



Brachers Bitesize
Returning to the workplace

Tuesday 18 May 2021

Presented by:
Catherine Daw and Abigail Brightwell

Brachers
With you all the way

Today's presenters



Catherine Daw | Partner and Head of Employment and HR, Brachers LLP

CatherineDaw@brachers.co.uk

Catherine joined Brachers on qualification in 1999 and became a Partner in 2003. She leads the Employment and HR Team and has a reputation for providing clear, practical and client-focussed advice. She is an experienced and pragmatic lawyer and has been representing employers on all aspects of employment law including restructures, TUPE transfers, employment tribunal claims and contracts of employment since 1999.

Catherine is noted in leading legal directory Chambers and Partners for her expertise advising clients in the healthcare sector on complex employment issues. A client interviewed by Chambers described Catherine as "*an exceptional lawyer who is extremely responsive and always delivers the required outcome.*"



Abigail Brightwell | Associate - Employment, Brachers LLP

AbigailBrightwell@brachers.co.uk

Abigail joined Brachers as a trainee in 2009 and qualified into the Employment team in September 2011. She has represented several NHS Trusts in cases covering unfair dismissal (including constructive dismissal), unlawful deduction from wages, discrimination and whistleblowing.

Abigail advises on a broad range of day-to-day workplace issues, both contentious and non-contentious, and is regularly called upon to give advice on settlement agreements.

Today's session

01

Flexible working and
discrimination risks

02

Pay, benefits and
expenses

03

Varying contracts of
employment

04

Practical considerations

Roadmap out of Lockdown



- Current government guidance in England is to work from home “where possible”
- Work from home message in place until Step 4 – guidance expected to change from 21 June
- Institute of Directors Survey – 60% of businesses intending to adopt a hybrid office/remote working model going forward

Poll

When restrictions ease is your business planning:

- (a) A complete return to the workplace
- (b) Introducing a hybrid model – a mix of home and office working
- (c) Fully remote working
- (d) Not yet decided

Flexible working requests

- Formal verses informal?
- Contractual right to make changes?
- Statutory right to request flexible working (*Sections 80F to 80I Employment Rights Act 1996*):
 - Employees
 - 26 weeks' continuous service
 - One request in any 12 month period

Flexible working requests

What changes can be applied for?

- Change of hours
- Change of working times
- Change to place of work

- Part-time, full-time, annualised hours, compressed hours, flexi-time, homeworking, job-share, staggered hours, term-time working

Flexible working requests

Making a formal request

- In writing
- Dated
- Being made under statutory procedure
- Change being sought and when to take effect from
- Effect on employer

Flexible working requests

Dealing with requests

- Deal with request in a “reasonable manner”
- Notify of decision within decision period (three months or longer by agreement)
- Only refuse on specified grounds
- Employee may bring a claim if they believe their claim has not been dealt with in a reasonable manner, not dealt with in the decision period or that the decision reached was based on incorrect facts
- Acas Code

Flexible working requests

- Specified grounds for refusal:
 1. Burden of additional costs
 2. Detrimental effect on ability to meet customer demand
 3. Inability to reorganise work among existing staff
 4. Detrimental impact on quality
 5. Detrimental impact on performance
 6. Insufficiency of work during the periods the employee proposes to work
 7. Planned structural changes
- Giving a reason for the refusal?

Flexible working requests

Employer's power to reject requests:

- *Webster v Princes Soft Drinks* ET [2004]
- *Commotion Ltd v Ruddy* UK EAT [2005]
- *Singh v Pennine Care NHS Foundation Trust* UK EAT [2016]

Flexible working requests



- The future?
- Government considering amending Flexible Working Regulations 2014
- Consultation on making flexible working the default position unless employers have good reasons not to

Discrimination risks

- Sex discrimination
 - Direct
 - Indirect
- Disability discrimination
 - Duty to make reasonable adjustments
 - [Employment: Statutory Code of Practice | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

Discrimination risks

- ONS report into prevalence of 'long COVID' in the UK
- Estimated 1.1 million people reported symptoms of COVID-19 lasting more than four weeks after first episode
- Greatest prevalence in 35-69 age bracket, and in females
- Could long COVID amount to a disability?
- Duty to make reasonable adjustments

Constructive dismissal

- Has there been a repudiatory breach of contract by the employer?
- Has the employer conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee, without reasonable and proper cause?
- Has the employee elected to accept the breach and treat the contract as at an end – have they resigned in response?
- Has the employee delayed too long in accepting the breach?

Pay, benefits and expenses

- Location based salaries
- Cost of living allowances
- How will salaries be determined - linked to value of work?
- Expense claims
 - a
- Validity of restrictive covenants

Varying contracts of employment

- Are the changes authorised by the contract?
- Is there a contractual mobility clause?
- Consultation and agreement
- What if employees do not agree? Unilateral variation or dismissal and re-engagement
- Collective consultation obligations
- 20 or more dismissals at one establishment within 90 days



Any Questions?

Brachers
With you all the way



About Brachers' Employment team

Our [Employment and HR team](#) take pride in delivering employment law and HR services that are tailored to your needs. We are dedicated to listening and learning about your business to understanding the challenges you face, your ambitions, and how to retain, your key asset, your people.

We are one of the largest employment and HR teams in the South East, working alongside businesses with 60,000 employees in the region.

We appreciate that business is about taking managed risks. Our commitment to you is that we will not sit on the fence but will make recommendations using the benefit of our judgment and experience.

Book a free online consultation

If you would like more information on how we can support you with the issues covered in this webinar, [book a 30-minute online appointment](#) with a lawyer from our Employment team for an initial discussion on your needs and to find out how we can help.

Presentation slides

Please email events@brachers.co.uk if you would like us to send you a copy of these presentation slides.