# Workplace Newsletter

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

April 2021

## How best should HR managers handle bringing people back to work post pandemic?

**With restrictions easing bit by bit over the coming months there are plenty of employers who will be looking to get their people back to work as soon as they can.**

But for many, this won't be until restrictions are fully lifted, and thousands of employees will have spent around 16 months working from home by then. A return to the workplace will inevitably throw up all sorts of questions and concerns. How best should HR managers handle bringing people back to work post pandemic?

Ultimately, communication is key, but careful planning as to the what/how/when will make a real difference between just getting information across, and making sure your staff are engaged and content.

We take a look at some of the key issues HR teams will need to consider whilst navigating the return to work at the end of the pandemic.

Read the full feature here p2>

## Are you making these common employment law mistakes?

We take a look at some of the terminology we often come across being used incorrectly.

Read here p3>

## What do I do about... an employee applying for dual nationality?

The combined impact of Brexit and the pandemic has seen a surge in individuals looking to apply for citizenship in another country. What impact does this have for you?

Read here p5>

## Welcome

Everyone's talking about – Cuthbert, and Colin. Perhaps if Aldi's social media guru wasn't so hilarious we wouldn't be as interested – then again, who could forget the whole - are Jaffa Cakes cakes or biscuits saga? Maybe it's the food element that has us so hooked.

Either way, it's a worthwhile deviation from employment and HR issues so, along with our usual content, we've included a link to an excellent piece from our MD about the caterpillar war.

As always, please follow us on LinkedIn for our latest updates.

outset.

Recent case law - Adison Lee v Lange p6>

Caterpillar wars: Colin vs Cuthbert p5>

Line of Duty HR Blog p5>

## What key information do HR managers need to communicate to employees?

### Work culture
For some employers the pandemic will see a move to flexible/ hybrid working becoming permanent. For others, you've made do but it's not how your business will operate at its best. However you choose to move forward, explain your intentions, and the rationale behind them, to your employees early on – before you're inundated with flexible working requests.

### Practicalities
Think about the practicalities for those coming back to the workplace. Will their passes still work? Are the same parking facilities available? Are desks still in the same place? You may have dealt with all of these things, but reassure employees about them to help ease any anxiety about their return.

### Changes
Are you planning on making any changes? There are a multitude of changes organisations have made or are looking to implement as a result of the pandemic, from re-arranging the office set up, to re-organising the working week.

Some of these changes seem so beneficial or minor that it's almost an afterthought to communicate them to employees. Consider whether any changes impact contractual terms (if so, you may need to consult) but, even if they don't, make sure to communicate them no matter how trivial they seem.

### Requirements
Will employees need to do anything specific before they return? Are you implementing a requirement for vaccinations, for example? Do they need to bring equipment with them, or arrange for it to be collected/delivered to the office before their return?

### Benefits and support
Don't forget to point out all of the benefits to your employees of returning to work – the social aspect, having on hand IT support, even things like the access to free fruit in the office!

Some employees will feel nervous about a return to the workplace and it's important to remind everyone about what support is available to them.

Do you have an Employee Assistance Programme? Will you facilitate group or 121 support networks? Think about the initiatives for supporting your workforce in their return and make sure they know what's available to them.

### Covid
We all hope to one day hear the last of that word, but even once restrictions are fully lifted, and the majority of the population are vaccinated, there will still be covid concerns.

Some employees might be worried about risks to themselves or loved ones (who may not be vaccinated, for any number of reasons). Some may even resist returning to work. Think about what you might want to say to pre-empt such concerns and provide reassurance. It will be a delicate message to communicate and the timing will be key too.

This is a message probably best left until there is further clarity from the government as to the full lift of restrictions.

## What should HR managers consider in their internal communications strategy?

### Method
Whilst we might be suffering from Zoom fatigue, delivering important messages about returning to the workplace by email risks being missed, or poorly received.

Perhaps a video meeting will work well, a pre-recorded video message or maybe there's an even more creative solution you can combine with written comms.

Will your budget stretch to a full animation or mini-movie for example? Could you turn it into a team building event? Involve your marketing team and you might come up with some ideas which will really engage your workforce.

### Timing
Consider the particular piece of information you're communicating, and when is best to talk about it. Your future work culture, for example, will be an important one to communicate early. Other matters, such as covid concerns, will need to wait until more information is available from the government.

