



## January 2019 Update

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

In this month's edition, we report on:

- GDPR – What do you need to think about for homeworkers?
- What to consider when drafting contractual bonus clauses
- Employer's responsibility for their young workers

### **GDPR – What do you need to think about for homeworkers?**

Developments in technology means remote working is on the increase. Our increasing reliance on valued company data means that we need to add in an additional layer of protection for homeworkers.

Do your remote workers ever find themselves needing to use public networks to access data and/or be using their devices in public spaces? Aside from the risk of the device being mislaid, it can be more difficult to track a data breach as well as trying to identify how that breach has occurred.

Of course, companies do their utmost to ensure remote workers keep data secure. The challenge is to ensure policies and standing operating procedures are put into place, so that the guidelines and risks are clear to employees. This of course must be balanced against the privacy rights of employees. GDPR has made it more onerous with an increase in fines for a data breach, while also giving individuals more rights over their personal data.

Many companies put in place workplace policies that allow employers to track employees' usage of their devices (keystroke trackers) and their location. However, increasingly employees use their devices to access both work and their personal life. Separating the two worlds can be difficult. Without clear separation, the use of keystroke tracking technology could infringe the employees' rights under GDPR.

Are there less intrusive, ways to protect our data?

Yes, Article 32 of the GDPR requires organisations to use technological and security measures. There is a list of items that are considered suitable, such as encryption of data.

It is not possible to encrypt all data and so in some situations the GDPR concept of 'pseudonymization' may be useful. Masking data by replacing identifying information with artificial identifiers is often used. Blocking access to personal email, as personal email is unlikely to carry the correct technical and security measures, is often necessary.

**Employers:** Identify possible risks from remote workers and update your policies and procedures to identify any data sets, which if exposed, would create risk/vulnerability in the business.

**Contact us:** We can assist your business with data protection policies and procedures.

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## What to consider when drafting contractual bonus clauses

There is often disagreement if an employee resigns or their employment is terminated about outstanding bonus payments. The key thing is to make clear in the contract or a separate letter, whether any bonus payments will fall due in the event that either the company or the employee give notice to terminate. A recent case has considered this and the following guidelines from the judgement have been published:

### Lessons

- Use clear and concise language. Avoid convoluted sentences which may be ambiguous. Use plain English.
- Decide on the form of bonus you wish to pay. Will it be a guaranteed amount or discretionary bonus?

- Will you pay a guaranteed minimum amount and conditional amounts on top? It is possible to have a completely discretionary bonus with regards to the amount, time and method of payment.
- However, case law states that a company must exercise the discretion rationally. If you are refusing to pay a discretionary bonus arbitrarily, this would be unlawful.
- Set out the payment arrangements – is it paid in one amount or in instalments? When is it paid? Avoid a precise date for payment – indicate around what period, or by when.
- Decide whether any target must be met by the employee or the business before payment - be clear about it.
- For a signing-on bonus, include provision for repayment, possibly of part rather than the full amount, if the employee leaves before 12 months or a longer period.
- State what happens to the bonus or part if at the time of payment, the employee has given notice to end employment, or has left the business due to the employer giving notice in certain circumstances.
- On termination will they be entitled to a pro rata bonus payment, paid after their departure? Is this conditional on the employee abiding by their post termination restrictions? What happens if an employee is made redundant?
- Avoid bonus conditions which could be indirectly discriminatory. Check for direct and indirect discrimination. What happens when an employee is on maternity leave?
- What happens to the bonus payment if the employee is on garden leave? Not paying it may result in post-termination restrictions falling away with the contract, which should be avoided.

**Employers:** Make sure the bonus is set out in reasonably clear and unambiguous language and is clear what happens if the contract terminates.

**Contact us:** We can advise on bonus clauses and letters.

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## **Employer's responsibility for their young workers**

Many companies have links with schools to offer work experience or placements for a few weeks to a student. This is a great way to spot possible apprentices or future employees.

Employers have the same responsibility for the health, safety and welfare of young workers, (under 18 years of age) whether they are employees or work experience placements, as they have to the rest of their workforce. Often employers will need to send their employer liability certificate to the school or college.

Employers must also assess the risks to young people before they start work and advise them what these risks are. For students under the school leaving age, this information must also be given and available to the parents/guardian together with information on the control measures put in place.

Consider the specific risks often associated with young persons which include;

- Lack of experience and awareness of risks
- Work beyond their physical capability
- Exposure to substances harmful to human health
- Extreme heat, noise and vibration

Make sure all young person's receive induction training, especially during the first few weeks / days of their employment or work experience. This would include site rules, prohibited equipment, machinery, fire procedure and precautions, welfare arrangements, first aid and details of ongoing training programmes, introduction to colleagues, line managers and supervision arrangements.

**Employers:** Create a good impression with students and young workers from the start with processes.

**Contact us:** We can assist with induction and training.

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



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Business Forum

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