

## Whether it's still hard or now soft Brexit – beware the skills gap

As the UK labour market continues to change in the wake of last year's Brexit decision, employers should be preparing themselves to meet the challenges of skills shortages and increased competition for talent.

In May 2017 the Office for National Statistics published data revealing net long-term migration had fallen to 248,000 in 2016, down 25% on the year before. The data indicated that this 'statistically significant' fall was in part driven by a sharp increase in emigration numbers of EU citizens, which rose to 117,000, up 26% on the figures from 2015. Notable was emigration to the EU8 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia & Slovenia) which rose 63% to 43,000. In the same timeframe, immigration to the UK from this same set of countries fell 34% to 48,000.

February's Labour Market Outlook report, published by the CIPD and the Adecco Group, found that employers are already struggling to fill the c.750,000 vacancies in the UK labour market due to shortage of suitable skills and labour. This is particularly prevalent in sectors which have traditionally employed a large number of EU migrants such as wholesale, retail, hospitality, healthcare and social work. The report also

found that 27% of employers have seen evidence suggesting that EU nationals at their organisations were planning to leave, in 2017, their business or the UK.

### Central and Eastern Europeans have higher levels of work ethic compared to UK nationals

Jonathan Beech, Managing Director of immigration law firm, Migrate UK, warned that until the UK Government provides certainty among EU citizens by guaranteeing their rights to remain and work in the UK following Brexit, "We are likely to see a continuation of these trends, and potentially the start of a Brexit 'brain drain' from the UK."

But what does this actually mean? Are EU workers really better than indigenous UK workers? Yes; according to research from the University of Bath's Business School – but only in the short-term. The study, released in May, found that Central and Eastern Europeans have higher levels of work ethic compared to UK nationals, and were more than three times less likely to be absent from work. However, the research

showed that this is typically a temporary trend as new migrants work extra hard upon entering the UK job market. The lead researcher in the study, Dr Chris Dawson, summarised that, "Migrants new to the UK put in a couple of years of hard work, before a better understanding of our culture and job market means they adopt the same work ethic as native workers."

Finding the right skills and talent for your business is likely to get harder. The Resourcing and Talent Planning Survey, released by the CIPD and Hays on 5 June, indicates 72% of HR professionals are concerned competition for well-qualified talent will escalate when Britain leaves the EU. To be prepared, organisations should be reviewing their strategies for recruitment and talent to ensure they are fit for purpose. This means being adaptable and finding innovative ways to attract, select and retain the right people with the correct skills for your business. It means enhancing your organisational brand and your employee value proposition by making sure you have the tools and processes in place to find, keep and develop the right people to bring success to your business.

Contact Beststart HR for more help.

## Do you need to know anything more about Auto Enrolment?

By the end of the second quarter of 2017, over 500,000 employers will have staged and will be meeting their duties to provide nearly eight million staff with a workplace pension. However, unsurprisingly with the number and nature of businesses staging this year, the number of fixed penalty notices (FPNs) and escalating penalty notices (EPNs) issued by The Pension Regulator for non-compliance has increased to 14,502 FPNS and 2,517 EPNS. In addition, they have now started publishing on their website the details of those who have paid their EPNS but remain non-compliant and any who have failed to pay and are therefore subject to a court order.

From October 2017, all new employers will have automatic enrolment duties from the date they employ their first member of staff rather than having a staging date set for them in the future.

For those who have already staged, the minimum employer and employee contributions will be increasing on 6 April 2018. Employers will have to pay a minimum of 2% of their staff's qualifying pay, and staff contributions will rise to 3%. On 6 April 2019, this will rise again to 3% contribution from employers and 5% contribution from staff. The Pension Regulator will be writing to companies to remind them but if you have any queries, please contact Beststart HR.

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## Legal News

### Expired disciplinary warnings: to dismiss or not to dismiss

The ACAS code of practice has always been clear when it comes to expired disciplinary sanctions: once the specified period of time has passed, a disciplinary warning cannot be used in future disciplinary cases.

But a recent employment law ruling seems to fly in the face of this longstanding principle and contradict rulings in previous cases. Last year's case of Stratford v Autotrail VR Ltd (2016) brought to the court, for the first time in a number of years, the issue of employers using expired warnings to support a decision to dismiss an employee.

Mr Stratford started work in November 2001 and throughout his employment he had a very poor disciplinary record having received numerous disciplinary warnings. Mr Stratford was dismissed after being seen at work with his mobile phone in his hand, an action strictly prohibited by the employee handbook. Whilst the dismissing manager initially concluded that Mr Stratford's actions did not amount to gross misconduct, and therefore warranted only a written warning, he went on to consider his full disciplinary record and the decision was made to terminate his employment with notice. The rationale for this decision was not an accumulation of sanctions, as Mr Stratford did not have any live sanctions on record. Instead Autotrail concluded that the 17 previous disciplinary infringements requiring formal action demonstrated that Mr Stratford was not capable of changing his behaviour and 'enough was enough'.

