mustn't use your smart phone to access the internet during work time? If you ban it for those who work at desks in the office, how do you ban it for those who work in the yard, or the warehouse. Interesting times are ahead that's for sure!

About Redwing

Redwing Solutions Ltd was started in 2004 by Principal Consultant, Imogen Edmunds, Chartered FCIPD. The Company works with small to medium sized organisations, from the public, private and charity sectors across the West Midlands. The business supports its clients with up to date employment law and Human Resource Management and delivers workshops and training in everything people related. Our style of training delivery has been described as 'informed but fun' and we have the capability to design bespoke programmes that deliver results. For a no obligation discussion about your HR or Training needs just call us on 01527 457150 and we will happily come and see you to talk through your options.

www.thehrshop.co.uk for all your Human Resources needs.

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