



Implications of recent legal cases on your business

2016 saw the outcome of some important legal cases around employment practices. Whilst the cases are related to the UK, Jersey looks to the UK for precedence, making the implications important to note in Jersey too.

Below is a short overview of the case and any actions organisations should take.

Issue/case	Action
<p>Provision of benefits during maternity leave</p> <p>An employee at Peninsula argued that they should have received childcare vouchers whilst on maternity leave and, because they had not, that the company's childcare voucher scheme was discriminatory.</p> <p>However, as Peninsula had made deductions from the employee's salary in return for childcare vouchers, the Employment Appeal Tribunal (EAT) ruled that it did not have to continue to provide the vouchers during maternity leave and therefore the childcare voucher scheme was not discriminatory.</p>	<ul style="list-style-type: none"> • Ensure your maternity leave policy is explicit regarding what employees can and can't expect to receive in terms of payments and benefits during maternity leave • Communicate your maternity leave policy with employees
<p>Appropriate use of social media at work</p> <p>The European Court of Human Rights ruled in favour of an employer who had dismissed an employee for using Yahoo Messenger to chat to his family as well as his professional contacts. It found that the employer's actions of reviewing the employee's conversations were justified as it was seeking to verify that the employee was using his work computer and social media account for work purposes only, as was clearly stated in the company's social media policy.</p>	<ul style="list-style-type: none"> • Ensure your social media policy clearly states your expectations of personal vs professional use in the workplace • Share your policy with employees. NOTE: a workplace social media policy cannot be implemented retrospectively; it is therefore important to ensure that employees are fully aware of the policy you have in place
<p>Directors and officer's liability for employee actions</p> <p>WM Morrison was found liable for an assault made by one of its employees against a customer by the UK Supreme Court because of the close connection between his actions and his role – the employee was responsible for dealing with customer enquiries, which he had been answering when the initial altercation came about.</p>	<ul style="list-style-type: none"> • Company directors/officers must be made aware that, where an employee's action against a customer, client or supplier is directly connected to their everyday role and responsibilities, that the directors/officers will be held liable

Issue/case	Action
<p>Importance of clarifying employment status</p> <p>In a case brought by Uber regarding worker's rights, the Employment Tribunal ruled that Uber's drivers were in fact working for the company and would therefore come under a worker contract with corresponding legal rights.</p> <p>The ruling was made on the basis that Uber was responsible for risks typically borne by a driver in business on their own account, such as customer refunds and passenger fraud, as well as providing instructions as to how the work was to be performed.</p>	<ul style="list-style-type: none"> • Clarify worker's employment status given risks borne by you as an employer vs your employees • Ensure worker contracts comply with relevant Jersey or UK employment law
<p>Importance of appropriate and justified warnings prior to dismissal</p> <p>A senior producer at the BBC was dismissed for abusive behaviour but sued for unfair dismissal, which the Employment Tribunal (ET) found unjustified.</p> <p>However, because only a final written warning been given, the ET found that this was "manifestly inappropriate" and that an ordinary warning would have been more suitable. The ET also found that the producer's actions did not fit the BBC's definition of 'gross misconduct' under which he was dismissed.</p> <p>Both parties appealed the ET ruling, with the EAT finding in favour of the employee. It ruled that the dismissal was not fair, and upheld that the final written warning had been inappropriate.</p>	<ul style="list-style-type: none"> • Written warnings must be fair and appropriate to the conduct and take into consideration an employee's behavioural history, alongside any mitigation, precedent and circumstance • Where an employee's behaviour is believed to be gross misconduct, it must accurately fit the company's own definition of what this would entail within their employ.

If you would like further advice on how to implement any of these actions, please don't hesitate to contact us at becky@hrnow.je or call us on **747559**.

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