



Employee devices, use and safeguards

It is increasingly common for staff to have personal mobile devices which they can and do use for business purposes. This has many benefits with regard to flexibility, but the use of such devices gives rise to an increased risk in terms of companies' security for the protection of confidential and proprietary information.

It is important that companies who want to embrace this make sure there are adequate safeguards and controls in place to ensure that any risks from misuse are kept to a minimum. There are policies that can be put in place covering this which deal with the use of the device both in and out of the workplace.

It is important that any policy makes it clear what behaviour is expected of the employee and the consequences of failing to meet those requirements in terms of disciplinary action.

Any devices which are being used should be approved by the company's IT dept. Arrangements should be reviewed regularly and should be capable of being revoked if the device is being used in a way that could put the business or indeed the information that the business holds at risk. As with any policy it is essential that the policy is monitored and revised at least annually so that it is not only a statement of what should happen in a business but is a statement of what does happen.

Staff should also be aware that they should have no expectation of privacy concerning any data on the device of merits as monitoring and reviewing will be carried out as permitted by law.

Employees should also be made aware that they must use their best efforts to physically secure the device against loss or theft and that they keep any antivirus or anti malware software up to date. Only approved applications and software should be installed on the device. It is important that staff are aware that only they should be using the device not friends, family or associates. It is generally considered good practice to ensure the employee signs a declaration confirming they have read and understand any BYOD policy and that they agree to be bound by the terms.

Company PSC Registers

From 6th April 2016, every company has been required to maintain a register of people with significant control (PSC) over it as part of its statutory registers. The obligation on the company is to take reasonable steps to identify any individual or other legal entity, such as another company, who should be included in the PSC Register. Failure to comply with this requirement may constitute an offence by the company and every officer in default.

The PSC Register may be kept as a hard copy or in electronic format but official wording is prescribed and the register can never be blank. The first year of this new regime is now almost past and many companies are still failing to satisfy the requirements completely.

Set out below are the prescribed wordings that are commonly applicable together with some guidance. The date of the statement should be given. Companies should not delete statements when they cease to apply but should add the date that they ceased to apply.

1. The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company. This is likely to be the first statement in the register.
2. The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company. Once the investigations are completed, the company may add this statement but no other qualifying wording should be included.
3. The company knows or has reasonable cause to believe that there is a registrable person in relation to the company but it has not identified the registrable person. The company should add this statement before the identity has been confirmed. The statement should be added for each registrable person. The individual or other legal entity must not be named.
4. The company has identified a registrable person in relation to the company but all of the required particulars of that person have not been confirmed. The company must confirm the relevant information in respect of the person before including it in the register. Where the PSC is an individual, the information must be confirmed by the individual personally. Again, the statement should be added for each registrable person. The individual or other legal entity must not be named.
5. The company has given a notice under section 790D of the Act which has not been complied with. The company has to send out a notice to each potentially registrable person prior to registration asking them to confirm their details and giving them one month to comply. A separate statement should be made for each such notice not complied with.
6. The addressee has failed to comply with a notice given by the company under section 790E of the Act. This company is required to keep the PSC updated and must serve notice on a registered person asking them to confirm the position within one month if a registrable change has taken place or is believed to have taken place. A separate statement should be made for each such notice.
7. The notice has been complied with after the time specified in the notice. This statement should be added where it applies to a 790D or 790E notice.
8. The company has issued a restrictions notice under paragraph 1 of Schedule 1B to the Act. It is a criminal offence to fail to comply with a 790D or 790E notice. The company may also impose restrictions on the rights of the registrable person for failure to comply by issuing a restrictions notice. The company must however first issue a warning notice.
9. The company has withdrawn the restrictions notice by giving a withdrawal notice. The company should withdraw a restrictions notice if it is satisfied that: a) there is a valid reason



for failure to comply with the 790D or 790E notice; b) the notice has subsequently been complied with; or c) the restrictions notice unfairly affects the rights of a third party.

10. The court has made an order under paragraph 8 of Schedule 1B to the Act directing that a relevant interest in the company cease to be subject to restrictions. A court may order the lifting of restrictions on rights in the company imposed by a restrictions notice.

11. Once the registrable details are confirmed, the appropriate statement should be added naming the registerable person. The company should include all that apply. There are similar statements, not listed, for trust interests.

- *The person holds, directly or indirectly, more than 25% but not more than 50% of the shares in the company.*
- *The person holds, directly or indirectly, more than 50% but less than 75% of the shares in the company.*
- *The person holds, directly or indirectly, 75% or more of the shares in the company.*
- *The person holds, directly or indirectly, more than 25% but not more than 50% of the voting rights in the company.*
- *The person holds, directly or indirectly, more than 50% but less than 75% of the voting rights in the company.*
- *The person holds, directly or indirectly, 75% or more of the voting rights in the company.*
- *The person holds the right, directly or indirectly, to appoint or remove a majority of the board of directors.*

Sarah Astley can be contacted at s.astley@gullands.com

Tribunal fees

The recent Ministry of Justice review of the introduction of fees in the employment tribunals and EAT has now been published.

