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## January 2022 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

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In this month's edition, we report on:

- Self-Certification - emergency changes
  - Digital right-to-work checks to become permanent from April
  - Fire and rehire as a last resort
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### Self-certification – emergency changes

Emergency legislation has been passed which temporarily extends the period for which employees can self-certify their absence during a period sickness for Statutory Sick Pay purposes, from 7 days to 28 days (including non-working days).

This means the employee does not need to provide a medical certificate from their GP until after 28 days. These Regulations have been made in order to reduce the pressure on GPs created by the ongoing Covid-19 pandemic.

The new rules apply to periods of incapacity which commence between 17 December 2021 and 26 January 2022, or which started before 17 December but have not yet lasted more than 7 days (as the requirement to provide medical evidence has not yet arisen).

Given the temporary nature of these Regulations, we do not recommend that employers amend written rules on absence reporting. However, it is worth instead communicating the temporary change in requirements to staff via a memo, email or other message.

Statutory Sick Pay (SSP) is £96.35 a week and normally paid by employers. There is a SSP Rebate Scheme means any business with less than 250 employees can claim SSP for any Covid-related absences, for up to two weeks per employee.

**Employers:** Employees must self-isolate for four days before becoming eligible for SSP and should be paid for every day of that self-isolation.

**Contact us:** We can assist with Covid related and other sickness absence.

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### Digital right to work checks to become permanent from April

Digital right-to-work checks are to be made permanent, the government has announced, following widespread calls to make the temporary measure a longer-term feature.

The change to allow right-to-work checks to be carried out digitally was initially deployed as a temporary measure to aid with remote working in response to the Covid-19 pandemic, and was meant to end on 5 April this year, after a number of extensions.

However, the government has recently announced that digital checks done remotely will now continue past this date. The benefits of the new system will be important for businesses as the job market recovers. This system is quicker and easier and reduces the time needed to get candidates into work.

The announcement comes as the government revealed plans to extend the Seasonal Worker Visa route until 2024. This allows overseas workers to come to the UK for up to six months.

**Employers:** If you do a digital right-to-work check then mark that the check was completed digitally or remotely.

**Contact us:** We can assist with induction, employment contracts and policies

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## Fire and rehire as a last resort

The pandemic has seen companies use fire and rehire tactics to force employees into accepting different, and in some cases worse, terms and conditions of employment.

### What is it?

Fire and rehire happens when business owners/managers want to align employees' contracts to new business models and their employees disagree with the proposed changes. Whilst not illegal, the controversial practice has been condemned by many.

### Fire and rehire carries risks, which include:

- Damage to working relations
- Reduced staff morale
- Increased stress
- Reduction in performance levels
- Claims for breach of contract, unfair dismissal and failure to consult
- Harm to an organisation's reputation

Consider other options first.

Taking all of this into account, ACAS have set out new guidance to help employers explore all other options before using fire and rehire tactics to change employee contracts.

### If you are considering contract changes, here are some useful pointers:

1. Look carefully at the issues you are trying to solve and consider whether they can be answered by making changes elsewhere in the organisation.
2. If changes are still necessary, then make sure you consider how best to communicate the changes.
3. Fully inform affected staff and their representative in a timely manner and with clear information.
4. Consult with all employees and their representatives in a genuine and meaningful way.
5. Keep all communications constructive and if consensus is not reached, encourage alternative options to find a compromise where possible.

Of course, there are many situations where it is reasonable and necessary for to vary employees' contracts.

In these circumstances, we encourage positive engagement and a thorough consultation process with all employees who are impacted by the changes. When communicating with them, ensure information is communicated in a way all employees will be able to

understand, taking into consideration any disabilities or language barriers. Failure to do so may give rise to a discrimination claim.

Sometimes reaching an agreement is not always possible and it is only then that an employer should use fire and rehire as a last resort. If you terminate an employee's contract that amounts to dismissal, so you need to ensure you have followed a fair dismissal procedure where you have provided:

- A fair reason for the dismissal
- The correct amount of notice
- Offered a right of appeal

**Employers:** Variations of contract require a minimum of a 1-month consultation period

**Contact us:** We can assist with varying employees' terms and conditions

**For more information or assistance Email:** [enquiries@employmentlawsupport.co.uk](mailto:enquiries@employmentlawsupport.co.uk)



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