

Employee New Year's Resolutions: – How can they impact your business?



At the start of a new year, many individuals will have resolved to make changes to their lives. How could these top 6 new year's resolutions by your staff affect your organisation?

1. Spend more time with family

Some employees may have decided that 2015 is the year that they wish to spend more time with family. The past year saw the introduction of some new Government measures and family friendly policies. Changes include the introduction of Shared Parental Leave which will impact on these employees – employers should be aware of these changes and be ready to deal with such enquiries:

Shared Parental Leave

The Government introduced new Shared Parental Leave Regulations on 1 December 2014. These Regulations apply to babies due, or children adopted, on or after 5 April 2015. Under the new regime, mothers must take their 2 weeks' compulsory maternity leave following the birth of the child, and then the remaining 50 weeks can be split between the parents however they choose. This differs from the old regime of Additional Paternity Leave as the mother does not have to have finished her maternity leave for the father or partner to take theirs, meaning that both can enjoy shared parental leave simultaneously. The Regulations are complicated and specialist advice is recommended when an application for shared parental leave is made.

2. Get a better work/life balance

Individuals may have resolved that they will make a conscious effort to strive for a better work/life balance in 2015. Since 30 June 2014, any employee can make a request to work flexibly, and it does not matter what the reason for the request is. To be eligible to make such a request, the employee must have 26 weeks' continuous service and not have made a request within the previous 12 months. Though employers must consider the request, the request can be refused on certain grounds set out in the legislation, including burden of additional costs, inability to re-organise amongst existing staff and could have a detrimental impact on performance. Employers should be aware that a timescale of 3 months must be adhered to in considering the request. Failure to properly consider the request can result in a claim to the employment tribunal, not least in relation to unlawful discrimination.

3. Travel more

Travelling more is often high on the list of employees' new year's resolutions, and this will of course mean the need to request holidays. Last year saw significant news coverage of the Employment Appeal Tribunal case of **Bear Scotland Ltd v Fulton**. In this case, the Employment Appeal Tribunal decided that overtime pay (at least for compulsory overtime), must be included in the calculation of holiday pay. This applies only to the 4 weeks of holiday per annual leave year that European law requires, and not the additional 1.6 weeks under UK law. Of most significance, however, is the decision of the Employment Appeal Tribunal that where a worker is seeking to claim backdated holiday pay for a period of years, any break of 3 months or more in which no holidays were taken or holiday pay was paid at the correct rate, will break the series of deductions.

In this edition

Employee New Year's Resolutions: How can they impact your business?

An overview of the top 6 resolutions your staff are making for 2015 and the affect these could have on your organisation.

1. Spend more time with family
2. Get a better work/life balance
3. Travel more
4. Get fit and healthy
5. Get a different job
6. New Start

Checklist: 2015 Changes You Need to Know About

What lies ahead?

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Employers are advised to take specialist employment law advice to ensure that they have assessed the potential liability of successful claims for backdated holiday pay, and to discuss how best to safeguard the future.

4. Get fit and healthy

Getting fit and healthy is often top of the resolution list after the excesses of the festive period. It can be of huge benefit to employers to have employees who are energised and revitalised from their healthy living regime.

However, there may also be employees currently off on long term sick leave who also wish to try to get back to work in 2015. A new Governmental scheme called Fit for Work Scotland will assist employers in helping employees get back to work after a period of sickness. The website for Fit for Work went live in December 2014 and provides information for employers with employees on sick leave. It is anticipated that the initiative will be fully rolled out by May 2015.

The purpose of the initiative is to make occupational health assessments and advice more accessible to GPs, employers and employees, thus better enabling all parties to manage sickness absence. It does this firstly by providing access to advice through a website and helpline for GPs, employers and employees, and secondly by providing for employees who have been sick for four weeks to be referred by their GP or employer for a telephone based assessment with a health professional with experience in occupational health.

For employees whose fitness resolutions fail, employers may wish to note a recent decision of the European Court stating that obesity may in some cases amount to a

disability (triggering the need for reasonable adjustments etc.).

5. Get a different job

Many employees see the new year as a good opportunity to consider a new career, or a move to a different company.

When an employee hands in their resignation employers typically have one of three major concerns:

- 1) If they are a valued employee, how can the employer persuade them to stay?
- 2) If there has been a dispute, is the employee resigning with a view to claiming constructive dismissal?
- 3) How can the employer ensure that the employee does not steal business, clients, ideas or go to work for a competitor?

Expert employment law advice can assist in relation to all these issues, and minimise the risk of harm to your business. You should not wait until the employee resigns. Consider including restrictive covenants and other provisions in the employment contract.

6. New Year, New Start

Many employees come back to work in the new year with a new zest for their job and a desire to succeed and contribute. This is perhaps the optimum time to encourage and motivate staff to ensure that employers get the best out of them for the coming year.

The Employment team at **bto** looks forward to working with you all in 2015.

Update

Checklist: 2015 Changes You Need to Know About

- Fit for Work Scheme
- Parental leave (18 weeks unpaid leave) can be taken up to age 18 (currently age 5)
- Changes to adoption leave, pay and other arrangements
- Shared parental leave and pay

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