



*[*Tip - If viewing the e-mail on
your smartphone*

turn to landscape screen mode]

In this month's issue we look at:

Flex Appeal vs Flexism – How to make the most of flexible working.

Gig Hero to Zero – An update on Gig Economy & Zero Hours developments.

Age Discrimination – We take a closer look at the case of Eileen Jolly a medical secretary who has won her case against an NHS Trust.

Humour

Trending # HR related stories in the news

This Month's Events

We list the charitable events happening this month

Welcome to the latest edition of our free Employment Law update.

Employment Protection Scheme

The scheme is designed to act as an additional HR resource to cover the minefield of compliance and legislative issues that face many businesses. The firm can offer clients peace of mind through the provision of an insured arrangement for employment disputes. In addition, Samuel Phillips offer an audit facility, Help Line and this regular e-mail update to keep clients informed.

If you would like further information or you wish to nominate colleagues, friends and or associates to receive their own free subscription please forward details to [Sally Lomas Fletcher](#).



Robert Gibson

Robert heads the overall commercial division of the firm. He is a member of the Employment Lawyers Association an ACAS appointed Arbitrator and District Judge. Robert was educated at Newcastle Royal Grammar School and studied law at Newcastle University. He qualified as a solicitor in 1984 and not long after became a partner with Samuel Phillips. He enjoys travel, playing golf, walking and is a passionate fan of rugby union.



Sally Lomas Fletcher

Sally is an experienced partner who specialises in Employment Law. She regularly carries out detailed audits for clients to ensure compliance with employment legislation and prepare employment contracts, disciplinary and grievance procedures and all other policies needed in the ever-changing landscape of employment law.



Fresh Connection North

Fresh Connection North is a networking group consisting of professionals that are rising stars in the North East of England. The group aims to bring professionals together to assist in establishing relationships at the crucial stage of their careers. Contact us via e-mail for information info@freshconnectionnorth.co.uk

The firm has wide experience in dealing with:

Unfair dismissal
Redundancy
Equal Pay
Wages Act
Discrimination
Breach of Contract



Samuel Phillips Law Firm
18-24 Grey Street
Newcastle upon Tyne, NE1 6AD

Tel: (0191) 232 8451

Email: admin@samuelphillips.co.uk

Website: www.samuelphillips.co.uk

This Month

Flex Appeal vs Flexism – Making Effective Use of Flexible

Working

You may be surprised to hear that only 6% of British workers still hold what is traditionally accepted as the “norm”, a 9 to 5 job.

Many employers now accept that this flexible approach to work can aid recruitment, boost staff morale and essentially have a positive impact on productivity. Despite this trend there are still a large number of organisations who've held on to the 1950's model of an ideal working week. Whilst tolerating those who request and are granted flexibility certain traditional thinking employers can be found guilty of discriminating against them.

Since 2003 staff who are parents and/or carers have been entitled by law to make reasonable requests for flexible working. In 2014 the scope was widened for all workers

(we explore the process in detail below). This legislative leg up for those wishing to start earlier and leave earlier, or reduce days/hours, can as a consequence cause a level of FOMO (fear of missing out) in the workplace or more seriously result in actual discrimination, also known as “flexism”. With high levels of employment and an increased demand on employers to meet employees “work/life balance” this is an area of management that organisations need to understand so as to develop clear and positive policies.

Findings from a 2018 report by Timewise into the impact on part time workers found:

- **68%** feel so grateful to be allowed to work part-time that they accept career compromises
- **59%** miss out on networking opportunities because they conflict with their own working patterns
- **65%** feel less connected to their own teams because social events are harder to make
- **59%** feel they have fallen behind full-time colleagues in terms of skills and knowledge.

What is Flexible Working?

