

Workplace Newsletter

Keeping you up to date with all things Employment Law, HR & Work-Based

May 2021



Does innovation extend to your employment practices?

There's a growing trend of doing things differently, and it's extending to employers' approach to their employment practices.

Honest Burgers have a down to earth tone running through their marketing and social media presence – think more Aldi than M&S. But it doesn't stop there – just take a look at their employment contract.

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Welcome

This month we're taking a look at a real range of issues, including the eye-watering £2.5m Tribunal award, what employers can do to support mental health wellbeing and risk assessments for homeworkers.

As always, please follow us on [LinkedIn](#) for our latest updates.

The eye-watering £2.5 million Tribunal award

We take a look at the second largest disability discrimination award case.

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What do I do about... employee mental well-being?

Mental health issues are nothing new, but the pandemic and its various knock on effects has seen a surge in people experiencing challenges with their mental health well-being

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Risk assessments for home-workers

With people working from home suddenly and out of necessity, did you delay the review of your workplace and activity risk assessments? [Read more >](#)

HONEST CONTRACT
HOURLY

PAY
Your pay is per hour, paid bi-weekly (every two weeks) to your bank account. We partner with Wagesstream, meaning you can stream 50% of your money as you earn it. More information is found in Knowledge Library.

HOURS
Your guaranteed working hours are per week. But you'll be paid by how many actual hours you've worked, this means there's more flexibility if you go home early one day. We may review your guaranteed hours if an external factor affects the amount of bums on seats to your restaurant. For every 6 hours you work, make sure you take a 30-minute paid break to rest and fuel up. Or if you're working a double shift, take 1 hour.

LOCATION
Your restaurant is
Sometimes we may need you to work in other restaurants nearby, but we will do our best to make sure you are not travelling more than an hour to work.

HOLIDAY PAY
If you work full time - that's 45 hours a week, you're entitled to 5.8 working weeks holiday pay. We calculate this in hours, which is 261 hours over the year. This includes taking your birthday off work too. If you're working part time, we'll calculate your holiday hours on the amount of hours you've worked. The Honest holiday calendar starts from 1st March and ends 28th February.

PENSION
You will be auto-enrolled into our pension scheme (NEST) after 3 months. Employee contribution 5% vs Employer contribution 3%.

SERIOUS STUFF
If you've been overpaid, it's likely that we've made a mistake. Before spending the money on a nice holiday, we'd much prefer it if you let us know - as we have the right to take it back at a later date. Your contract and all our policies are held on Knowledge Library, it's important to us that you know your stuff.

THE HONEYMOON PHASE
You don't know what you don't know, and maybe we aren't right for each other after all. So there's 30 days to figure it out, and if it doesn't work - let's be adults about it. You give us 48 hours notice, or we'll give you one week. And we'll also pay you for the holiday you're owed.

WHO CARES WINS
HONEST COLLEGE
Your learning journey is individual to you. We self-learn here, and Honest College is your go-to place for 'useful skills' and 'life skills'. The mandatory courses you need to complete are H&S and Food Safety level 2.

PERKS
Check out the full list of Honest Perks on Knowledge Library. Our favourite two are private healthcare with Vitality, and free burgers for you and your friends every month.

THE GLORIOUS EXIT
BREAKUPS
Breakups happen, and that's okay. But we would love to know the reason so that we can help or get better in the future. If you do decide it's time to leave we require weeks notice, so we can find your replacement.

PEOPLE GUARDIAN
When things inside or outside of work aren't going well, and you don't know where to turn, our People Guardian Bot is there to support and offer advice.

HONEST BY NATURE
WORKPLACE
Workplace is our culture engine, where we communicate, learn and hold events. We also use instant chat bots to stay in touch during your life at Honest.

YOU SIGN
WE SIGN _____ DATE _____

Signing your Honest contract means you agree to read through your employment policies, which are held in Knowledge Library on Workplace.

DESIGNED BY L&S BURGERS, GREAT BRITAIN

Not only is it pretty unusual in looks and content, but they shared it on their LinkedIn page.

Would you be willing to share your standard employment contract online?

Maybe the Honest Burger ethos is similar to yours, could you model your contracts in a similar way?

