

White Paper

Minimising the impact of employment legislation on strategic HR: Reducing risk while cutting the red tape

Introduction

In an increasingly litigious employment environment, HR managers can't afford to drop the ball even for a moment. From the BBC being brought to rights over ageism, to holiday entitlement disputes being dragged before the European courts, employers are at greater risk than ever of being sued and publicly condemned for failing to do right by the people who work for them.

Currently, employment legislation is the fastest changing area of HR as a multitude of coinciding factors force regulators to bring national policies up to date. The focus of the legislation is as broad as it is deep, covering everything from parental leave, flexible working and limits on the hours employees put in, to retirement age and pension schemes, and the way benefits including cycling schemes and fuel allowance are calculated and managed.

On top of all of this, HR departments must record everything properly and keep adequate records and be able to produce a clear, up-to-date audit trail of any sequence of events with very little notice.

The risks of non-compliance with any of these legal requirements include litigation, financial penalties, and a damaging effect on employee relations and the company's reputation.

Even more challenging is the fact that HR departments must absorb the changes and new requirements despite their own resources being under pressure. Just as entire organisations have downsized to weather the recession, so too have individual HR functions. This is despite the increasing demands on HR managers and supporting functions such as payroll, not to mention the growing status the HR role is supposed to have within companies.

The reality is that there are now fewer staff to juggle these mounting responsibilities. If Human Resources is ever to take up its rightful position higher up in the company hierarchy, with greater strategic responsibility and more of a say in the boardroom, something has to change.

As vital as it is to be legally compliant and to honour employee rights, administering and ensuring the systematic roll-out of and adherence to statutory requirements is hardly the domain of strategy makers.

The HR department's best option then is to prioritise its strategic responsibilities over more routine, administrative tasks and to look for ways to streamline and automate the latter as far as possible. Once repeatable process-based tasks are taking care of themselves – consistently and reliably, and with minimal manual intervention – HR teams can divert skills and attention back to where these are needed most to add real value for the organisation.

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The rising profile of HR

An organisation is only as good as its people. Statements to this effect are often to be found in company mission statements and on plaques in reception waiting areas, giving voice to the commonly held view that a business's most important assets is its employees. The Investors in People scheme, now 20 years old, is just one of many programmes to support this, giving enterprises a badge to wear to demonstrate their commitment to developing and caring for their staff.

However, the positioning of HR departments in a company's internal hierarchy has taken time to catch up. If organisations are to be truly people-driven, it follows that the HR function should be highly valued and central to company strategy, which traditionally hasn't always been the case.

Nevertheless, as long as HR departments are held back by the minutiae of administrative duties, they will be thwarted in their mission to move forwards and upwards in the organisation, emerging out of the back office and into the boardroom, where business strategy and policies are made and shaped.

A brutal recession and the most intense onslaught of new employment legislation in recent history have conspired to increase this challenge. Not only does the average HR department have fewer resources to draw on, those that remain are being fully deployed absorbing and processing a whole raft of new legal and tax-related requirements which have far-reaching implications across HR and payroll, from policy to administrative processes. At the very time when HR managers should be making their presence felt - not least as companies prepare for the eventual economic recovery - many are finding their plates are fuller than ever as they struggle to keep on top of day-to-day demands.

So sue me

The shake-up in employment law over the last decade has been substantial. EU harmonisation and intervention coupled with a growing awareness among the workforce of employee rights has prompted a swathe of exacting new standards to be set, backed by increasingly unambiguous laws. Once, it was only really in sectors with strong trade union representation that organisations needed to worry about infringing employee rights. Now, even the newest and most junior staff member in the smallest of companies can be confident they have the law on their side if they decide to challenge their employer about anything from unfair dismissal or unreasonable working hours - to whether they are entitled to holiday pay on top of sick pay.

However trivial the quibble might seem to be, companies cannot afford to take such matters lightly, as the courts are likely to back the employee all the way if necessary. A sign of how extreme things have become has been evident in the hugely protracted 'Stringer vs HMRC' case. The challenge, which centred around an HMRC employee who had been on long-term absence, took seven years to clear the judicial process. When the employee's contract was terminated, he argued that he had not been paid his outstanding holiday entitlement. The sums involved were insignificant, but the ramifications of the case were huge. It resulted in a ruling by the European Court of Justice (ECJ) that employees continue to accrue statutory holiday while on sickness absence from work, whatever the length of that absence.