Examples of Flexible Working Practices:

- Flexitime Core Hour Coverage – Ability to start and leave earlier or later, to suit employee circumstances, as long as contractual core hours are covered
- Part time. Working hours less than the contractual norm for the role, typically working fewer days
- Working from home – Ability to do some or all of the work from home or anywhere else other than the normal place of work.
- Job sharing. 2 or more people share a single job splitting the hours.
- Staggered Hours – Specifically agreed start, leave and break times.
- Compressed hours. Working full-time hours but over fewer days.
- Annualised hours. Employee has to work a certain number of hours over the year but they have some flexibility about when they work. There are sometimes ‘core hours’ which the employee regularly works each week, and they work the rest of their hours flexibly or when there’s extra demand at work.
- Phased Retirement. Default retirement age has been phased out and older workers can choose when they want to retire. This means they can reduce their hours and work part time.
- Career Break. There are no laws that deal specifically with taking a career break – it is only an agreement between the employer and the employee. Employers don’t have to offer career breaks. If they do, the policy must be clearly laid out (eg in a staff handbook) and should cover things like:
 - eligibility and notice periods
 - how to apply and how long is allowed
 - if the employment contract’s terms and conditions continue - eg qualifying for pay increases

Advantages of Offering Flexible Working

- Increase in staff morale
- Loyalty and reduction in staff turnover
- Recruitment incentive/ staff benefit
- Rental costs making more efficient use of space (notably if staff work from home)
- Greater efficiencies through better utilisation of resources
- Happier employees can equate to greater levels of productivity & reduced absences

Challenges for the Employee;

- Being overlooked for promotion (not considered as committed as others)
- Not offered the same training/ development opportunities
- Not invited or able to attend networking events

Challenges for the Employer;

- Avoiding accusations of “flexism” and having a workable, constructive approach by supporting ALL staff and being aware of the following key points
 - Managing expectations and retaining a fair, consistent and reasonable approach
 - Training/ communication to ensure managers understand the policy and how to apply it
 - Retain a focus on operational and customer needs and not let service levels drop as a result of a lack of resource
 - Continual evaluation to ensure the policies are working for the employee and the business

Flexible Working – Legislation & Application Process

From April 2014 the Government extended the scope of requesting flexible working to ALL employees whereas previously it only applied to parents and carers.

Employees can apply for flexible working if they've worked continuously for the same employer for the last 26 weeks. It's known as 'making a statutory application.'

The basic steps are:

1. The employee writes to the employer.
2. The employer considers the request and makes a decision within 3 months - or longer if agreed with the employee.
3. If the employer agrees to the request, they must change the terms and conditions in the employee's contract.
4. If the employer disagrees, they must write to the employee giving the business reasons for the refusal. The employee may be able to complain to an employment tribunal.

The application must include:

- the date
- a statement that this is a statutory request
- details of how the employee wants to work flexibly and when they want to start
- an explanation of how they think flexible working might affect the business and how this could be dealt with, for example if they're not at work on certain days
- a statement saying if and when they've made a previous application

There are specific, permitted reasons why an employer may reject an application however these may be challenged by an employee if they consider them to be unreasonable.

Reasons for rejecting

Employers can reject an application for any of the following reasons:

- extra costs that will damage the business
- the work cannot be reorganised among other staff

- people cannot be recruited to do the work
- flexible working will affect quality and performance
- the business will not be able to meet customer demand
- there's a lack of work to do during the proposed working times
- the business is planning changes to the workforce

It is important to note that whilst it may appear that the above offers a range of rejection options the employer must give any such request due consideration and be able to support any refusal.

It is always worth identifying the reasons behind any such request, meeting the member of staff to talk through their application and working to arrive at a sensible solution. By way of example the original request may prove too problematic for the business to accommodate however a discussion around the options and what could be possible often delivers a compromise that works for employee and employer.

Zero to Gig Hero – News Update

Delivery firm Hermes has put forward a proposal for its workers that has met with a mixed response however essentially the GMB union approve.

The deal suggests a new status for drivers called “Self-employed plus” and those who opt in for this arrangement can receive up to 28 days paid leave and pay at £8.50 an hour which is above the £7.83 current minimum wage (rising to £8.21 in April).

The GMB were very pleased with the proposal calling it “ground-breaking”.

