



work place news *by Chloe*



Legal challenge against compulsory vaccinations

An open letter has been sent to a number of Parliamentary ministers, the CQC and Care England claiming that the requirement of care home workers to be vaccinated is unlawful and unenforceable.

Among others things, the letter states:

“The Care Quality Commission must now immediately issue the instruction to care providers to stop telling workers they need to be vaccinated. Because they do not.”

The letter sets out a concise and convincing summary of the relevant law and could lead to formal judicial review proceedings challenging the recently introduced regulations.

In the meantime, employers may understandably be left in a state of confusion as to what to do if an employee does refuse to be vaccinated.

Despite what the open letter states, the Regulations have been introduced and an employer won't be liable for following them, even if they are later repealed.

Watch this space – even if you don't operate in the care sector what happens here will undoubtedly impact how every employer deals with its own approach to vaccinations in the workplace.

The editor's welcome

I've just managed to squeeze this newsletter in before the end of August. I always expect the Summer to be quiet, as lots of people go on holiday and there are no year-end rushes. But for about the 5th year running it hasn't happened. I'm not complaining, but my Outlook mailbox limits aren't happy!

I hope you've enjoyed fun, if a bit chilly, summers. If like me you're keeping busy at work, there are just a few updates in this latest newsletter for you, but nothing too major happening in the employment law world.

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

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This month...

Manual right to work checks

Why using your personal email account for work is risky business...

[Read more >](#)

Recent case law

Not furloughing as an alternative to redundancy - fair or unfair?

[Read more >](#)

Updated guidance

We've compiled links to government guidance that's changed or new in the last month...

[Read more >](#)



Manual right to work checks delayed – again!

Twice now I've included information about the end to the temporary online right to work checks in the newsletter, and, yet again, the government have extended the long-running 'temporary' arrangements which are now due to end on 5 April 2022.

As a brief reminder of what how you should be conducting your right to work checks:

Up to and including 5 April 2022

- checks can be carried out over video calls
- job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- employers should use the online Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents

From 6 April 2022

- If the individual is able to provide a share code which enables you to use the online service (largely for those with EU Settled Status) you can do so
- Otherwise you will need to conduct a manual check:
 - **Obtain** - original, acceptable documents
 - **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
 - **Copy** - the document clearly, make a note of the check on the copy, and keep it securely

Please refer to our [May 2021 edition](#) for further information about conducting right to work checks.

Outset news & events

Just three weeks to go before we cycle London to Brighton in memory of our colleague, Ashley

If you read our previous newsletter, you'll know that our team is cycling from London to Brighton in memory of our colleague Ashley, who we very sadly lost to Leukaemia in the middle of the pandemic.

We wanted to do something together, and in our own way to remember Ashley. He was a keen cyclist and we couldn't think of a better way to celebrate his life than to cycle from London to Brighton in his memory.

We're raising money for **Blood Cancer UK**, a community dedicated to beating Blood Cancer and **Macmillan Cancer Support**, who provides specialist healthcare, information and financial support to people affected by cancer.

Some of us have never cycled before, or up until now, even owned a bike!

We'd be so grateful if you'd consider sponsoring us and supporting these fantastic charities.

[Please click here to donate on our JustGiving page >](#)

Operation Ark

Animals are a big part of my life – I set up and actively ran a rescue centre with my best friend for several years. Our charity is still operating although dormant as life sadly got too busy.

Outset is luckily a business of fellow animal lovers and we have plenty of great clients who are directly or indirectly in the animal care industry. The crisis in Afghanistan is bringing us all together in trying to do what we can to help the veterinary teams and animals currently stranded in Kabul.

You may have heard of the animal charity **Nowzad**, set up and run by former Royal Marine Pen Farthing. Pen has been featured several times in the media – he is desperately trying to get them out of Kabul and to safety. His team includes several locally trained vets who are now extremely vulnerable.

To find out more and see how you can help, please visit their website: www.nowzad.com

New guidance

Here are links to new and updated guidance issued in August that are relevant for employers:

UPDATED Government guidance on NHS Test and Trace – guidance originally published in May, updated on 13 August.