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The ruling raises a number of practical issues which are still being resolved by the UK Government. As a result of the ruling, however, employers have been advised to conduct an audit of all those on long-term absence, to assess the cost exposure in terms of holiday entitlement and to consider what steps might need to be taken – for example, whether to make payment for holiday already accrued or bring employment to an end to cap the company's exposure if there is no prospect of a return to work.

Increased rights for contract, part-time and agency workers all add to the burden on employers to do right by their staff, however casually they have been engaged.

Employee rights

Equality laws have also been the source of controversy recently, most poignantly reflected in the high-profile case of the BBC being found guilty of age discrimination. The BBC is expected to have to pay out £250,000 to presenter Miriam O'Reilly following her court victory in January 2011. Such cases can only increase now that the default retirement age has been abolished. Similar controversy surrounded Sky News when two of its sports presenters made sexist comments live on air, raising new questions about what may or may not be said at work without breaching discrimination law.

Parental rights are continually being adjusted too, to afford greater rights to fathers, as are the rights of employees to greater flexibility in the hours they work, particularly if they have children. Upper limits of the number of hours employees can work in a given week, or without a break, must be observed too.

Employers are being called upon to play their part in sorting out the growing pensions crisis. Under a new auto-enrolment scheme due to come into force from 1 October 2012, employers will have a responsibility to enrol eligible workers into a qualifying workplace pension arrangement. This follows the finding that only a third of employees today are in a workplace pension (ASHE survey 2010), and that 750,000 employers offer no pension at all. From October next year, employers will be required to make a minimum 3% contribution towards a defined contribution scheme (based on qualifying pensionable earnings) or the National Employment Savings Trust (NEST), or offer membership of a defined benefit or hybrid scheme.

Employer accountability

Measures don't extend only to honouring employees' rights. Other legislation makes employers more accountable for the actions of their staff when they break the rules, placing new pressure on HR departments to be seen to be taking swift and clear action in the event of serious misdemeanours.

The Bribery Act, which came into effect in April 2011, introduces rigorous new anti-corruption regulations affecting all employers. This is forcing employers to review anti-corruption procedures and ensure that precautions are in place to tackle bribery in the workplace. Legislation also requires employers to complete mandatory criminal record checks prior to and for the duration of employment for certain roles. Failure to do so may reduce the company's ability to defend itself against any allegations and the associated harsh new penalties.

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Payroll pressures

At a payroll level, legislative changes and the implementation of new initiatives are disruptive too. Changes to pensions, benefits and allowances must be administered punctually and accurately at this level to avoid over or underpayment and any associated penalties and recriminations. Considerations range from fuel allowance to the administration of cycle-to-work schemes. In further changes, albeit not a legal requirement, organisations may be encouraged to deduct charitable donations from employees' wages and salaries with their permission, as a way of increasing public giving. This is a fine idea in principle, but will be another administrative hurdle for HR and payroll managers to jump. Implementing new measures like these isn't always straightforward, because of the complex calculations and special provisions involved. Failure to do things properly can mean a lot of additional pain later.

One of the biggest changes on the radar for payroll is a comprehensive shake-up of the PAYE system, which is required in advance of October 2013, the launch date for the Coalition Government's Universal Credit. In the run-up to the new system, the Government is taking action to improve accuracy and transparency in the way that payroll information is provided to HMRC and DWP. From April 2013, under a new HMRC Real Time Information (RTI) initiative, employers will need to begin migrating to real-time payment information delivery. Here, 'live' payslip information will be issued automatically to HMRC with each payroll run. Initially, the transfer of information will be handled via the Government Gateway, but ultimately it will be managed via an all-in-one BACS transaction. As of now, organisations have two years to prepare for the change which, although involving some upheaval, presents an opportunity to introduce slicker and more sophisticated payroll processes.

Useful resources detailing all of the latest legislative requirements and changes affecting employers are listed at the end of this white paper.