Tim Roache, general secretary of the GMB, said: "Full credit to Hermes. They're showing that the gig economy doesn't have to be an exploitative economy and we look forward to working with them through this ground-breaking agreement. Other employers should take notice, this is how it's done."

Existing couriers of which Hermes has 15,000 can continue to deliver in whichever order they prefer to however newly appointed couriers wishing to take up the “self-employed plus” option will be obliged to follow Hermes specified routes.

The agreement is an “opt in” which also provides for those wishing to retain their current status and earn premium rates when available.

Martijn de Lange, chief executive of Hermes UK, said: "We have listened to our couriers and are wholeheartedly committed to offering innovative ways of working to meet peoples' differing needs."

Former aide to Tony Blair and author of the 2017 independent review into working practices, Matthew Taylor added a note of caution. In an interview on BBC Radio 4's Today programme he said; "I'm afraid.. I think the HMRC...will be looking at this very closely because if somebody has most of the benefits of being an employee and if the employer has most of the benefits of employing somebody, then the tax authorities will want the employee to be paying national insurance as an employee and they'll want the company in particular to be paying national insurance on those people,".

Hermes disagreed with Mr Taylor, having received legal advice that under its new offer its couriers would remain self-employed.

TUC Calls for Zero-Hour Contract Ban

A TUC poll of the UK workforce and the union's subsequent statements have turned the heat up on the nature, impact and motivations for implementing zero-hour contracts. It's estimated some 780,000 or 2.4% of UK employees are engaged via this form of employment.

Just under 10% of the 3,287 workers polled by the TUC in their recent research were found to be those on zero-hour contracts. The results of this segment of the survey highlighted that they are more than twice as likely to work night shifts and are paid a third less an hour than other workers.

The TUC concluded the "exploitative" system should be banned as it is only "good for employers". The government however disagrees suggesting that a large number of employees benefit from the flexibility afforded by the contracts. Students, carers and retirees look for work that enables them to earn money whilst managing other priorities.

TUC general secretary Frances O'Grady said, "the vast majority" of people on zero-hours contracts "want out".

There's a suggestion that those on zero-hours contracts suffer stress from not having regular hours and pay and as a consequence this insecurity puts their health at risk.

The research also suggests:

- Median hourly pay before tax for someone on a zero-hour contract was £7.70 compared to £11.80 for other workers
- 23% of zero-hour contracts have night work as a usual part of their working pattern, compared to 11% of other workers

Age Discrimination

Jolly v Royal Berkshire NHS Foundation Trust

The UK has an ageing population with a growing number far from ready to retire. This in itself should be a positive factor for the economy however it can also raise new challenges when issues arise in the workplace.

The case of Eileen Jolly demonstrates how a previously highly regarded member of staff found herself on the wrong end of a series of unfortunate events and "Age Discrimination" became a central theme of the case.

Background

Medical secretary Eileen joined East Berkshire College of Nursing and Midwifery in 1991, she was 61 at the time. She had planned to work until her 90th birthday

The College became part of Royal Berkshire NHS Foundation Trust.

26 years after joining, January 2017, and having recently received a long service award Eileen was dismissed.

Over the years she'd worked for a number of managers including 12 years supporting Brendan Smith a consultant surgeon. He described her as being meticulous and reliable, important attributes as her work involved managing the list of patients awaiting surgery. She was to notify Smith of any occasions when a patient was nearing the breach date, 52 weeks from the initial referral.

Role & System Change

In 2015 Jolly's role changed from that of Medical Secretary to Patient Pathway Coordinator. The training required for this new role was poorly managed in that the trainer failed to provide the information required for dealing with patients via different systems. A re-arrangement of the training was suggested but not actioned.

Importantly patient records were made digital in 2015 and the process for managing the waiting list understandably adapted to the new format.

Suspension

In September 2016 Jolly was informed by the Trust's director of operations that she was being suspended and she should leave the premises. As she was escorted from the premises, she overheard someone say, "Eileen won't be coming back."

The reason for the abrupt and unceremonious departure from the Trust was her failure to manage the waiting list, standard processes were not being followed and three serious incidents had occurred in the past two years where the breach period had been met and not dealt with.