Other ways to stand out

Some employers focus on other ways of standing out and one of the most significant ways of doing this is by offering enhanced benefits.

It wasn't too long ago that the UK announced the introduction of 2 weeks paid leave for bereaved parents. It was the world's most generous statutory offering but already employers are surpassing it by extending paid leave not only following stillbirth and death of a child, but miscarriage too.

Monzo Bank and Channel 4 both announced pregnancy loss policies, providing paid leave to men and women affected by miscarriage.

But what do employees really want?

Depending on which survey results you look at, employees most want/value anything from housing cost contributions to free tea/coffee.

When results are analysed by age group definite patterns emerge, with 18-38 year olds most interested in family related benefits, and those aged 53 years and over more interested in paid sabbaticals and health/death in service insurance.

The best way to find out what will make a real difference to your workforce is always going to be - ask them. Whether its working groups or anonymous surveys, if you want to increase employee morale, job satisfaction and attract the best candidates, find out what it is your workforce need and want.

See what your competitors are doing, and maybe even check out what others are doing too - there's something really engaging about the Honest Burger contract that just makes you want to get to know them.

Recent Case Decisions

The £2.5 million Tribunal award

Barrow v Kellogg Brown and Root (UK) Ltd

Being the Respondent that has to pay the second largest disability discrimination award ever made by the Employment Tribunal was probably not the sort of publicity Kellogg Brown and Root (UK) Ltd were aiming for.

The Claimant in the case of Barrow v Kellogg Brown and Root (UK) Ltd first started working for the Respondent as a graduate trainee on 1 September 1980. At the time of his dismissal he had been employed by the Respondent for just over 36 years - the majority of his working life.

The sequence of events detailed in the London South Tribunal's liability judgement leave one in little doubt that Mr Barrow was treated extremely badly by his employer following a change in his behaviour due to the strong oral steroid Mr Barrow was taking for a skin condition. A condition that was later to be diagnosed as Mycosis Fungoides, a form of lymphoma (cancer).

Following a purported summary dismissal, Mr Barrow was subjected to a 'sham' process in which the Respondent attempted to justify his dismissal as a 'some other substantial reason' dismissal, namely a breakdown in trust and confidence.

The Tribunal dismissed a few of Mr Barrow's claims but found in his favour in terms of unfair dismissal, disability-related harassment and discrimination arising in consequence of disability.

Discrimination awards are not subject to a cap, unlike straight unfair dismissal claims. The Tribunal accepted that Mr Barrow would not work again and therefore career long losses were sustained. Mr Barrow was 60 at the time of his dismissal. In addition to career-long losses, Mr Barrow was awarded injury to feelings, together with £25,000 for pain, suffering and loss of amenity. The Tribunal also made an award of aggravated damages in the sum of £7,500.

The consequences of getting it wrong can be costly. As this case demonstrates, an individual who has suffered discrimination during employment can claim compensation for a number of factors including financial losses, injury to feelings, personal injury and in cases of exceptionally bad treatment, aggravated damages.

What stayed with us most after reading this case though was not the strikingly high award but the fact that according to the firm that represented him, Mr Barrow told them 'It has been the most traumatic event in my life, even more than being diagnosed with cancer, and I have been deeply scarred by the way I was treated by the company'.

We're sure you'd agree that your business wouldn't ever want to be responsible for causing someone to summarise their experience in such a way. All employers should strive to deter and prevent discrimination in the workplace, not just because getting it wrong can be expensive but because getting it wrong is just, well, wrong.

Assessing risks to Agile workers

Reflecting on the past year Covid-19 has highlighted the importance of risk assessment like never before both from a legal standpoint and a moral one. With people working from home suddenly and out of necessity, did you delay the review of your workplace and activity risk assessments?

The pandemic has affected our work more than any time in recent history and businesses have had to adapt to meet the challenges posed by Covid-19. Things will not be the same and, for many, home and agile working will now be part of their daily routine. Whilst there are many positives to home and agile working, beware the bear trap that is 'out of sight out of mind'.

Employers' responsibilities towards their employees don't stop and start at the doors of the main workplace. Employers are still responsible for their employees even if they work from home and as such, adequate health and safety arrangements need to be in place.

