

People manager essentials in an evolving legal landscape

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Speaker



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Agenda

- Why is it important?
- Impact of the Employment Rights Bill?
- Key risk areas, top tips and avoiding common pitfalls
- Disciplinary investigations
- Effective performance management
- Managing sickness absence for disabled employees
- Grievances and whistleblowing



Disciplinary investigations

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The importance of a robust investigation

- Truth
- Fairness
- Legal risk
- Culture
- Retention
- ERB reform



5 step plan to success

- STEP 1: Organisational preparation
- STEP 2: Investigator's preparation
- STEP 3: Handling investigation meetings
- STEP 4: Gathering evidence
- STEP 5: Investigation report and outcome



Effective performance management

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Why is it important?

- You can't afford to lose staff
- Give staff the opportunity to excel and succeed
- Keep your best staff engaged and feeling valued
- Help retain staff and mitigate sector retention challenges
- Ensure high quality care
- Ensure compliance with regulatory and legal obligations
- Minimise risk of ET claims
- Employment Rights Bill reform (UD from day 1 / statutory probationary periods)



5 step plan to positive performance management

- STEP 1: Role requirements and setting the standard
- STEP 2: Support
- STEP 3: Review, assess, feedback
- STEP 4: Recognition and reward
- STEP 5: Early informal resolution

Be proactive!



Formal performance management

1. Reasonable investigation
2. Capability hearing
3. Opportunity to improve
4. Review progress
5. Failing to improve – warnings and dismissal

Case Study (1)

- Claire is the manager at RWK Care Ltd and manages a team of care workers, including John. John joined the company in September 2023.
- Claire is very busy but makes sure she talks to each member of the team every other month to see how things are going.
- In November 2023, Alex, a senior childcare worker, informed Claire that he had concerns about John and reported that “although John seems to provide a good level of care to children, he has not been providing sufficiently detailed information at handover meetings and his daily care records are often difficult to read and very vague”.
- Alex continued to complain about John’s performance to Claire but Claire had not had a chance to meet with John because she had been so busy. Alex became very frustrated and aired his concerns with Claire on 1 March 2024. This led to Claire finally arranging a meeting with John on 10 May 2024.
- At the meeting, John was shocked at Claire’s criticism of his performance and the fact that some of the issues she raised were historic. Claire told John that she would need to keep a closer eye on his performance.

Case study (2)

- Claire received a further complaint from Alex that John failed to complete a care plan correctly which was picked up by during an inspection.
- Claire invited John to a formal capability hearing on 10 February 2025. John was issued with a First Written Warning and told his performance would be reviewed in 3 months. John did not appeal the decision.
- A review meeting was scheduled on 10 May 2025. Prior to the hearing, Sadie, a senior care worker, emailed Claire to say that John was regularly making mistakes, which was making her job difficult and stressful. At the hearing, John denied the allegations but was issued with a Final Written Warning.
- John then submitted a Fit Note signing him off work with stress.
- He also issued a grievance disputing the allegations and complaining that Claire was unsupportive and trying to get rid of him because he had reported her to the Home Manager a few months ago.

Managing sickness absence – disabled employees

Disability discrimination

- What is a disability?
- Types of discrimination
- Duty to make reasonable adjustments
- Unfavourable treatment because of something arising in consequence of a disability (s.15 EqA)



s.15 EqA and sickness absence management

- Unfavourable treatment
- Something arising in consequence
- Because of
- Knowledge
- Objective justification defence



ERB reform

- SSP from day 1 of absence
- Removal of waiting days
- Removal of lower earnings threshold
- Impact on overheads?
- Impact on absence management?

Case Study (1)

Sally has been employed by RWK Care since 1 March 2021 as a Senior Residential Care Worker and Team Leader.

During her employment she has had high levels of sickness absence. Her manager, Sam, has raised this with Sally during each of her last 3 annual appraisals; however, there has not been any improvement in her attendance levels. As her absences have not exceed 3 weeks in a year, she has not reached the company's capability policy triggers.

Sally's absence has got much worse in the last 12 months during which she has had a total of 6 weeks' absence. Her Fit Notes have given various reasons for her absences including "headaches", "chest pains" and "stress and anxiety".

Sam is getting frustrated by Sally's absences:

- Their adhoc nature means that it is difficult to plan the rota and arrange appropriate cover for absences.
- Sally is a Team Leader and leads the shift when she is on duty. Her failure to turn up for work means Sam has to try and find another shift supervisor, or agency staff, to cover the shift at short notice, which can be very difficult.
- Two children have complained about frequently being cared for by different members of staff and Sam is concerned about the impact this is having on the quality of care they receive.

Case Study (2)

- Staff have expressed unhappiness at having to constantly pick up the slack caused by Sally's absences.

Last week, Sally returned to work from a 3-day period of sickness absence. During her Return-to-Work meeting, she complained that while off sick she had not received her attendance bonus for the month, and this had made paying her bills difficult and caused her a lot of stress.

Sally became agitated when Sam asked her questions about the underlying reasons for her absence but after some gentle prompting, she said that she had been suffering with stress and anxiety, had not been sleeping and had been unable to leave the house.

When Sam asked her whether she was better now or whether further absences were likely, Sally lost her temper, shouted aggressively at Sam, repeatedly swore at her and stormed out of the room. She then left the building and went home.

Sally has submitted another Fit Note, signing her off work for 4 weeks with "anxiety and depression".

Grievances & whistleblowing

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Grievance v whistleblowing

- What is a grievance?
- What is a whistleblowing disclosure?
- Qualifying disclosures
 - Disclosure of information
 - 6 types of relevant failure
 - Reasonable belief
 - Public interest
- Protected disclosures



Managing whistleblowing concerns

- Why is it important?
- Policy
- Open and transparent culture
- Clarity on how to raise concerns
- How to spot?
- Unfounded concerns
- Audit and learning



Quiz

1. Are casual bank staff protected under the whistleblowing legislation?
2. Does a protected disclosure have to be made in good faith?
3. To be protected, does the worker have to make the disclosure to their employer, before disclosing it to anyone else?
4. Does a disclosure need to be in writing to be protected?
5. Can an individual employee be personally liable for a claim brought by a whistleblower?
6. Does an employee have to be dismissed to bring a claim under the whistleblowing legislation?



Questions

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