It confirms that from 16 August you will not need to self-isolate if you are notified you have had close contact with someone with COVID-19 and any of the following apply:

- you are fully vaccinated
- you are below the age of 18 years and 6 months
- you have taken part in or are currently part of an approved COVID-19 vaccine trial
- you are not able to get vaccinated for medical reasons

NEW Government guidance on the vaccination of those working in care homes published on 4 August

NEW ICO consults on updated guidance - The Information Commissioner's Office has launched a consultation on how organisations can continue to protect people's personal data when it is transferred outside the UK, which includes updated guidance in the form of an International transfer risk assessment and tool.

Fed up of managing your HR admin?

Did you know that businesses can save up to 400 hours per year by using HR software?

If you're currently managing employee absence, holiday requests, expense claims and appraisal meetings across lots of different platforms or spreadsheets, then an HR information system is likely to be a valuable and cost-effective resource for your business.

Our cloud-based HR information system (HRIS) can help you...

- Manage holiday requests & expenses
- Manage and track sickness and absence
- Store HR documents centrally and securely

If you'd like a free quote and demo to find out if a HRIS is for you please contact [Mark](#).

outset.



Believe it or not?

You may have seen the recent media reports about HMRC's naming and shaming of employers in breach of the National Minimum Wage Regulations.

Not only did they publish their hit list, but they also released a statement containing what they claim were "some of the most ridiculous excuses for flouting the law":

"The employee was not a good worker, so I did not think they deserved to be paid the National Minimum Wage."

"She does not deserve the National Minimum Wage because she only makes the teas and sweeps the floors."

"My accountant and I speak a different language – he does not understand me, and that is why he does not pay my workers the correct wages."

"My employee is still learning so they are not entitled to the National Minimum Wage."

"It is part of UK culture not to pay young workers for the first three months as they have to prove their 'worth' first."

"I have got an agreement with my workers that I will not pay them the National Minimum Wage; they understand, and they even signed a contract to this" effect.

"My workers are often just on standby when there are no customers in the shop; I only pay them for when they are actually serving someone."

"They are not British and therefore do not have the right to be paid the National Minimum Wage"

Not furloughing as an alternative to redundancy – Fair or unfair?

Cases relating to furlough and redundancy are filtering through the Employment Tribunals now, and because of their significance we're all watching what happens closely, even in first instance, non-binding decisions.

Mhindurwa v Lovingangels Care Ltd

Ms Mhindurwa provided live in care but in February 2020 that person moved into hospital, then a care home. Her employer had no other work for her as a result of the pandemic and Ms Mhindurwa asked to be furloughed, which they refused.

In May 2020 put her at risk of redundancy, offering her domiciliary care as an alternative, which she chose not to accept as she would have to travel too far.

Ms Mhindurwa was dismissed, her appeal was effectively a rubber stamping of the original decision, and she brought a claim in the Employment Tribunal for unfair dismissal.

The Judge found that the employer had failed to handle the appeal adequately, and failed to properly consider furloughing Ms Mhindurwa as an alternative to redundancy.

The judge stated: “this was the type of situation that the furlough scheme envisaged. Why it was not considered or not considered suitable in this case is not explained by the respondent”.

Handley v Tatenhill Aviation Ltd

Mr Handley was a flying instructor and as a result of the pandemic, the flying school has to close. Even when it could reopen there would be a reduced demand for flying lessons. Mr Handley was initially furloughed, but his employer was concerned about the scheme ending and not being able to afford to continue his employment.

Tatenhill decided to make Mr Handley redundant, using the furlough scheme to fund his notice (which was allowed at that time). The Tribunal found issues with the procedure used but ultimately decided that Mr Handley would have been dismissed regardless, so no compensation was awarded.

The Judge said: “The nation was in unprecedented uncertainty at the relevant time, and it is not for me to step into the shoes of the employer and substitute my view for that taken by the employer at the time. The decision to dismiss [Mr Handley] notwithstanding the existence of the furlough scheme does not, in my view, render the dismissal unfair.”

What do these decisions mean?

Two different decisions on very similar scenarios may not seem helpful, but a distinction can be seen in the thought process and the approach of the employers. In the former case, the employer failed to consider or explain why it couldn't have used the furlough scheme instead of redundancy. In the latter case, the employer was able to demonstrate that it did consider using the scheme and the reasons why it decided on redundancy as the most appropriate option.

Although these decisions won't be binding on other Tribunals, they do give some helpful pointers to employers as to how similar cases might be decided. The furlough scheme is soon coming to an end and in some cases redundancy decisions and dismissals may have already happened – but if you do face a claim these outcomes might at least help you decide on tactics in managing those claims.