For example, care needs to be taken to ensure that the home environment offers a safe place of work for the employee.

What are my responsibilities as an employer?
An employer is responsible for an employee's health, safety and welfare 'so far as is reasonably practicable'.

This means that employers must conduct risk assessments of all the work activities carried out by employees, including for those working from home.

Consider how you will address matters for home workers that might need to be approached differently, for example:

- how you might regulate stress levels
- how to ensure rest breaks and other Working Time obligations will be met
- whether specialist equipment is required
- whether electrical/IT equipment needs to be safety tested or virus and security protected
- first aid arrangements
- how work-related accidents should be reported

You will of course need to document the risk assessment and any actions arising from the assessment. A review period should also be established upon completion of the initial assessment. Your obligations for the health and safety of your home workers is ongoing, so don't make the mistake of completing one risk assessment and considering it a job done!



Risk assessment checklist

Staff suitability

e.g. existing ill-health of employee, adverse effect on individuals' existing health through isolation from the team or lone working
e.g. Stress related/ depression

Mobile/hot desking /DSE

Consider what equipment is being used and what environment the employee is working in, it is unlikely that your standard DSE questionnaire will be sufficient as an agile working assessment

Lone working

What controls are in place to monitor the employee's wellbeing if they are working in isolation for prolonged periods of time? Are their check calls, emails, Whatsapp groups that can be used to monitor safety and wellbeing?

Manual handling

Depending on the employee's role, this may be more relevant to some than others, but consider things like furniture deliveries and IT equipment.

Electrical safety

What is your policy with regards to portable appliance testing, providing the user with information on pre-use checks that need to be conducted and how to report concerns?

Travel and driving

Working in and travelling to other locations including meetings. Consider journey length, mode of transport, suitability of transport, rest breaks, personal safety.

Work pressures and hours

Flexible working patterns have extended the usual operational hours of businesses with subsequent implications for the timeframes in which health and safety management capacity, availability, response and systems need to operate. Another aspect of time relevant to health and safety management and particularly employee wellbeing is that of the extent to which flexible working patterns contribute to stress and impair work-life balance. The role of technology in making workplace communication and work accessible 24x7 is also a significant factor to consider.

Training

Developing simple, clear, common sense training that provides a basic understanding of the principles and good practices of posture, workplace ergonomics and use of laptops, tablets and computers. Training that sets out "common sense" responsibilities for employee, clearly sets out the employers responsibilities and commitments and signposts to a support infrastructure should employees have any concerns, pains or issues. Training packages are making use of online e-learning systems and/or short and engaging videos.



Manual right to work checks back from 21 June

The Home Office faced backlash from employers and industry bodies for announcing an end to virtual right to work checks from 17 May. This was despite the rule still being that employers must allow employees to work from home where they can do so effectively, which isn't set to change until 21 June at the earliest.

They saw sense and at the last moment announced an extension to the temporary right to work check measures. These are now due to end on 20 June 2021 so, barring another extension, make sure you're ready for the new (old) way of conducting right to work checks.

What are my obligations?

Employers aren't strictly, legally required to carry out right to work checks – if the Home Office conducted an audit and all of your employees had the right to work in the UK you would not be subject to any penalty if you had not carried out right to work checks.

However, employers are under an obligation to assist the government in preventing illegal working. Knowingly employing an illegal worker is a criminal offence to which there is no defence. However, a civil penalty applies even where you weren't aware someone didn't have the right to work (remember the doctrine – ignorance is no defence). You can avoid a civil penalty if you have carried out a compliant right to work check.

A word of warning to employers who are sponsor licence holders – you are held to a higher standard. Sponsors are expected to maintain robust systems for helping to prevent illegal working.

There is therefore the risk of sanctions, even potentially losing your sponsor licence, for a failure to carry out compliant right to work checks in respect of all employees (regardless of what their actual right to work status happens to be).

What are the penalties?

For the criminal offence of knowingly employing an illegal worker, employers can face an unlimited fine and even a prison sentence of up to 5 years. Knowledge includes where you had "reasonable cause to believe" the person didn't have the right to work in the UK, was not allowed to do certain types of work, their papers were incorrect or false or their permission had expired.

