

# CHC Resources Conference 2013

## Employment Law Update

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# What is lone working?

- Does not necessarily mean that a person has to be working in isolation all of the time
- “Those who work by themselves without close or direct supervision” – Health and Safety Executive (HSE)


# Managing lone workers

- Contract
  - Place of work
  - Hours of work
  - Expenses
- Illness
- Buddy system
- Monitoring systems and equipment
- Lone worker policy

# Hazards of lone working

- Employees who work alone face the same hazards as other workers however the risk of harm is greater.
- Hazards which lone workers may face include:
  - Accidents or emergencies arising out of work and the lack of first aid equipment
  - Fire
  - Inadequate provision of rest, hygiene and welfare facilities
  - Violence from the members of the public
  - Manual handling

# Employers' legal duties

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- No legal prohibition on working alone
  - **Section 2 of the Health & Safety at Work Act 1974** – duty of care on employers to ensure the health, safety and welfare of their employees at work
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  - **Regulation 3 of the Management of Health and Safety at Work Regulations 1999** – every employer shall make a suitable and sufficient assessment of:
    - The risks to the health and safety of his employees to which they are exposed whilst at work; and
    - The risks to the health and safety of persons not in his employment arising out of or in connection with the conduct of him by his undertaking
  - Employers also have a duty to provide:
    - Facilities for first aid under the Health and Safety (First Aid) Regulations
    - Welfare under the Workplace (Health Safety and Welfare) Regulations
    - Suitable equipment and training under the Provision and Use of Work Equipment Regulations and the Lifting Operations and Lifting Equipment Regulations


# Carrying out a risk assessment

- Identify risks at an early stage and establish measures to be put in place to minimise risk e.g. training, supervision
- Keep a written record of the assessment and any employees particularly at risk
- Ensure regular reviews of the risk assessment are carried out
- Have arrangements in place for planning, control, monitoring and review of the measures put in place
- Establish procedures to be followed in the event of serious and imminent danger
- Provide health and safety information, instruction and training for all employees
- Have procedures in place for what to do in the event of a fire

# Data protection issues

- “Appropriate technical and organisational measures against unauthorised or unlawful processing of data that identifies individuals (personal data) and against accidental loss or destruction of, or damage to, personal data (principle 7, Schedule 1, DPA 1998).
- ICO has the power directly to impose fines of up to £500,000 on data controllers for serious breaches of DPA.
- Data controller remains responsible for data, even if data is stored on a personal mobile device belonging to the employee.
- Is mobile technology covered by your Data Protection Policy?
- Staff training

# Case study A



Alan is a Housing Officer. His role requires him to make regular home visits to tenants in poor and deprived areas to carry out checks on the maintenance and upkeep of properties, collect rent payments, offer advice and assistance to the tenants on welfare benefits and also deal with any neighbourhood disputes. Alan conducts these home visits alone. There is a particular property that he visits on a weekly basis where one of the tenants has alcohol and drug problems which often makes the gentleman in question violent and aggressive, especially when Alan approaches him about payment of his rent. Visiting this property causes Alan a great deal of stress.



# Case study questions

- What type of training can be offered to Alan to help him deal with aggressive and violent behaviour?
- What type of control measures can the organisation put in place to minimise the risks to Alan's safety?

# Case study B

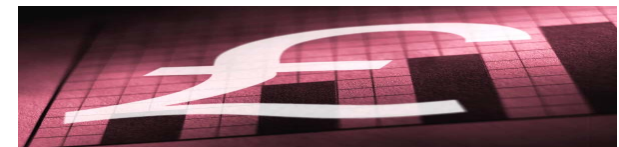
Carol is a community nurse in Gloucestershire. She visits patients by car. It is her own vehicle and it is now 10 years old. On two occasions in the last year the car has broken down on country roads. Her work involves travel outside urban areas and there is always the possibility that the car could break down on a rural road with no access to breakdown services, possibly in bad weather or at night. However, the risk is not just confined to rural areas as the car could also break down in an urban area where there is the potential for violence.

# Case study questions

- What responsibilities does an employer have with regards a vehicle that is used for work purposes?
- What control measures can be put in place to minimise the risks to Carol's safety?