Tame it with technology

Given the complexity and volume of recent and forthcoming employment legislative changes, HR professionals have got their work cut out managing their organisation's compliance effectively, and ensuring that up-to-date HR policies and procedures are maintained.

Falling short is clearly not an option, given the potential legal, financial and reputation-related ramifications, yet it is becoming increasingly difficult for HR managers to track, implement and manage new requirements reliably and efficiently using traditional, manual methods.

Parting with paper

Many organisations, particularly those with fewer than 100 employees, still rely far too heavily on paper for administering HR activities, meaning that every legislative change requires a time-consuming overhaul of practice and extensive measures to track compliance.

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Even where activities are automated, such as payroll which may be managed by a bureau, the majority of IT systems in use are old and restricted in their functionality. As such, they lack the flexibility to adapt and incorporate new requirements and rules, or to integrate with other business systems used by the company.

Heavy reliance on manual and paper-based processes holds HR and payroll teams back in numerous ways. Documents can be easily lost, and are difficult to share or to pass around efficiently, especially where the personnel involved are distributed across different locations. They are impossible to back up and secure, and don't lend themselves to expedited processing or clear audit trails.

Each time a new business or legal requirement is introduced, the HR headache multiplies, because there is new action to be taken and more paper to be pushed.

As HR departments attempt to push back and assert their strategic importance in the organisation, their increased reliance on technology to help take the strain is becoming increasingly inevitable. This is a good thing. Implemented strategically, modern, optimised HR and payroll systems offer them all sorts of additional benefits, enabling personnel to be spared the tedium of admin and redeployed to more value-added activities.

If it's process-driven, automate it

While HR is a people-based discipline, many of the routine activities are rule-based, lending themselves to high levels of automation. In legal compliance terms, the systematic application of those rules not only relieves HR professionals of a sizeable operational burden, but also streamlines internal processes through more effective workflow practices - helping to improve business performance, facilitate innovation and enhance operations. Make a change in one system, for example, and pre-defined rules will apply the changes across all related systems, saving managers a lot of legwork. Payroll alone could be reduced from a three-day process to a half-day's work.

Tracking the changes

Just keeping on top of legislative changes is demanding enough, so it is vital that, where HR managers do lean on technology, they keep their systems up to date through the latest upgrades and new releases. Wherever automation is possible, a good HR software supplier will incorporate or at least provide for new requirements, using workflow, rules and triggers. Harnessing technology offers unparalleled speed of implementation, establishing early confidence that new criteria are being met.

Portal power

Self-service applications can help significantly, enabling HR departments to rapidly and comprehensively communicate details of changes to employee entitlements and responsibilities as these are introduced - for example, by way of a centralised, web-based intranet which all staff can access securely and, where appropriate, according to pre-determined role-based rights. New employee rights and requirements can be issued here, for example, as well as electronic forms which can be filled in and returned online as needed,

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tracked by workflow to ensure that no one slips through the net.

As Generation Y moves up and through the organisation, conducting routine HR activities online will increasingly become something that is simply expected.

Traceability

Automated workflow ensures that the right information and administrative processes are delivered to the right people at the right time. As well improving productivity and ensuring faster processing times, this creates an inherent audit trail, greatly aiding the HR manager's ability to demonstrate compliance with new requirements, or the communication of new requirements, if this were ever questioned. Process visibility is essential in tracking progress and improvement.

Conclusions

Despite the impact of the recession in flooding the job market with people looking for work, skills shortages continue to plague many industry sectors, with the result that organisations must now think 'out of the box' about how they attract and retain the best people. While no one is quite sure when it will come, the return of a more buoyant economy is within grasp and most businesses are at some level preparing to gear up for it. Skilled and experienced HR people need more than ever to be at the top table, sharing their knowledge about internal challenges and wisdom about best practices gleaned from elsewhere, so that companies are ahead of the game on innovative flexible working initiatives and other schemes that will stand out to would-be employees.

Ensuring compliance with new legislation is an important part of the brief, no question, but strategic interpretation of the requirements and slick and thoughtful implementation of new measures will be a better use of senior HR people's time than systematically dotting the 'I's or crossing the 'T's.