The civil offence is one of employing an illegal worker – knowledge is irrelevant – so you will fall foul of the law regardless of whether or not you knew the person didn't have the right to work. The penalty can be up to £20,000 but will be reduced based on the adequacy of any checks carried out.

If your checks were fully compliant with the Code of Practice/ other guidance/rules in place at the relevant time then you will not be fined. Penalties will also be reduced where there is evidence of you reporting illegal workers, cooperating with Home Office enquiries and where you have not previously been found to employ illegal workers.

How are checks currently conducted?

Where someone starts work between 30 March 2020 and 20 June 2021 inclusive, employers are benefitting from temporary adjustments to the process for right to work checks, introduced as a result of the pandemic.

This allows individuals to email their ID to employers and then the employer to check these via a video call where the person holds up the original. The copy document is annotated as: "adjusted check undertaken on [insert date] due to COVID-19". The government has confirmed that employers will not be required to re-do such checks, even once the rules are tightened.

What changes from 21 June 2021?

For any employee who starts employment on or after 21 June 2021 employers must revert to manual, or where applicable, online checks. Home Office guidance changes with frightening frequency, and employers will be well advised to always check online for the latest, most up to date guidance/code of practice/ rules.

How do I conduct an online check?

Online checks can be conducted if the individual can provide you with a share code. The share code is relevant for EU nationals or their relatives who have EU settled or pre-settled status and other individuals who applied for a visa and used the ID checking app to scan their ID on their phone.

The individual obtains their share code by entering the details they used for the purposes of applying for their permission in the first place, on the following government page: <https://www.gov.uk/view-prove-immigration-status>

Once the employee gives you their share code, you need to enter it, and their date of birth, on the following government page: <https://www.gov.uk/view-right-to-work>. You will be able to save a copy of the result to the employee's file.

Where an individual is unable to provide an acceptable document, for example because they have a pending application with the Home Office, employers should use the online Employer Checking Service. This is only relevant in limited circumstances, and you must have the individual's permission.

How do I conduct a manual check?

For employees starting a new role from 21 June, unless you have a share code, you must conduct a manual check. Simply put, this involves 3 steps:

1. **Obtain** - original, acceptable documents
2. **Check** - (in the presence of the individual) the documents are genuine, reflect the individual giving them to you and permit the person to do the work in question
3. **Copy** – the document clearly, make a note of the check on the copy, and keep it securely

The Home Office right to work checklist is an excellent tool for employers in conducting right to work checks – it explains what can be accepted as evidence, how to check the documents, how to copy them and whether a follow up check is required. Always look online for the latest version: <https://www.gov.uk/government/publications/right-to-work-checklist>

Do I have to conduct the check in person?

The Home Office has published a suite of statutory Codes of Practice for employers on preventing illegal working. This includes the following Code of Practice on Preventing Illegal Working which states, in section 4, that "The person must be present in person or via a live video link."

We'd suggest keeping a close eye on this page and Code. By the current wording of the Code, checks by way of obtaining the original documents by post then checking these with the individual present over live video call would be compliant. This might present its own challenges – individuals may be unwilling to send such important documents by post, and who would be liable for a replacement if it went missing?

If you do decide to check the documents against the individual via video call, it would be wise to download and keep a copy of the Code of Practice in place at the time, so that it can be referred to in the event of an audit.

When do I conduct checks?

Right to work checks are only relevant for new employees, and any employees with a time limited right to work (i.e. where they have a document which does not fall into List A of the checklist). Checks must be conducted before the individual carries out any work in order to gain the full protection of the statutory excuse.

The rules you must follow in respect of right to work checks are the ones in place as at the date the employee's employment actually starts. For employees with a time limit on their right to work, a repeat check should be conducted in advance of their current permission expiring.

Employers don't have to conduct (and can't insist on conducting) retrospective checks for existing employees where they provided ID which fell into List A of the checklist. This includes any EU national employees.

Many employers mistakenly believe they need to be checking the status of all of their existing employees, this is not the case and could even give rise to the risk of a claim.

What do I do about... mental health well-being?



