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COMPLIANCE REPORT 2022



SAFE & SECURE

Compliance 2022: A time to be certain

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SAFETY FIRST

Deborah Scales, Associate at Clarkslegal discusses health and safety compliance in today's world of hybrid work.

Times have radically changed since the mid-seventies when the Health & Safety at Work Act 1974 imposed a legal duty on employers to ensure 'as far as reasonably practicable' the health, safety and welfare at work of all its workers. What should employers be doing now to comply with these duties when being "at work" now means work at home for so many? And how has the concept of 'welfare' moved on with today's emphasis on well-being, work/life balance and mental health support? As employers compete to attract and retain the best talent, many businesses have now made hybrid working a standard part of their offering (where the role allows it). Some employers are also offering unlimited annual leave as a perk they believe will give them an edge over their competitors.

Managed well hybrid or home working certainly brings a host of benefits to all parties. But there can be risks employers must be alert to. For example, the inability of hybrid or home workers to 'switch off' and separate home and work life, to feel they must be constantly available (even if that feeling is misplaced) and to feel isolated and demotivated. In September 2021, the World Health Organisation (WHO) announced that it had included 'burn out' in the International Classification of Diseases: not as a medical condition as such but 'an occupational phenomenon' which impacts on a worker's health. Burn out, according to the WHO, occurs as a result of chronic workplace stress that has not been satisfactorily managed and which results in the following:

- feelings of exhaustion;
- negativity and cynicism about the job;
- reduced professional efficacy.

Employers can find helpful guidance on the Health & Safety Executive (HSE) website about how to manage and recognise work related stress. The HSE Management Standards covers six key areas of the ways in which work is designed (demands, control, support, relationships, role and change). Further details are in HSE workbook call 'Tackling work related stress using the management standard approach'.

Employers should also seek legal advice on employment law as in some cases stress and anxiety disorders can amount to a disability under the Equality Act 2010 if the condition has a long-term, adverse effect on the individual's ability to carry out day to day to activities.

Some Issues for employers to look out for this year:

- Take care offering unlimited annual leave. It may work for some businesses, but initial studies suggest that those who were offered it took less leave than they would have done under the traditional system. If unlimited leave comes with the obligation to have fulfilled all outstanding work commitments, instead of handing them over to a colleague while you take a break, employers could be faced with some unattractive outcomes: the uncommitted workers exploit the system to the detriment of their colleagues; the conscientious employees don't take the leave they should putting themselves at risk of burn out; and, if working relationships sour, this employee then brings a claim under the Working Time Regulations accusing the employer of pressuring them into not taking their statutory annual leave entitlement.
- Menopause at work is likely to stay high on the agenda this year as we await guidance from the House of Commons Women's and Equality Committee on whether legalisation is needed to protect menopausal women at work. According to the Office for National Statistics there are 4.4 million women aged 50 to 64 in the UK workplace so it is an issue all employers should be mindful of, irrespective of government legalisation.
- There is also government consultation underway on voluntary and mandatory reporting on disability in the workplace. This could include reporting on the proportion of employees identifying as disabled. The definition of disability under the Equality Act – which imposes duties on the employer in relation to the disabled person – is rarely straight forward, especially in mental health cases. Employees should take legal advice when needed and also take extra care over confidentiality and data protections issues. Information about a person health constitutes special category data under the UK GDPR and so particular obligations apply to the processing of such data. ■