

Contents:

1. **Employment Law Update**
2. **Primary Care Federations**
3. **Complaints Procedure Update**

1. Employment Law Update

A number of important changes in employment law came into effect in April. The main ones of relevance to GP practices are summarised below.

Statutory Minimum Leave Entitlement

With effect from 1 April there is an increase in the statutory minimum annual leave entitlement from 24 days to 28 days for full time workers (i.e. those working 5 or more days a week). There is no statutory right to take public holidays as leave and if an employee takes a public holiday off, the employer is entitled to deduct this from the leave entitlement.

These provisions only apply in so far as the employee's contract falls short of the statutory provisions. Contractual terms which are more beneficial than the statutory minimum are unaffected.

Statutory Parental Pay and Sick Pay

With effect from 6 April:

- o Statutory sick pay for eligible employees goes up from £75.40 to £79.15 per week
- o Statutory maternity, paternity and adoption pay for eligible employees goes up from £117.18 to £123.06 per week. Maternity pay continues at this rate for 33 weeks (following a 6 week period at the earnings related rate), paternity pay for 2 weeks and adoption pay for 39 weeks.

Repeal of Statutory Dispute Resolution Procedures

The Employment Act 2008 repeals the statutory dismissal and grievance procedures with effect from 6 April 2009. However, this does not mean that an employer need not have procedures in place. The employer is still obliged to specify within an employee's statement of employment particulars the disciplinary and grievance procedures that apply. Employers are encouraged to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the Code") and this can be found on www.acas.org.uk. The Code encourages employers to involve employees in the development of the procedures.

It is essential to follow a disciplinary procedure when dealing with cases of misconduct and poor performance. An employment tribunal will take the Code into account when deciding whether or not a dismissal for poor performance or misconduct is unfair and, if an employee's claim is successful, may increase the compensation payable by up to 25% if the employer has unfairly failed to follow relevant parts of the Code.

Disciplinary issues and grievances pre-dating 6 April 2009 will continue to be dealt with under the old regime.

Extension of Right to Request Flexible Working

Previously, the right to request flexible working was restricted to parents of children under six (or under 18 in the case of disabled children) and carers of adult dependents. This right is being extended to parents of children up to the age of 16.

The employer must give proper consideration to such requests, meet with the employee within 28 days of the request and give a decision in writing within 14 days of the meeting. It is acceptable to turn down a request only on specified grounds which are:

- a) additional costs burden;

- b) detrimental effect on ability to meet customer demand;
- c) inability to re-organise work among existing staff;
- d) inability to recruit additional staff;
- e) detrimental impact on quality;
- f) detrimental impact on performance;
- g) insufficient work during proposed periods of work;
- h) planned structural changes.

Refusing a request from a woman to work part-time or flexibly may be grounds for a claim of indirect sex discrimination as women are statistically more likely to have childcare responsibilities and may therefore be more disadvantaged by a requirement to work full-time or to a rigid work pattern. It is advisable to seek legal advice before refusing a request to work flexibly. In the first instance please contact Sandra Wiltshire of our New Enquiries Team on saw@lockharts.co.uk or 020 7383 7111.

2. Primary Care Federations

Whether it is to run a GP led health centre, share back room services or collaborate in the provision of enhanced or specialist services, more and more GP practices are getting together in Primary Care Federations.

Getting the right organisational structure at the outset is of crucial importance. It is essential that there are sound decision making mechanisms in place and clear rules about what activities are permitted by the individual practice members outside the scope of the Federation's work. In addition there should be provisions relating to admission and exit of members, finance and termination of the venture.

A corporate structure is often appropriate so as to limit the liability of the member practices. If this route is chosen consideration must be given to the most appropriate corporate structure for the venture: companies limited by shares or guarantee or a limited liability partnership may all be appropriate although some of these structures have limited use in the NHS. Choosing the

wrong structure at the outset could result in the Federation being legally unable to enter contracts awarded at tender or being unable to provide access to the NHS Pension Scheme for employees.

Lockharts has over ten years experience of providing specialist legal services to the healthcare sector. Our corporate team has a wealth of expertise in setting up various kinds of collaborative ventures between GP practices and between GP practices and commercial providers.

We are able to assist with:

- o Helping to identify the most appropriate structure for your collaborative efforts
- o Forming companies and LLPs
- o Preparing tailored constitutional documentation
- o Advising on the tendering process
- o Advising on the terms of contractual arrangements between PCTs and Federations
- o Due diligence
- o Advising on staff and asset transfers from existing providers to the Federation
- o Advising on NHS regulatory issues and the NHS Pension Scheme
- o Property and employment matters

If you would like more information about our services in this area or would like a Solicitor from our team to come and speak to your Federation (without further obligation), please contact Victoria Wheeler in our New Enquiries Team on vw@lockharts.co.uk or 020 7383 7111.

3. Complaints Procedure Update

Further to our March newsletter, in which we updated Practices as to the new complaints regulations which came into force as of 1 April 2009, evidence has emerged from the pilot schemes in 25 PCTs over the past year that there have been instances where PCTs seem to have encouraged patients to make complaints against Practices.

Accordingly, Practices are recommended to have their own effective complaints procedures so that any complaint a patient wishes to make against a practitioner or the Practice is kept 'in-house' in the first instance. This should attempt to resolve any problems at an early stage and obviate the need to involve the PCT, which should only become necessary if the complaint cannot be resolved using the in-house procedure.

Lockharts can advise on an effective complaints procedure for Practices in light of the new regulations and should you require any information regarding this, or advice on the above, then please contact Victoria Wheeler in our New Enquiries Team on vw@lockharts.co.uk or 020 7383 7111

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Kabir Savjani at csd@lockharts.co.uk.

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"...Offering a 'much wider breadth of knowledge and expertise' than many of its competitors, the firm comes highly recommended and gives clients "very little reason to shop around."



"Under Andrew Lockhart-Miramis, Lockharts is an 'established leader in medical law' that acts for over 1,500 GP practices on a variety of corporate and commercial issues, including private APMS contracts with PCTs"