Jolly was unaware of two of the earlier incidents and the employment tribunal were not furnished with details during a recent hearing. The third incident was confirmed as not Jolly's fault however it had been insinuated that she had been responsible during a subsequent investigation.

There were further failures when the Unison representative could not make the date of an internal interview and she raised a grievance detailing how the new processes from 2015 did not accord with the way that her boss, Smith worked, and essentially inadequate training had been given.

She highlighted that consultant surgeon Smith did not feel she was under-performing and argued that the real reason for her dismissal was her age.

Dismissal

Daniel O'Donnell, Patient Pathway Manager, dismissed Jolly on the grounds of her "catastrophic failure in performance, where damage had been caused to patients as well as potentially the Trust's reputation".

Jolly appealed against the decision. The Trust then ruled this appeal "out of time" however they did so incorrectly further adding to the catalogue of errors.

Judgment

At the hearing Employment Judge, Andrew Gumbiti-Zimuto, ruled that Jolly's grievances were therefore not addressed. The matter was one of discrimination on the grounds of age. There were hurtful comments made regarding being "stuck in her ways" and this along with the error strewn processes used by the Trust left the dismissal as "tainted by discrimination". Regardless of the point of discrimination the Trust had failed to follow correct procedures regarding capability which automatically made the dismissal unfair. A remedy hearing has been scheduled for 14 October.

Managing Mature Staff

1. Never assume. As with any generation there are common traits but equally they will have individual characteristics, preferences and attitudes like any other employee.
2. Be consistent and treat older members of staff no differently to any other
3. Communicate clearly and frequently
4. Provide adequate training
5. Be mindful of any health, safety or security needs
6. Tap into the experience bank and consider opportunity for mentoring younger staff
7. Offer flexibility

HumouR

Let's see if we can put a "Spring" in your step and a Smile on your face...

Someone stole my mood ring, I'm not sure how I feel about that.

A Roman legionnaire walks into a bar sticks up two fingers and says, "five beers please."

Someone stole my Microsoft Office, and they're going to pay for that
...you have my Word!

Working in a mirror factory is something I can totally see myself doing.

Trending # HR related stories in the news

»An Educated Approach to Workers Rights

NG27 a group who worked for the National Gallery as art and history experts have succeeded in their bid to be given workers' rights. The 27 regularly delivered talks, lectures and workshops at the central London museum until they were sacked in October 2017.

They said they were not given any paid holiday, sick pay, pension or maternity pay despite paying taxes through the payroll as employees. The National Gallery claimed NG27 were freelancers not entitled to such employment rights.

After an employment tribunal in central London, Judge A M Snelson ruled on 28th February that it was "unsustainable" for the gallery to describe the workers as self-employed.

Claims of unfair dismissal were dismissed by the judge.

The case is thought to be the first in the public sector to address concerns about workers' rights.

»BAME drivers accuse London Mayor of discrimination

Private hire drivers are seeing the latest congestion charge as a step too far in the fight to reduce pollution in the capital. Whilst Black Cab drivers are exempt the growing band of private hire drivers are furious at the additional fees they'll be forced to pay. The group, which includes Uber drivers, says the charge is discriminatory as 94% of them are from black, Asian and other minority ethnic backgrounds.

From 8 April, private hire vehicle drivers will have to pay the £11.50 daily congestion charge to drive in central London, under rules introduced by the mayor.

» ET – Phone Help!

The backlog of employment tribunal cases rose 77% in July to September 2018 to 23,700, up from 13,360 in the same period in 2017. The stresses on the system are telling as the high volume of claims continue. Employment Tribunals received 36,900 single claims in the year ending 30 September 2018, up 88% from 19,600 the year before. Meanwhile as pressure mounts the number of staff within HM Courts & Tribunal Service has fallen 17% since 2013!

