

CITY HR PRODUCES FREE EMPLOYEE CONDUCT VIDEO



The Senior Managers Regime has dominated the HR landscape for many firms in banking, asset management and insurance as they respond to consultations, set up project plans and review a host of people management changes ranging from HR policies through to management information reporting and systems. Most members will have received the City HR Employee Life Cycle document which charts the changes from an HR, compliance and employment law perspective, as well as having attended a number of Association briefing meetings in this respect.

City HR has now turned its attention to the training aspects of these regimes and produced an employee video. The film, which lasts 3 minutes, sets the scene on SMCR and SIMR for all levels of staff and outlines what it means to me, my manager, my firm and the industry at large – both here and overseas.

It has been designed as an introduction to each firm's conduct programme and can be customised by the accompanying CEO or Senior Manager message. It comes with a trainer's handout on the numerous ways it can be used.

The film is free of charge to member firms and can be delivered in a variety of different formats to comply with IT download policies. There is a license available for members who may wish to use the film to support their client advisory activities.

For those organizations that lack the internal resource to deliver in-house conduct training, City HR can help in this respect. The Association has developed a range of portable training programmes ranging from Project Planning to Employee Conduct Training and can arrange for these to be delivered in-house. Please contact City HR on 0207 670 1932 for further details or to order your copy of the free film.

City HR Conference 10 November 2015 Painters' Hall,

HR: A STRATEGIC AND VALUED PARTNER TO THE BUSINESS

We are focusing this year's Conference on the value of HR as a strategic partner to the business and exploring the issues facing CEOs and Board Members in the City, what business leaders want from their HR teams and ways in which HR professionals can optimize their influence and adopt a strategic mindset with their business counterparts, as well as ways in which we can produce better business results by harnessing employee engagement.

Please see the City HR website www.cityhr.co.uk for further details.

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HUMAN CAPITAL MANAGEMENT

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MIND THE GAP - GENDER PAY GAP REPORTING – A MANDATORY REQUIREMENT

Closing the gender pay gap continues to be high on the political agenda and routinely in the media spotlight. In an attempt to 'close the gap' the Government is placing employers under greater scrutiny and putting in place more onerous measures on them, such as mandatory gender pay gap reporting.

The disparity at a national level between men and women's pay is reducing but still stands at an alarming gap of 19% *. However, according to the Inquiry into Sex Discrimination in the Finance Sector compiled by the Equality and Human Rights Commission in 2009, the gender gap for full time workers stood at a huge 55% and the EHRC reported that no improvements appeared to have been made in the Sector.

HR professionals will know that gender pay reporting is not a new concept. Measures were put in place in 2010 with the introduction of the Equality Act 2010, which contains powers to make gender pay gap reporting mandatory. However, these powers were not utilised and instead a voluntary reporting approach was favoured. In 2011, the Government introduced the "Think, Act, Report" scheme, in an attempt to encourage

employers to voluntarily publish gender pay information as part of a culture of transparency. This proved not to be particularly successful. Whilst over 200 employers signed up to the scheme, only a handful published information about their gender pay gap.

Where are we now?

New measures are set to be enacted in Spring 2016 requiring employers with at least 250 employees to publish information about their gender pay gap within their business within 12 months, under the Small Business, Enterprise and Employment Act 2015. The precise details of these new measures have been subject to Government consultation, which was closed on 6 September 2015. We anticipate an update to be released soon, which will draw upon specific details, for example:

- the data employers will be required to publish about pay, for instance, a detailed breakdown across the employer, e.g. by grade/job or full-time/part-time roles; and
- where the information needs to be published, for example, on the employer's website.

What does this mean for the Financial Services Sector?

The challenges will lie in collating the data and presenting it in a statistical format, which is compliant. However, carrying out a disclosable equal pay review and publishing an adverse gender pay gap could also have a number of significant and harmful

implications for employers, which include:

- reputational damage and negative publicity;
- difficulty in attracting talent (especially amongst women);
- disclosure of sensitive financial data; and
- the risk of significant liability resulting from employee claims for equal pay.

The proposed penalty for non-compliance with the new measures is a relatively meagre fine of up to £5,000. However, the associated negative publicity and employment relations risks would likely be far more damaging.

What can be done to limit the impact on employers?

Identifying problem areas early will allow them to be addressed discreetly as part of any annual salary review process before mandatory reporting comes into force. We recommend employers, particularly in the financial services industry, take the approach adopted by some of the big four accountancy practices who have pre-empted the change in the law and reviewed and reported on their pay gaps. Employers should be proactive and consider undertaking equal pay audits now to close the gaps that cannot be legally justified. Taking a proactive approach will allow employers to be on the "front foot" and reduce legal and commercial risks before this legislation comes into force.