The review concludes that the fees regime is working well and is meeting the original objectives for the introduction of fees. It acknowledged that the introduction of fees had discouraged many individuals from bringing employment tribunal claims, but went on to say that there was “nothing to suggest that they have been prevented from doing so”.

It is hard to reconcile this with the substantial drop off in claims since the fees were introduced in 2013. Moves are afoot to make some claims such as those from the national insurance fund fees exempt claims. Consultation is also taking place on proposals to widen access to the Help With Fees remission scheme by increasing the gross monthly income threshold and making allowances for those living as couples and those with children.

Plumbers and taxi drivers

You cannot have escaped the press attention given recently to cases involving the so called “gig economy” and the subject of one of our articles in the January brief. Despite a contract that labelled him an independent contractor the Court of Appeal agreed with the earlier decisions that a plumber was a worker for the purposes of the Employment Rights Act 1996 and the Working Time Regulations 1998 as well as an employee within the extended meaning of that term in the Equality Act 2010.

Lawyers have been warned about drawing conclusions from this fact sensitive decision but here goes. Worker status issues have always been a difficulty for employers, just because you call someone self employed does not necessarily make it so.

All change for National Minimum Wage

Please check the quick reference section for the up to date changes to Minimum Wage, National Living Wage and the statutory definition of a week's pay for redundancy calculations.

Free seminars coming up:

17th May 2017

Entrepreneurs seminar, joint event with McCabe Ford Williams

18th May 2017

Construction payment disputes and how to avoid them, joint event with Base Quantum



Publication of Employment Tribunal Judgments

In early February 2017 the Ministry of Justice formally launched its website of employment tribunal decisions. Presently the website contains decisions from 2015 onwards. Future tribunal decisions handed down in England, Wales and Scotland will also be uploaded onto the website.

Previously those decisions were archived and available if requested in writing and a fee paid to the Courts and Tribunal Service.

This increased accessibility may cause some concern for employers as the risk of adverse publicity for the business is now much greater. Allegations made about personnel or confidential or commercial information will now be more readily accessible than before.

On the plus side the publication of decisions should provide helpful examples of how employment tribunals approach issues of fact and law, which will assist all parties in deciding whether their case is worth proceeding with. It will also be a useful tool to have details of the amounts awarded to provide realistic expectations as to remedy for future cases.

Essential documents for employers



When starting up a business what are the absolute minimum documents that an employer is required to have in place? Most are aware they need contracts for their employees, but what about the Staff Handbook. Is this full of unnecessary memos or legal requirements?

There are in fact very few written policies that are an absolute legal necessity for an employer to have. For the most part, policies set out in a staff handbook are there as a matter of good practice, to set out the standards expected of employees; to assist the running of the business, and to reduce legal risk by making sure employees and managers understand the legal rights and responsibilities inherent in the employment relationship.

However, there is a minimum level of information that must be given to employees in writing. Much of this must be given in a single written statement of terms under s1 of the Employment Rights Act 1996, which may be given in the form of a statement, a letter of engagement or a written employment contract.

Some information can be (and usually is) given in a staff handbook or on the firm's intranet.

There are also areas where a written policy is not compulsory but can bring significant legal protections for the employer, beyond merely setting out standards of behaviour or employees' entitlements.

Below is a quick table of the policies and procedures that are, in general, required by law, and those that an employer would be well advised to consider including.

Required by law	Advisable
Disciplinary procedures and rules (if not in contract/section 1 statement)	Bribery
Grievance procedures (if not in contract/section 1 statement)	Equal opportunities
Information about pensions (if not in contract/section 1 statement)	Data protection
Health and safety (if 5 or more employees)	Whistleblowing
Whistleblowing (in some cases such as listed companies and public bodies)	

Quick reference section

Statutory minimum notice periods:
An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service the notice period does not extend beyond 12 weeks.

National Minimum Wage

(From April 2017)

Apprentices	£3.50
16-17	£4.05
18-20	£5.60
21-24	£7.05

National Living Wage from April 2017 for 25+ £7.50

Statutory Sick Pay (from April 2017) per week £89.35

Statutory Shared Parental/Maternity/Paternity/Adoption Pay (basic rate) (from April 2017) £140.98

Statutory Holiday
5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped for dismissals after 6th April 2017 under the Statutory Scheme at £489.00

CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



Sarah Astley
Tel: 01622 689727
Email: s.astley@gullands.com



Andrew Clarke
Tel: 01622 689733
Email: a.clarke@gullands.com



Dudley Cramp
Tel: 01622 689734
Email: d.cramp@gullands.com



Amanda Finn
Tel: 01622 689795
Email: a.finn@gullands.com
Twitter: @Gullands_HR_Law



John Holder
Tel: 01622 689775
Email: j.holder@gullands.com



Abbe West
Tel: 01622 689716
a.west@gullands.com

Gullands Solicitors are Authorised and Regulated by the Solicitors Regulation Authority. Number 50341

16 Mill Street
Maidstone
Kent ME15 6XT
01622 678341

18 Stone Street
Gravesend
Kent DA11 0NH
01474 887688

www.gullands.com
info@gullands.com



This newsletter is intended to provide a first point of reference for current developments in various aspects of law. It should not be relied on as a substitute for professional advice.

