



CLYDE&CO

LPC Chairs Briefing on Employment Law Matters

Clyde & Co LPC support in partnership with Community
Pharmacy England

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What are we covering today?

- ❖ Clyde & Co Support
- ❖ Personal liability for members of LPCs
- ❖ Changes in employment law (recent and future)
- ❖ Handy hints when considering:
 - ❖ Work experience - safeguarding
 - ❖ Career breaks / Sabbaticals
 - ❖ References and withdrawing offers of employment



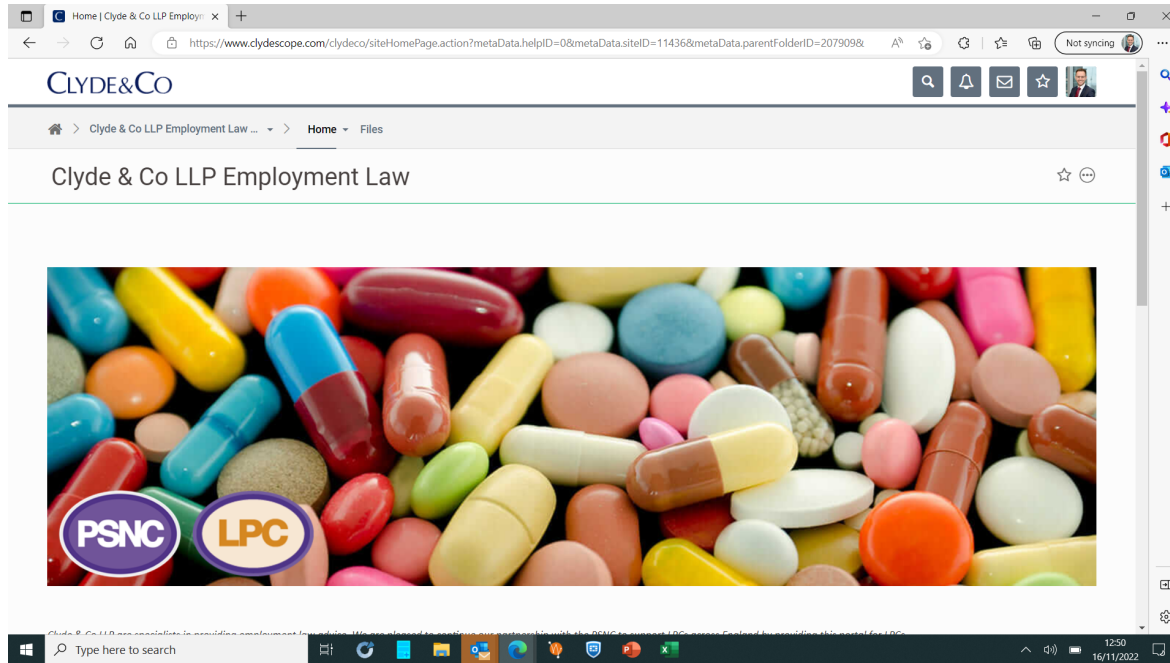
Clyde & Co Support

Clyde & Co LPC support in partnership with the PSNC

- ClydeScope Portal
 - Legal advice on core issues
 - Guides to processes, including grievance, disciplinary and redundancy
 - Suite of redundancy template documents
 - Key template documents
- Redundancy training
- Access to specialist employment law advice and support



ClydeScope Portal



Advice notes

Guidance on employment status	A quick guide to collective redundancies	Redundancy process flowchart	Guidance on the redundancy process	Advice on the risk of liability
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TUPE note also now live...

Key template documents

Staff Handbook	Contract of Employment	Consultancy Agreement	Settlement Agreement	
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Access to specialist employment law advice and support

Option 1

£500 plus VAT for the year

£250 plus VAT “pay as you go” on an hourly basis

Option 2

Inclusive advice
and support

Hours per month	Based on a blended rate per hour	Total fee per month plus VAT
5	£245	£1,225
10	£240	£2,400
15	£220	£3,300

What if my LPC has no subscription and an issue arises?

Subscription windows – May and November each year



Personal liability

Personal liability for Members of LPC

Unincorporated associations

- LPCs are typically unincorporated associations – with no “corporate veil” to protect members
- This means individual members can become personally liable for claims against the LPC, including any Employment Tribunal claims

What should LPCs do?

- Take steps to ensure good practice in HR
- Obtain advice from specialists where issues arise

Employment law update & possible
future developments

Recent workplace developments

Flexible Working

Employment Relations (Flexible Working) Act 2023

- The procedure will remain a right to *request* flexible working
- New duty to consult if employer is considering rejecting the request
- 2 requests in a 12 month period (currently one)
- Reduced period to respond to 2 months (currently 3 months)
- No requirement for employee to set out impact of their request on employer
- Acas has launched [consultation](#) on new [draft Code of Practice on handling requests for flexible working](#)
- The government intends to introduce secondary legislation to provide for the right to request flexible working to become a Day One right

What should LPCs do?

- Be aware of the upcoming changes and implement them when they come into force (updated policy to be provided via the portal) - expected summer 2024



Future gazing

Post-Brexit employment law reform

Retained EU Law (Revocation and Reform) Act 2023

- 'Sunset clause' replaced (which provided that at the end of 2023, what was left of certain retained EU law would simply disappear) with a list of EU laws to be revoked at the end of 2023 - this doesn't include any key employment laws
- From January 2024 the Act will bring an end to the supremacy of EU law, abolish directly effective rights and remove EU interpretative principles from UK law
- Supreme Court and Court of Appeal will have wider discretion than previously to depart from case law based on EU principles (eg domestic holiday pay cases) and retained EU case law
- New reference procedure will enable lower courts/ tribunals to refer points of law on retained case law which they consider are of general public importance to higher courts

What does this mean for LPCs?