Mental health issues are nothing new, but the pandemic and its various knock on effects has seen a surge in people experiencing challenges with their mental health well-being. But this remains an area that some employers find tricky to recognise, address and manage.

What is mental health?

We all have mental health, just as we all have physical health. Just like physical health, a person's mental health can fluctuate throughout their lifetime, day-to-day, and even within the same day.

Why should employers be concerned about mental health wellbeing?

All employers know that they are under an obligation to ensure the health and safety of their employees, and this therefore extends to mental health. But there are countless reasons to make employee mental health wellbeing a high priority, including:

- Ensuring good employee attendance and performance
- Maintaining a happy workplace
- Minimising the risk of claims, for example of discrimination or even personal injury

How do I know if an employee might be suffering with poor mental health?

If you don't know your employees it will make it more difficult to spot any warning signs. So the first stage is to ensure a solid base – have regular catch ups and discussions and create an open environment, where employees feel able to share any concerns. It's also important to ensure managers are trained and know how to spot potential issues early.

Managers need to be familiar with the warning signs of possible poor mental health – and especially when these occur as a change (rather than being a regular feature of that person's character). In particular sudden poor performance may actually be a sign of something else going on.

Here are some common indicators of poor mental health which might be particularly noticeable in a work context:

- Tiredness/poor sleep
- Dishevelled appearance
- Losing confidence and/or motivation
- Mood swings/over-reactions
- Struggling to absorb information
- Memory lapses
- Being withdrawn
- Contributing less to meetings/activities/tasks
- Working excessive hours
- Arriving late, leaving early, taking longer breaks
- Performing inconsistently/differently
- Taking risks that are excessive/out of character

What should I do if I think an employee might be suffering with poor mental health?

Of course it could be the case that an employee displaying signs of poor mental health is absolutely fine – there could be another reason entirely for their behaviour. However, it's important that, especially where there is a significant change in one of your employees, you talk to them about it.

Explain that you've noticed xyz, which seems out of character for them, and ask if everything is ok? Is there anything you can help with? Do they need any support? If they express feelings of low mood or you think there could be a chance that their mental health is suffering, suggest they speak to their GP, refer them to any company support available and consider what else you can do to support them.

How can I support an employee suffering with poor mental health?

Consider any adjustments you might be able to make to their working environment or role to support them. For example, if they're struggling with sleep, could they start and finish later or work from home? They might just need a less stressful workload for a few days, or to know that you're available to speak to when they're feeling too pressured.

Make sure you document everything, in case the issues become long term. Diarise follow ups, without adding undue pressure. For example, perhaps just set yourself a reminder, rather than sending a formal calendar invite.

Make sure the employee is aware of the external support that may be available to them:

- GP
- Improving Access to Psychological (IAPT) services that provide evidence-based therapies for those suffering with anxiety and depression
- Charities e.g. Mind
- Counselling services - the British Association for Counselling and Psychotherapy (BACP) which is the professional association for members of the counselling professions in the UK and maintains a register of therapists
- NHS resources on mental health services
- Online counselling services
- The Samaritans
- Friends/family
- Any employee assistance programme offered by your Company.

Sometimes employees may not be receptive to your attempts to speak to them about the issues you've noticed. If it is impacting their performance, try to gently explain that you are trying to support them before any issues become more serious, and your primary aim is to help them.

If they seem reluctant to access support, try to find out why. It might be fear or embarrassment and you may be able to reassure them about their concerns.



Believe it or not?

Most of us have a vague inkling that in Sweden working parents receive more support than in the UK, but have you ever considered the direct comparison? The Swedish government subsidises childcare heavily but would you be willing to sacrifice a higher tax rate for the family support?

UK	Sweden
Paid maternity leave	
39 weeks	68 weeks
Amount of maternity pay	
Up to £145 per week for 33 weeks	Up to £588 per week for 56 weeks (80% pay capped)
What about Dad?	
2 weeks paternity leave	90 days paid leave
Childcare costs	
£920 p/month (average for 40hrs+ daycare where both parents work full time)	£0-£119 p/month means tested
What's the catch?	
up to 45% Individual tax rates	up to 57% Individual tax rates