

# Employment Newsletter



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## SPRING HAS SPRUNG!

Welcome to the March 2023 edition of our employment newsletter.

It is the beginning of spring, the celebration of mothers and a time for new beginnings. This month's newsletter will focus on how to deal with flexible working requests with a case update for holiday pay calculations for part year workers.

In the true spirit of new beginnings, our Butcher Andrew's litigation team has expanded again. In February 2023, we welcomed Jessica Proctor, an Australian trained solicitor, to our team. She joins us having relocated from Australia and will be assisting David and Amanda on litigation matters until she qualifies as a UK solicitor later on this year.

In networking news, we are thrilled to have been involved in the re-introduction of the Fakenham Chamber of Trade and cannot wait to support the Chamber as it continues to provide vital support to local businesses in Fakenham. We are also pleased to announce the return of the North Norfolk Business Breakfast on Tuesday 18 April 2023. We have made the decision that the breakfast networking will be held quarterly to ensure our attendees get the most out of the group. The venue remains our Fakenham office, with coffee, tea and a selection of pastries being served from 8am. We hope you will join us on Tuesday 18 April 2023. To book your space, please email Julie at [julie@butcherandrews.co.uk](mailto:julie@butcherandrews.co.uk).

## AN EMPLOYER'S GUIDE TO FLEXIBLE WORKING REQUESTS

Flexible working is defined as a way of working to suit the employee's needs. It could involve flexible start or end times, flexible days, compressed hours, switching full-time to part-time work, changing shift patterns or working from home. Requests for flexible working can be made by any employee, not just parents or carers.

Most employers have a flexible working policy and should they receive a flexible working request from an employee, it should be dealt with in line with that policy. If you do not have a flexible working policy, then it's important to remember all employees have a legal right to request flexible working and in order to be eligible to make such requests, employees need to have worked for the same employer for at least 26 weeks and the request should be in writing. These types of flexible working requests are known as statutory requests made in line with the law surrounding flexible working. Statutory requests cannot be made by worker or self-employed contractors.

Continued...

## INSIDE THIS NEWSLETTER

1. Tackling discrimination in your workplace
2. Case study: Harper Trust v Brazel [2022] UKSC 21

## COMING UP:

- April Newsletter
- North Norfolk Business Breakfast meet up—18 April 2023



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## FLEXIBLE WORKING REQUESTS CONTINUED

As an employer, you need to deal with the statutory request in a reasonable manner, carefully considering the advantages and disadvantages of any request. You should hold a meeting to discuss your considerations with the employee and then confirm your decision in writing. Your decision letter should include a route of appeal for the employee.

Legally you have to deal with the request but that does not mean every request has to be accepted by employers. An employer can refuse a flexible working request if they have a good business reason for doing so. In circumstances where you are rejecting a statutory request, be clear with your employee the reason for doing so. This can help your employees understand the business reason for the decision.

Employees can only make one flexible working request in any 12 month period, so you should be mindful of what a rejection might mean for your employee. In order to get the most out of the process, use any meeting with your employee as a way of exploring other possible options. This will maintain the relationship between

the parties whilst also encouraging new ideas which might be viable for your business.

If your employee is not eligible to make a statutory flexible working request, they may wish to make a non-statutory request. There's no set rules on how to deal with these kinds of requests but it is best to still have the employee's request in writing.

Should you agree to a flexible working request, this will affect your employee's terms and conditions of employment. This includes "pro-rata" pay, "pro-rata" holiday allowance, changes to working hours or changes to place of work. You should not detrimentally alter your employee's terms and conditions of employment as punishment for making a flexible working request. This could be discriminatory.

We regularly guide employers through processing requests made by employees (for flexible working or otherwise) and do so by providing clear practical advice from the outset. If you need advice on any flexible working requests made by your employees, please contact us on 01328 863131.



situation in practice which concluded at the beginning of this March 2023.

The correct method, as published in guidance by the Government following this consultation, is a calculation based around the worker's average pay from the previous 52 weeks (only counting weeks in which they were paid) and multiplying this by 5.6 weeks for a full year's entitlement.

If you need assistance with the new guidance on calculating holiday pay, or wish to speak to us about a current holiday pay dispute, please get in touch.

## PAYMENTS FOR ANNUAL LEAVE FOLLOWING *THE BRAZEL RULING*

In July 2022, the Supreme Court handed down a Judgment in *Harper Trust v Brazel* [2022] UKSC 21 which changed the way we calculate holiday pay for part year workers. The Trust were using the calculation of 12.07% as their chosen method for calculating holiday pay but the Supreme Court ruling confirms this method is unlawful.

The ruling came as a shock to the Employment law community and created a period of doubt for what the correct calculation was for part year workers, with the overall impact of the decision uncertain. The Government opened a consultation at the end of January 2023 to address the disparity between an employers legal obligations under the Working Time Regulations 1998 and the

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