- The Act will create uncertainty for UK employers and could lead to more employment-related claims
- Keep a close watch on government announcements for any plans to exercise its powers under the Act

Future gazing

Post-Brexit reform proposals: Holiday entitlement and pay

Rolled-up holiday pay

- Rolled-up holiday pay to be optional way of calculating holiday pay for all workers
- When workers go on holiday, they wouldn't receive any further pay whilst away as they would have already received their holiday pay whilst working

What does this mean for LPCs?

- Employers will need to make their workers aware if they choose to start paying rolled-up holiday pay – and payments clearly marked on workers' payslip as their holiday pay

Merging holiday entitlements

- Merging of EU and UK holiday entitlements into one pot of statutory annual leave of 5.6 weeks
- Consultation on having single rate of pay for the whole 5.6 weeks' holiday entitlement and what that should be

What does this mean for LPCs?

- Employers that don't pay 5.6 weeks' leave at a worker's normal pay rate could face significant additional costs

Future gazing

Post-Brexit reform proposals: Holiday entitlement and pay

Records of working time

- Removing requirement for employers to record working hours for almost all members of their workforce

What does this mean for LPCs?

- Many employers do not currently record the specific working time of their workers, except for the purpose of calculating pay so this proposal is unlikely to be significant for most employers

Holiday accrual in the first year of employment

- Workers to accrue their annual leave entitlement at the end of each pay period until the end of their first year of employment

What does this mean for LPCs?

- Look out for new regulations which will set out a method for calculating holiday entitlement for workers in their first year of work

Recent workplace developments

New family-friendly legislation

- **Neonatal care (Leave and Pay) Act 2023**: up to 12 weeks' paid leave for parents of babies receiving neonatal care
- **Carer's Leave Act 2023**: one week's unpaid leave per year for employees providing or arranging care
- **Protection from Redundancy (Pregnancy and Family Leave) Act 2023**: extends redundancy protection to women and new parents [New law will give pregnant women and new parents greater protection against redundancy : Clyde & Co \(clydeco.com\)](#)

What should LPCs do?

- Watch out for secondary legislation which the government's recent announcement said would be forthcoming "in due course" to implement these new entitlements
- Consider introducing these rights in your policies before the secondary legislation is announced



Recent workplace developments

Parental leave and pay:

Government proposals for reforming parental leave and pay

- Government response published to 2019 consultation: [Parental Leave and Pay: good work plan: proposals to support families](#)
- No changes to be made to shared parental leave
- Proposed changes to paternity leave to be implemented in due course:
 - Employed fathers and partners entitled to take the current entitlement of up to 2 weeks' statutory paternity leave in 2 separate blocks of one week of leave
 - Employed fathers and partners entitled to take statutory paternity leave at any time in the first year
 - Notice requirements for statutory paternity leave to change: fathers to give 28 days' notice before each period of leave, although the notice of entitlement must be given 15 weeks before birth

What should LPCs do?

- Await developments and update Paternity Policy accordingly

Future gazing

Harassment laws

Worker Protection (Amendment of Equality Act 2010) Bill

- Third party harassment provision removed from Bill
- Employer duty to take “reasonable steps” to prevent sexual harassment
- “Compensation uplift” by up to 25% for sexual harassment breach
- EHRC Guidance on tackling harassment at work

What does this mean for LPCs?

- Ensure Equal Opportunities Policy is implemented and effectively communicated
- Carry out regular staff and manager workplace behaviour training

Future gazing

Whistleblowing

Review of the whistleblowing framework

- The review will focus on:
 - How the whistleblowing framework has facilitated disclosures
 - How the whistleblowing framework has protected workers
 - Whether whistleblowing information is available and accessible for workers, employers etc
 - What the wider benefits and impacts of the whistleblowing framework have been on employers, prescribed persons etc
 - What best practice looks like in responding to disclosures

What should LPCs do?

- Await the government's response on proposed changes to the whistleblowing regime

Work experience – safeguarding

Work experience – employment law issues

- What is their employment status?
- Can they be unpaid or must they receive at least NMW?
- Other considerations eg
 - harassment
 - recruitment and vetting
 - data protection
 - protection of intellectual property rights
 - health and safety

Career breaks / Sabbaticals

Career breaks / sabbaticals

- No legal right to a career break / sabbatical
- Legal and practical considerations
 - How to cover the absence
 - Does the employee resign or remain in employment?
 - Holiday accrual
 - Statutory sick pay
 - Continuity of employment
 - Key terms to consider when agreeing to requests

References and withdrawing
offers of employment

References

Giving references:

- Generally, there is no legal obligation to provide a reference
- Beware discrimination and victimisation issues
- Duties owed to ex-employee and recipient
- Defamation and negligent misstatement
- Negligent provision of a reference
- Withdrawing an offer of employment
- Best practice:
 - Give brief factual details of employment start and finish dates and role **only**
 - Give more details but accompany these with a disclaimer
 - All reference requests should be forwarded to HR

Obtaining references

- Jobs offers – make them conditional on satisfactory references
- Withdrawing an offer of employment

Thank you

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