[TIP - If viewing on your phone turn screen to landscape mode]

Event Title	Start Date	Hashtag Name
Time For A Cuppa	01-Mar	#TimeForACuppa2019
St David's Day	01-Mar	#StDavid'sDay2019
Marie Curie Great Daffodil Appeal	01-Mar	#MarieCurieGreatDaffodilAppeal2019
National Bed Month	01-Mar	#NationalBedMonth2019
Dechox	01-Mar	#Dechox2019
Ovarian Cancer Awareness Month	01-Mar	#OvarianCancerAwarenessMonth2019
Self Injury/Harm Awareness Day SIAD	01-Mar	#SelfInjury/HarmAwarenessDaySIAD2019
Deep-Vein Thrombosis Awareness Month	01-Mar	#Deep-VeinThrombosisAwarenessMonth2019
Endometriosis Awareness Month	01-Mar	#EndometriosisAwarenessMonth2019
Walk All Over Cancer	01-Mar	#WalkAllOverCancer2019
The Great British Spring Clean	01-Mar	#TheGreatBritishSpringClean2019
World Hearing Day	03-Mar	#WorldHearingDay2019
National Careers Week	04-Mar	#NationalCareersWeek2019
British Pie Week	04-Mar	#BritishPieWeek2019
Endometriosis Awareness Week	04-Mar	#EndometriosisAwarenessWeek2019
Shrove Tuesday/Pancake Day	05-Mar	#ShroveTuesday/PancakeDay2019
St Piran's Day	05-Mar	#StPiran'sDay2019
University Mental Health Day	07-Mar	#UniversityMentalHealthDay2019
World Book Day	07-Mar	#WorldBookDay2019
International Women's Day	08-Mar	#InternationalWomen'sDay2019
British Science Week	08-Mar	#BritishScienceWeek2019
Programming for Primaries	08-Mar	#ProgrammingforPrimaries2019
Healthcare Science Week	08-Mar	#HealthcareScienceWeek2019
World Glaucoma Week	10-Mar	#WorldGlaucomaWeek2019
Nutrition and Hydration Week	11-Mar	#NutritionandHydrationWeek2019
National Butchers Week	11-Mar	#NationalButchersWeek2019
You Can Care Week	11-Mar	#YouCanCareWeek2019
National No Smoking Day	13-Mar	#NationalNoSmokingDay2019
World Kidney Day	14-Mar	#WorldKidneyDay2019
World Sleep Day	15-Mar	#WorldSleepDay2019
Red Nose Day / Comic Relief	15-Mar	#RedNoseDay/ComicRelief2019
Disabled Access Day	16-Mar	#DisabledAccessDay2019
English Tourism Week	17-Mar	#EnglishTourismWeek
St Patricks Day	17-Mar	#StPatricksDay2019
National Poultry Day	19-Mar	#NationalPoultryDay2019
World Oral Health Day	20-Mar	#WorldOralHealthDay2019
Spring Equinox (First Day of Spring)	20-Mar	#SpringEquinox(FirstDayofSpring)2019
World Down Syndrome Day	21-Mar	#WorldDownSyndromeDay2019
International Day of Forests	21-Mar	#InternationalDayofForests2019
World Poetry Day	21-Mar	#WorldPoetryDay2019
National Skipping Day	22-Mar	#NationalSkippingDay2019
World Water Day	22-Mar	#WorldWaterDay2019
World Meteorological Day	23-Mar	#WorldMeteorologicalDay2019
World TB Day	24-Mar	#WorldTBDay2019
Purple Day	26-Mar	#PurpleDay2019

Wear A Hat Day	29-Mar	#WearAHatDay2019
World Bipolar Day	30-Mar	#WorldBipolarDay2019
English Tourism Week	30-Mar	#EnglishTourismWeek2019
Mothering Sunday	31-Mar	#MotheringSunday2019

Disclaimer: This newsletter is a summary of legal issues not intended to provide specific legal advice nor intended to be comprehensive. If advice is required, please contact your solicitor. This transmission is intended solely for the addressee (s) and is confidential. If you are not the named addressee, or if the message has been addressed to you in error, you must not read, disclose, reproduce, distribute or use this transmission. Delivery of this message to any person other than the named addressee is not intended in any way to waive confidentiality. If you received this transmission in error please contact the sender or delete the message.