

HR Brief

Human Resources tips brought to you by
Crendon Insurance Brokers Ltd

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DID YOU KNOW?

Many key changes to the HR landscape are expected in 2016. Here are several of the biggest changes being introduced during the first half of the year:

- Trade union reforms
- New National Living Wage
- Mandatory gender pay reporting
- The new State Pension
- Guidance on changes to employment status—specifically, tax and employment rights

Monitoring Employee Communications: What's Acceptable?

A recent European Court of Human Rights (ECtHR) case ruled that monitoring employees' private communications in the workplace does not necessarily breach their privacy rights. The case *Bărbulescu v Romania* centred on Mr Bărbulescu, an engineer in charge of sales, who was employed by a private company in Romania. At the request of his employer, Mr Bărbulescu set up a Yahoo Messenger account. As outlined by the employer's regulations, this account was solely to be used for business purposes and any personal use of the account was strictly prohibited.

Over a period of eight days, Bărbulescu's employer monitored his account and accused him of using it for personal matters. After denying the accusation, Bărbulescu's employer presented a 45-page transcript of his communications, some of which were to his fiancée and brother. For breaching the employer's regulations, Bărbulescu was dismissed.

After several unsuccessful challenges in the Romanian courts, Bărbulescu appealed to the ECtHR. In his appeal, Bărbulescu

argued that the dismissal was based on a breach of his rights under Article 8 of the European Convention on Human Rights. Article 8 provides employees with a reasonable expectation of privacy at work. However, this right is not always guaranteed.

In its ruling in favour of Bărbulescu's employer, the ECtHR found the following:

- The employer had clearly outlined the policy regarding private use of its telecommunication systems.
- It was not unreasonable for the employer to verify the account's use as it was meant to contain only business-related content.
- The employer did not examine other documents that were stored on Bărbulescu's computer—just the Yahoo Messenger account.

To prevent similar situations from occurring at your company, be sure to eliminate any ambiguity in your company's policy on the private use of telecommunications systems. This policy should clearly state whether your employees may use the system for personal use as well as business, and under what circumstances your company has the right to monitor or review their use of it. In addition, it may be beneficial to have the regulations reviewed by your company's employee advisory board.

For more information on drafting a general computer/email/Internet security policy, contact **Crendon Insurance Brokers Ltd** today.

Avoid Risky Reference Policies

When providing a current or former employee with a reference, it is important to confirm only the most essential information about his or her time with the company. The recent *Pnaiser v NHS England and Coventry City Council* case highlights the danger of ignoring this guidance.

Ms Pnaiser, an employee of Coventry City Council, had experienced several periods of disability-related absences, yet was assured a form of reference for a future potential employer. Ms Tennant, representing the council, gave the agreed reference to NHS England and offered to discuss Ms Pnaiser further on the telephone. In her continued discussion, Tennant revealed Pnaiser's disability and recommended that she not be hired. Subsequently, NHS England withdrew the job offer.

In response, Pnaiser filed a formal claim against both parties—citing that by withdrawing the offer, she was being discriminated against for her disability. The courts ruled in Pnaiser's favour.

To ensure that your company does not have a similar experience, it is important to have clear guidelines about what should and can be included in an employee reference. This should generally only include the amount of time an individual spent with the company and what his or her role(s) was. The exception to this guidance is if the position is in financial services, in which you must adhere to the Financial Conduct Authority (FCA) requirements.



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