



Post-Covid Employment Law & Ince

Presentation by Ince for CECA's virtual conference:
"Build Back Fairer - Time to Think Differently"

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Hidden dangers

The Covid-19 pandemic has accelerated changes in the workforce that began even prior to the first lockdown in March 2020. More and more people are working from home part or all of the time. This has forced businesses to face up to dangers that had previously been swept under the carpet. In this seminar we will look at -

- Emergence of a “2-Tier” workforce;
- Ensuring employee safety outside the workplace;
- GDPR and Privacy; and
- Vaccination.



Home Working – a 2-Tier Workforce?



The pandemic has already established that there are two types of worker – those that **can** work from home (e.g. white collar professionals) and those who can't (e.g. “essential” workers and construction workers).

In addition, as restrictions have eased, further divisions have emerged. Furthermore, a recent ONS survey indicated that younger workers were far less likely to report an overall positive view of homeworking than older workers, with far fewer workers aged 29 and under reporting "improved work-life balance" or "completing work in a shorter time" than their older colleagues.

They also overall reported more distractions working from home – likely because younger workers generally are more likely to live in smaller and/or shared accommodation than older workers. This is also true of ethnic minority workers, and those from disadvantaged socio-economic backgrounds, who are much less likely to have the space and internet connectivity to comfortably (and confidentially) carry out work from home.

Dealing with hybrid working fairly

Indirect sex and disability discrimination

- Risk assessments and reasonable adjustments for disabled employees.
- 70% more men than women responsible for childcare – differential treatment of home and office could lead to indirect sex discrimination claims.
- Losing out on “on-site” benefits (canteen, gym) or just “face time” leading to promotion.
- The Flexible Working Regulations still exist and should be adhered to!



Dealing with hybrid working safely

Hybrid working does not just mean home and office

- Do you know where your employees are working out of the office?
- Can you facilitate a safe workspace for them – whether in the home or elsewhere?
- Are they still in the jurisdiction? Are they paying the right tax? Are there different employment laws outside the UK?



No jab, no job?



Chartered Institute of Personnel and Development (CIPD) –

“Mandatory vaccination is an intrusion on an employee's body and may discriminate on the basis of disability, or religious or philosophical belief.”

Charlie Mullins, chairman of Pimlico Plumbers in Jan 2021 –

“...If people don't want the vaccine, let them sit at home and not have a normal life...”

In the absence of new legislation, such as that introduced for CQC registered care homes, compulsory vaccination across the economy is unlikely.

Employers who wish to introduce their own policy should tread carefully and not hastily discipline or dismiss those who refuse. To avoid possible discrimination claims, a no job no job policy must be a “proportionate means of achieving a legitimate aim” e.g. H&S of staff and clients. To avoid problems before introducing such a policy –

- Assess the risk. Consider circumstances of each role and if other measures would suffice.
- Consult and support employees who are vaccine hesitant and their reps. Time off to attend vaccinations.
- Introduce other protective measures for those who cannot be vaccinated (face masks, social distancing etc.).



02 / Harassment and Racial Abuse in the age of Social Media

Harassment under the Equality Act 2010 – a refresher

“Section 26 - Harassment

(1) A person (A) harasses another (B) if —

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of —

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”

- Race (which includes colour, nationality, ethnic or national origins) is a protected characteristic.
- Intention doesn't really matter (“...*purpose or effect*...”) – employment tribunals often take the phrase “banter” as an admission of guilt.
- Employers will be liable for their staff's harassment of other employees unless they have taken “all reasonable steps” to prevent it.
- The workplace, particularly in the age of hybrid working, stretches beyond the office.

Social Media – have you taken “reasonable steps”?

Abuse of employees by other employees on social media is a real problem. Employers must have policies in place emphasising that employees represent the employer outside the workplace and that racial (or other) abuse of colleagues on any medium will have very serious consequences.

Social Media Policies

A well crafted social media policy is a “must have” not just a “nice to have” for all employers.

- A prohibition on hate speech, threats of violence, harassment, or racial epithets on social media will go some way to establishing the “reasonable steps” defence to a racial harassment claim.
- Making it clear that such behaviour is gross misconduct will help defend against unfair dismissal complaints.
- They establish the expectation that your organisation’s reputation is in employee’s hands everywhere. Including online.

Harassment by third parties



As originally enacted, the Equality Act 2010 had specific statutory provisions on third party harassment in that stated that an employer could only be liable when they knew that an employee had been harassed by a third party on at least two previous occasions and did not take reasonably practicable steps to prevent the harassment. This three strikes requirement proved unworkable in practice, and was repealed in 2013.

There is, currently, little or no direct legal protection for employees against their employers where they have suffered harassment by third parties at work – employees have to show that the employer essentially deliberately allowed it to happen – an impossible threshold to reach!

Nevertheless, good practice, fairness and equity mandate that all employers should put in place comprehensive measures to protect their staff from harassment by third parties that will stand them in good stead when (hopefully if!) the law is amended once again.

Any questions?



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Thank you, in any case

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