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* Data drawn from the ONS Annual Survey of Hours and Earnings (the Annual Survey), 2014

"SPEAK UP!"

In early October, the regulators announced their final rules on Whistleblowing, which sees firms needing to have their policies in place by 7th September 2016.

The main provisions under SMCR and SIMR are that there must be an independent channel through which concerns can be disclosed, these must be open to anyone for all types of disclosure and that staff should not be deterred from using the process via their contract or settlement agreements. Firms must also

allocate a prescribed responsibility for whistleblowing to an NED, who is effectively the Whistleblowers' Champion as an oversight rule with annual reporting, although actioning results will be the collective decision-making of the Board. Ultimately concerns can be reported to the regulators if internal channels fail.

This has been a topic of considerable focus by the Chartered Institute for Securities and Investment (CISI) who recently launched a campaign to encourage individuals to "speak

up" through the development of new principles, training programmes and scenario testing. A new on-line and interactive workshop has been developed to give employees the tools to know when to Speak Up and how to do so in the right way.

CISI has offered to deliver a workshop for City HR members in the New Year and this will one of our first programmes for 2016. In the meantime, to find out more go to the "further resources" section of the speak up page – www.cisi.org/speakup

PROPOSED TAX AND NI SIMPLIFICATIONS ON TERMINATION PAYMENTS

One of the most complex and sensitive people issues for businesses is how to manage the termination of staff. To do so efficiently and with least risk involves balancing the needs of the business with the rights of the individual. Thrown into this mix is the question of whether to pay a termination payment and if so how any payment should be structured.

For a number of years the tax regime has enabled employers to pay the first £30,000 of any termination payment without deduction of tax or national insurance contributions. This applies providing that the payment is genuinely non-contractual and is not attributable to the employee's salary or benefits.

Despite the fact that the current system seems to be well understood and working well, on 24 July 2015 the Government announced that it intends to reform the tax and national insurance contribution exemptions on termination payments. A Consultation Paper was issued with proposals for reform. The objective for reform is to make the system "simpler and fairer" and is so that "above all else an employee has certainty about the amount of money they will receive when they lose their job".

Whether the proposals put forward will achieve either of these objectives is highly doubtful, but they will certainly result in more tax and national insurance contributions (NICs) being paid to HMRC; the risk being those most adversely impacted will be those who are less well off. They will also, if enacted in their current form, undoubtedly impact adversely on the ability to reach agreement with an employee and avoid unnecessary tribunal claims – running a coach and horses through Government policy to reduce the need to resort to the tribunal to resolve employment disputes.

So that you can get a flavour of what is suggested and make up your own mind about whether the proposals will achieve the Government's objectives, we examine them below.

Proposals

The main thrust of the proposals is to remove the "complexities" in the system. The key proposals with the objective of removing complexity are:

- To remove the distinction between the tax and NI treatment of contractual and non-contractual termination payments, so that **all payments made in connection with the termination of employment will be treated as earnings**. From the consultation paper the concern which is seemingly prompting this change is the confusion over the tax treatment of payments in lieu of notice. If this is an area which is problematic for employers, it is a problem that is for the large part generated by HMRC with its concept of "auto- PILONS" which can make the distinction between contractual and non-contractual payments less clear.
- **To align the income tax and NIC treatment of termination payments**, so that where a payment is subject to income tax, NIC's will also be payable.
- **A new exemption** would apply in place of the current £30,000. Employees would qualify for the exemption once they had completed **two years of service**. The level of the exemption would then **increase at a set rate with each further year of service completed**, up to a maximum amount. No figures are currently proposed, although the examples in the consultation document

refer to an initial exemption of £6,000, with a further £1,000 for each additional year of service. Not only does this give much less of a tax break to tempt an employee to settle with it also seems to be adding to the potential for confusion because the allowance is dependent on years of service and increases with length of service.