Now more than ever it is time that HR professionals turned to IT in its strategic capacity, as a time saver, rule keeper and resource-saver. In times of austerity, and in recovery, the benefits are seen time and time again to outweigh any costs.

Technology eases the restraints of red tape, and spares companies the burden of mind-numbing and costly law suits, by helping to manage risk as well as box-ticking compliance. Automation creates opportunities for flexibility, where rules might otherwise get in the way, making home-working and other cultural shifts easier to manage while remaining within the guidelines.

Cloud solutions lighten the load

Finally, one exciting development to mention is the accelerating trend towards cloud computing, which is enabling organisations of all shapes and sizes to be more innovative, creative and ambitious in the way they harness IT. This is because of the considerable cost efficiencies and significantly reduced internal IT investment and support burden. Cloud-based software solutions offer organisations a way to cut free from

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old, large legacy systems which may be restricting flexibility while incurring hefty annual maintenance charges. Instead, companies can opt for lighter, more modern and agile systems which are updated more regularly and are paid for by way of a modest monthly service charge based on the peaks and troughs of usage.

Of course, technology alone cannot work miracles. HR managers need to be on top of their game, interpreting new legislation, assessing its impact, and determining how best new measures should be implemented. But the important thing, here, is that they are not alone. Rather, they must reach out to their software suppliers for help and advice and a clearer understanding of how and where technology usage can be expanded and enhanced to make their lives easier and their organisations' HR-related prospects healthier. The right supplier will go the extra mile to explain how software can help; working with the company to make any changes work for and not against the business – both now and in the future, when the next raft of legislation appears on the radar.

Source and resources:

Lists and schedule of changes

- A full breakdown of recently introduced UK employment legislation, c/o CIPD: <http://www.cipd.co.uk/hr-resources/legal-timetables/default.aspx>
- The lowdown on further, forthcoming measures, Personnel Today: <http://www.personneltoday.com/events/list.aspx?navigationid=10&type=10026&past=false>
- Latest news for employers, from HMRC: <http://www.hmrc.gov.uk/employers/news.htm>
- Summary of PAYE regulation changes from April 2011, from HMRC: <http://www.hmrc.gov.uk/payepaye-regchange.htm>
- HMRC Real Time Information/PAYE changes: <http://www.hmrc.gov.uk/ria/ia-improve-payepaye.pdf>

Details of specific changes

- 'Payrolled' expenses and benefits, c/o HMRC: <http://www.hmrc.gov.uk/payepaye/exb/overview/basics.htm#8>
- Cycle to work scheme guidance: <http://www.dft.gov.uk/pgr/sustainable/cycling/cycletoworkguidance/>
- Equality Act 2010 explained: http://www.equalities.gov.uk/equality_act_2010.aspx

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- Employment rights, c/o Department for Employment & Learning: <http://www.delni.gov.uk/index/er.htm>
- Employers' guide to changes to maternity/adoption leave and pay and flexible working legislation, c/o Department for Employment & Learning: <http://www.delni.gov.uk/de/index/publications/pubs-employment-rights/other-employment-rights-publications/er-maternity-adoption-information-employers.htm>
- Identity Document Act 2010: <http://www.legislation.gov.uk/ukpga/2010/40/2011-01-21>
- Latest pension reforms (Pensions Bill 2011), c/o DWP: <http://www.dwp.gov.uk/policy/pensions-reform/>
- Pensions: auto-enrolment explained, Pension Advisory Service: <http://www.pensionsadvisoryservice.org.uk/future-pension-reforms/auto-enrolment>
- Statutory sick pay – latest guidance for employers: <http://www.hmrc.gov.uk/helpsheets/e14.pdf>
- An employer's guide to the Agency Workers Regulations, Personnel Today: <http://www.personneltoday.com/employers-guides/agency-workers-regulations/>
- Bribery Act 2010 explained, c/o IoD: <http://www.iod.com/Home/Business-Information-and-Advice/Being-a-Director/Hot-topics/Bribery-Act-2010---What-It-Means-For-Employers/?ListItemID=753&ListGroupID=52>

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