# Compensation limits – from 1 February 2013

- A week's pay increases to £450
- Maximum awards for unfair dismissal:
  - Basic Award - £13,500
  - Compensatory Award - £74,200



- 25 June 2013 - Compensatory award cap:
  - lower of one year's pay / £74,200



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# National Minimum Wage

- Current Rates from October 2012:
  - Workers 21+ - £6.19 / **£6.31**
  - Workers 18-20 - £4.98 / **£5.03**
  - Workers 16-17 - £3.68 / **£3.72**
  - Apprentices - £2.65 / **£2.68**
- Rates from **October 2013**
- April 2013 – Consolidation of existing legislation



# Sickness payments

- From 6 April 2013:
- Statutory Sick Pay increases from £85.85 to £86.70
- Maximum period is for 28 weeks



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# Guidance on fit notes

- New Government guidance [www.dwp.gov.uk](http://www.dwp.gov.uk)
- Fit note information:
  - a person's general fitness for work
  - not be tied up in the specific role that the individual undertakes.
- Doctors will not issue fit notes in first seven days of sickness absence

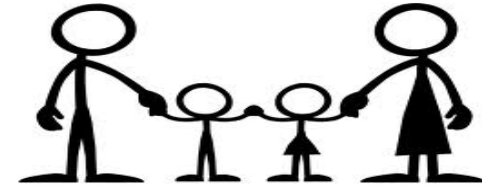


# Free health advisory service

- New Health & Work Assessment & Advisory Service in 2014
- Offer free OH expertise to employees, employers and GP's
- Free independent assessment of employees who have been off work for four weeks
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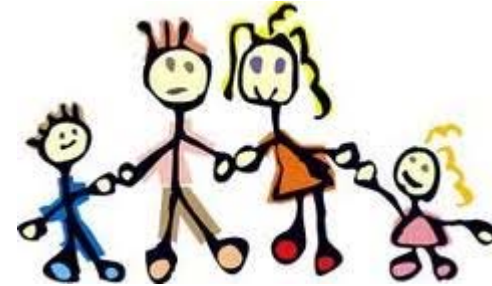


# Parental payments From 7 April 2013



- Weekly rate increases to £136.78
- Statutory maternity pay
  - 90% for 6 weeks / 33 weeks at basic rate
  - Maternity Allowance - 39 weeks basic rate or 90% weekly earnings
- Statutory Paternity Pay
  - 2 weeks basic rate or 90% weekly earnings
- Statutory Adoption Pay
  - 39 weeks basic rate or 90% weekly earnings

# Parental leave



- From 8 March 2013 extension of qualifying employees' entitlement to unpaid parental leave
- Increase from 13 weeks to 18 weeks per child up to age of five
- From 2015 extending parental leave per child up to age of 18



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# Family friendly rights



- Children and Families Bill
- Spring 2014
  - Extends flexible working rights to all employees with 26 weeks' service.
- 2015
  - Shared parental leave
  - Replace current maternity / paternity leave provisions

# Collective redundancies – changes from 6<sup>th</sup> April 2013

- From 6<sup>th</sup> April 2013:



- Proposals to make 100+ employees redundant at one establishment.
  - Minimum consultation period reduced from 90 days to 45 days.
  - Expired fixed-term contracts excluded.
- New ACAS Guidance 'How to Manage Collective Redundancies'

# Equality Act 2010



- 25 June 2013: no qualifying period for unfair dismissal if relates to employee's political opinion/affiliation
- 1 October 2013: removal of employer's potential liability for third party harassment
- 6 April 2014: end of the statutory questionnaire procedure



# Proposed reform of TUPE 2006 – Autumn 2013

- Repeal 'service change provisions'
- Scale back post-transfer restrictions on:
  - changes to terms & conditions
  - dismissals 'connected with' a transfer
- Government response on consultation unlikely until September
- Lead-in period to introduce change

# New employment tribunal rules of procedure

- Delayed until Summer 2013
- New rules to be published May 2013 with key objectives:
  - Proportionality;
  - Speed and efficiency;
  - Simplicity;
  - Certainty and consistency



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# Introduction new tribunal fees

- 29 July 2013
- Objective to deter vexatious litigants
- Dual Fee structure depending on complexity of case:
  - £160 / £250 to issue claim
  - £230 / £950 to list case for hearing
- ET discretion to reimburse fees paid by successful party



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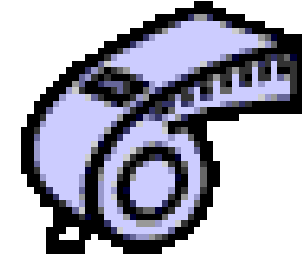




# No longer compromise, but settlement agreements

- Enterprise and Regulatory Reform Act 2013
- “Protected conversations” inadmissible in unfair dismissal claims
- Pre-termination negotiations
- Draft ACAS Code of Practice
- Coming into force Summer 2013

# Whistleblowing changes



- Applicable from 25 June 2013
- Currently disclosure must be made 'in good faith' to attract protection
- Disclosure must now be genuinely 'in the public interest'.
- ET discretion to reduce compensation by up to 25%



# ACAS early conciliation



- Compulsory pre-claim conciliation
- Proposed introduction 6 April 2014
- Employees attempt to resolve their complaints through ACAS before issuing a claim in the ET
- Financial penalties



# Questions?