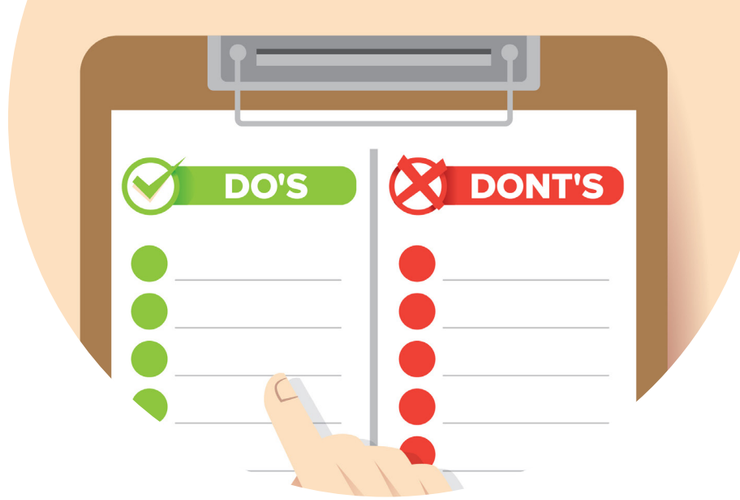
### Delivery
Who is the best person or people to deliver the comms? Employees will always look to senior leadership for direction and messages delivered by the most senior people in your business are bound to have the greatest impact.

### Engagement
For your employees to feel engaged, you need to involve them in the discussion. Think about carrying out surveys, setting up working groups or consulting with staff before you make decisions and communicate your approach. You can refer back to this when delivering information, which will help employees feel their voices have been heard.

### Follow up
Once you've completed all of the above it's easy to feel satisfied with your ticked list and move onto your next project, but don't waste that momentum.

You've got employees feeling engaged, listened to and you've given them lots of information. Make sure you have a plan for follow up. Whether that's managers following up with their teams to gather feedback, sending out surveys, inviting feedback in a specific way – whatever your method, employees will appreciate you involving them at every stage and it will provide you with an opportunity to get a heads up on any potential issues.






## Are you making these common employment law mistakes?

**Call us sticklers, but using the correct terminology not only ensures you sound as though you know your onions, it could even avoid a sticky employee relations situation. We take a look at some of the terminology we often come across being used incorrectly:**

Instead of **Meeting Representative** ✗

Use **Companion** ✓

**Why?**

This is one which makes us wince every time we see it. Employees are entitled to be accompanied to grievance meetings, and to disciplinary meetings which will confirm formal action.

The right is to be accompanied, by a companion. Avoid using the term 'representative'. This implies the individual is representing the employee's interests or acting on their behalf, and can reinforce a mistaken sense of authority on the part of the companion.

This is the case even if the employees' companion is a trade union representative – their role at the meeting is still as a companion and their permitted participation is limited.

Instead of **Compromise Agreement** ✗

Use **Settlement Agreement** ✓

**Why?**

This won't land you in any hot water, but the name changed to settlement agreement in 2013 so you'll sound up to date in your knowledge if you use the correct term.

Instead of **Industrial Tribunal** ✗

Use **Employment Tribunal** ✓

**Why?**

Another one which won't do any harm, but you'll sound even more behind the times as Industrial Tribunals became Employment Tribunals in 1998!

Instead of **DDA** ✗

Use **Equality Act** ✓

**Why?**

In 2010 the Equality Act consolidated all existing discrimination laws, whilst updating them in several areas. Despite this, we do still hear some people referring to responsibilities under the DDA. The Disability Discrimination Act only now applies in Northern Ireland, otherwise you should be talking about the Equality Act. If you do mistakenly quote the DDA, at worst it could be used against you by an employee as evidence of not being aware of your obligations under the Equality Act.

# What do I do about...

## an employee who says they're applying for dual nationality?

**The combined impact of Brexit and the pandemic has seen a surge in individuals looking to apply for citizenship in another country. There are several potential routes, notably via ancestry, marriage or residence. But if it's one of your employees, what impact might this have?**

**What's the process when someone applies for dual nationality?**

From a UK point of view there is no process to apply for dual nationality (also known as dual citizenship). You can hold a British passport at the same time as holding a passport from another country, and you don't need to apply to the UK government for dual citizenship.

However not all other countries permit dual nationality and it will be necessary to check the laws of the other country in question to see whether they permit an individual to also hold British citizenship.

**What happens if the other country doesn't permit dual nationality with the UK?**

In most cases where the current country allows renunciation, the individual will be forced to renounce their current nationality in order to obtain their new chosen citizenship. Some countries do not permit renunciation but Britain does.

This means if the country the employee is looking to apply to requires them to renounce their British citizenship, typically the individual would need to provide proof of having done so in order to obtain their new nationality.

Renunciation costs £372 and the individual has 6 months from when they receive their declaration to get another citizenship - otherwise the declaration will no longer be valid and they'll keep their British citizenship.

**If an employee does give up British citizenship, does that affect their eligibility to work in the UK?**

Yes. In most cases, unless the individual has another route to obtaining the right to work in the UK, giving up their British citizenship in exchange for another nationality will mean they do not have the automatic right to work in the UK. They will most likely have to be sponsored as a Skilled Worker to continue lawfully working in the UK.

If, however, they're going to be working for you but based abroad, they will not require any special permission as they won't actually be in the UK working.

**Can we stop them, or do we have to sponsor them?**

This situation can create complex challenges, but most well drafted employment contracts will place an obligation on the employee to maintain the right to work, or provide suitable evidence, or something to that effect.

An employer can't be forced to sponsor an employee, so in most cases if the employee gives up their right to work lawfully in the UK the employer should be able to dismiss them fairly, most likely for Some Other Substantial Reason.