- This new exemption will **only be available where the termination payment has been made in connection with redundancy** (either voluntary or compulsory). The concept is that employees should know that if they lose their job through no fault of their own they do not lose out financially. The problem is that there are many other reasons why employees can lose their jobs that are not their fault. For example, if an employee is dismissed through no-fault of their own because of illness or incapability or even a restructuring which falls within the "some other substantial reason" category, the employee is deprived of a tax free payment. Whether or not there is a genuine redundancy is not a straightforward question as years of cases law attests. There is a strict legal test to meet. If employers are not au fait with the technicalities then there may be most not less uncertainty about whether the correct tax treatment has been applied. What if the parties agree the reason for dismissal is redundancy can and will HMRC challenge this and argue that the tax should be paid? This proposal seems unlikely to provide more certainty for employees.
- Of the existing exemptions, the exemption for injury or disability is likely to remain (albeit potentially subject to a cap), as is that for HM Forces payments. But the foreign services exemption is likely to go.
- Two further **new exemptions** would be introduced in relation to **payments made in connection with wrongful or unfair dismissal or in the case of discrimination** (although it is not clear whether the treatment would be the same for such payments made under a settlement agreement as opposed to by the tribunal itself). Indeed, in the case of discrimination the suggestion is that any payment connected with discrimination awarded by a tribunal would be tax free, even that part related to loss of future earnings. Surely this will just encourage allegations of discrimination? Is it really the Government's intention to require employees to issue legal proceedings and take them to a hearing to guarantee a tax free payment?

As part of the drive for a fairer system, the current extra statutory concession which applies where an employer pays an individual's legal fees for legal advice in connection with termination may be removed. The rationale for this appears to be the legal advice sought often relates to improving the employee's tax position. There are wider policy considerations that flow from this proposal. How does the proposal fit with the legal requirement that employees must take advice on a Settlement Agreement? The reality is that richer people will always pay for tax advice. Those who are likely to be most impacted by this change will be the less well off.

These proposals are all contained in a Consultation Paper which closed on 16 October 2015. It is suggested that the Government will consider the responses by the time of the Autumn Statement in November when a further announcement will be made. It is suggested that the Government is likely to implement changes from April next year. We will keep you updated as matters develop further.

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FOCUS ON INTEGRITY

A seemingly endless stream of negative stories in the press has meant that UK banks and financial institutions have had their reputation battered. From rogue traders to systemic culture failures, these businesses and the individuals who run them will have to work hard to restore even the most basic level of trust from customers, shareholders and the wider public. It's in the financial and reputational interest of institutions – whether the focus of a scandal or not – to do something positive about it.

TIME TO CHANGE

City institutions need the confidence of the markets and their stakeholders in order to succeed – and there's a strong argument that such confidence is at an all-time low. Investing in focused leadership and management training shows the intent to create better leaders and to promote decision making that is ethically grounded and demonstrates a commitment to integrity.

So it's unsurprising that the ILM's 'Leading with Integrity' course is attracting interest from City institutions, according to Rachel Slough of leadership development provider Crechendo, "There have been lots of hits on the reputation of City institutions recently. This course is all about having a real conversation about how businesses articulate, implement and uphold their values, and helping everyone – from senior managers to frontline staff – to feel that they have the support and direction to make ethically-sound decisions they are comfortable with."

WHAT DOES ETHICAL LOOK LIKE

There's no single answer to that question. Every business thinks differently and has different aims and objectives. The value of the ILM course is that it starts a debate and encourages participants to take a more in-depth look at what is happening in the business now and how things could be improved. It's all about creating change champions who will lead by example and begin to embed positive behaviours into their teams. This in turn will demonstrate a commitment by the business that will deliver:

- Effective managers and positive role models
- Increased productivity, staff retention and team motivation
- A culture that attracts the best talent
- Greater trust from customers and stakeholders
- An enhanced reputation
- A potential competitive edge

Crechendo's view is the course is about identifying and investing in people with real potential who already understand that integrity will be the key factor in the success of City businesses over the next 5 – 10 years – and longer. The qualification is at degree level so the expected intake will be bright, proactive, thoughtful people who will be the next generation of senior City leaders.

TAKING THE PLUNGE

It may well be a brave organization that puts its hand up and says it needs to do better. The ones who do, however, are likely already to have senior leaders in place – perhaps newly appointed leaders – who understand that the sooner staff understand that there is no substitute for good quality decision making, the better.

Rachel Slough, Lead Partner, Crechendo

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Forthcoming events:

Annual Conference
10 November 2015

Meet the PRA and FCA
18 November 2015

Member Forum
9 December 2015

New members

Welcome to our new full members:

- DBS Bank
- UBS AG
- Lloyd's of London
- Schroder Investment Management Ltd.
- UniCredit Bank AG - London Branch
- Diamond Bank

Welcome to our new associate members:

- DMH Stallard LLP
- PA Consulting
- McLagan
- Vero Performance
- Linklaters



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