However this situation will be unusual and you should always take specific advice to minimise the risk of an unfair dismissal (or even discrimination) claim.



# Employment law, but not as you know it

Are you a Line of Duty fan? Have you read Chloe's blog? Published each week, usually on a Tuesday, Chloe rounds up the show and pulls out the HR blunders.

It's a different way of looking at employment law - who doesn't want to be able to watch Sunday night TV and claim CPD!?

Check out the six instalments so far here, and look out for the grand finale next week.

**Chloe Pereira**
Employment
Email me | 01622 606 422

# Copycat Caterpillars - hungry for an answer?

It's an impressive feat if you've managed to miss the recent media storm surrounding Colin the Caterpillar.

M&S is suing Aldi over their copycat cake (Cuthbert). Perhaps some of the most entertaining reading material around can be found on Aldi's social media account.

If you're interested in finding out a little more about the laws Aldi is accused of breaching, have a read of our MD, Sean Gorman's, excellent article – Are we not confused? Copycat caterpillars Colin v Cuthbert

**Sean Gorman**
Managing Director
Email me | 01622 759 900

# Believe it or not?

There might be a few things you'd like to change about our current employment laws, but when you consider the history, we've come a long way:

**1823**
Criminal offence for a workman to be disobedient and calling a strike was punishable as an aggravated breach of contract

**1823**
Abolition of slavery and the employment of children under the age of 9

**1871**
Trade unions legalised

**1944**
Female teachers no longer permitted to be dismissed upon marriage

**1963**
Employers required to give minimum periods of notice to terminate employment

**1965**
Employers required to make redundancy payments in specific circumstances

**1971**
Unfair dismissal protection introduced

**1975**
Sex discrimination made unlawful

**1976**
Race discrimination made unlawful

**1995**
Disability discrimination made unlawful

**1998**
Minimum paid holiday entitlement and rest periods introduced

**1999**
National Minimum Wage introduced

**1999**
Minimum maternity leave provisions introduced

**2000**
Protection from unfavourable treatment for part time workers introduced

**2006**
Protection for employees when the business they work for is purchased introduced

**2010**
Equality laws consolidated and updated

**2015**
Large employers required to report annually on measures taken to tackle modern slavery

**2018**
Bereaved parents entitled to leave and pay

# Recent Case Decisions

**We summarise another recent case, similar to the Uber drivers ruling around drivers' employment status.**

Employment Status – another judgment?

## Addison Lee v Lange

Addison Lee - the London-based private hire cab and courier company - could soon be paying out to thousands of their drivers with each being entitled to around £10,000 in compensation. This comes following the dismissal of their application to appeal against the rulings of the Employment Tribunal (ET) and Employment Appeal Tribunal (EAT).

## What's happened?

In a similar situation to Uber, Addison Lee claimed that the drivers were independent contractors and not workers - this was reflected in their contracts.

By classifying their drivers as independent contractors the drivers would not be entitled to rights such as National Minimum Wage, protection against unlawful deductions from wages and paid holiday. However, the Court of Appeal found that the drivers were workers. A key takeaway from this case is that it is yet another example of why you can't just rely on the wording in the contract.

The Court of Appeal agreed with the previous findings of the ET and EAT despite clear wording in Clause 5.4 of the Addition Lee drivers' contracts which said that "there is no obligation on you to provide the Services to Addition Lee".

This did not reflect what was really happening. In reality drivers who refused an allocated job could be sanctioned. This is inconsistent with an unfettered right to refuse work that you might otherwise expect with a true independent contractor.

## What next?

The decision by the Court of Appeal has a direct impact on Addison Lee, but there is clearly a wider concern for anyone engaging individuals in the gig economy. Cases like Uber and Addison Lee are just two of many cases that will no doubt strengthen the call for enhancing employment rights in the gig economy.

The outcome to any further cases will be highly fact-sensitive, and, as we mentioned previously when covering the Uber case, the importance of correctly assessing the status of self-employed contractors cannot be understated.

## Are we seeing a Government response to these types of cases?

On 21 April 2021 the House of Lords Select Committee on COVID-19 published Beyond Digital: Planning for a Hybrid World. Perhaps unsurprisingly given the outcome of the Uber and Addition Lee cases, the report recommends the introduction of "new legislation to give platform workers defined and enhanced employment rights".

Clearly this is an area that will continue to evolve and businesses will need to be alive to the changes to limit the risk of litigation. It will be particularly important for businesses to be conscious of employment status with the introduction of IR35, some people might consider this the perfect storm.

Crucially in this case, although EJ Anderson found in favour of the employer, she did make clear that in principle the health and safety protection under the Employment Rights Act can apply to the pandemic, and each case will turn on its own facts.

Employers should therefore exercise caution before dismissing an employee who refuses to return to work in similar circumstances.

Appropriate COVID measures taken in the workplace will be key, as will be considering exactly what concerns the individual raises and how these are addressed.

**Rachel Easton**
Employment
Email me | 01622 606 416