Although Autotrail had relied on expired warnings to justify the dismissal, the Employment Appeal Tribunal (EAT) concluded that the dis-

missal was fair. A similar consideration was given in the case of Airbus UK Ltd v Webb (2008), when Mr Webb and four colleagues were found watching television when they should have been working. Although all five individuals were found guilty of gross misconduct, four were given final written warnings whilst Mr Webb was summarily dismissed. This was due to him having a final written warning which had expired three weeks earlier whilst the other four had clean disciplinary records. The Court concluded that it was fair to rely on the expired warning as rationale for not reducing the sanction to final written warning for Mr Webb, as it had done for his four colleagues with clean records.

These rulings mean that there are circumstances where an employer can take an expired warning into account when deciding on the sanction for a dismissible offence. However, an employer should not rely on an expired warning to dismiss an employee for an offence which would not otherwise justify dismissal.

**Ask Beststart HR for further help.**



Image courtesy of Stuart Miles at FreeDigitalPhotos.net

### Kinnear v Marley Eternit Ltd t/a Marley Contract Services

An employment tribunal has awarded £25,000 for breach of contract to an apprentice whose four year contract of apprenticeship was terminated after less than two years.

In Kinnear v Marley Eternit Ltd t/a Marley Contract Services, Mr Kinnear brought a claim for breach of contract after his employment as an apprentice roof tiler was terminated on the grounds of redundancy.

The tribunal held that "it seems clear to the tribunal that the Claimant was an apprentice and, as such, he was entitled to be trained by the respondent company and employed by them until the apprenticeship finished. In this case, that would be until November 2018. It seems from the correspondence that no heed was paid by the company to the Claimant's particular status in the company."

The tribunal determined that early termination of an apprenticeship amounted to breach of contract. They held that Mr Kinnear had 122 weeks left to run on his apprenticeship and that he would have been paid £24,417 for this period. The tribunal also found that due to early termination Mr Kinnear would be disadvantaged in the labour market as a result of his roofing qualification being incomplete. He was awarded £25,000 – the maximum an employment tribunal can award for breach of contract.

			LEGAL TIMETABLE
April 2018	Gender Pay Gap – first reports required	2018	Shared Parental Leave extended to grandparents
April 2018	Changes to tax treatment of termination payments introduced		
May 2018	General Data Protection Regulation (GDPR) comes into force		

## Keeping your data secure and the GDPR

by Dave Privett, Commercial Director of Assign-IT Ltd

Many organisations are still not aware of the General Data Protection Regulation (GDPR) and what it means for their business. The Information Commissioner's Office (ICO), which is responsible for upholding information rights in the public interest, announced it is effecting the new GDPR regulations in May 2018.

The GDPR is a set of regulations passed by the European Commission to unify data protection across the EU, maintain consistent standards and toughen the protection of individuals' data. It is replacing the UK's Data Protection Directive from 1995.

But what does this mean for UK businesses?

The new regulation widens the definition of personal data to any information that can be used to identify an individual. It tightens the rules of gaining consent to use personal information. Every company holds HR records, customer lists and contact details for customers, suppliers and employees. Any data you hold which can be used to identify a person is classed as personal data.

It places greater importance on how you manage, process and store data as well as the documentation that you must keep to demonstrate your accountability for holding it. It also introduces a data breach notification requirement which states that businesses must notify the agency within 72 hours of discovery. Having the right technology and processes in place will allow this to be done automatically.

The mandatory reporting requirements also include actions such as notifying clients and any other business relationships of the breach and serious fines of up to 4% of your annual, global turnover.

What types of breaches could you face?

**Insider Breach** – This can be from an employee mistakenly emailing the wrong document to an external party or a leaver exporting data to use in their next job. That copy of the data is leaving your control which is your responsibility.

**Poor Configuration** – Is everything on your network installed correctly? Have the accounts and passwords been changed from the default options? If your network has not been set up correctly and updates are not being maintained, your business is more open to the chance of wrongful access.

**Lost Mobile Device** – This could be a laptop, company phone or even an employee's mobile. What company data was stored on it and can you wipe it clean remotely?

With most of our data stored on IT systems, we all need to be more aware about protecting our information, especially with the growth of cybercrime. When people think of cybercrime and personal information being stolen, passwords and bank details come to mind. However, it is much broader than this, as seen recently with the global malware attack that affected large parts of the NHS. It includes all data that falls under the categories of personal data and sensitive personal data.



Image courtesy of Stuart Miles at FreeDigitalPhotos.net

The ICO supports **Cyber Essentials**, a Government backed scheme, which can mitigate fines if a company suffers a breach. Achieving this certification provides evidence that you have carried out basic steps towards protecting your business and your data from internet based cyber attacks.

Whilst the scheme cannot guarantee full protection from all attacks, it will better protect you from the most common online threats, so it is a great starting point. There are 5 technical controls that the scheme assesses your business against:

1. Boundary firewalls & internet gateways

2. Secure configuration
3. User access control
4. Malware protection
5. Patch management

Do not assume this is just a problem for the big corporate names. PWC reported that 74% of small businesses have been a victim of cyber crime. This figure was an increase of 60% on the previous year. They also report that the average cost of a worst-case security breach to a small business is between £75,000 – £311,000. Outside of the regulatory communications and fine, consider how an attack might impact the functioning of your business?

- ◆ If your client information was stolen?
- ◆ If your website was taken offline?
- ◆ If you could not access any emails or your core IT systems and applications?

May 2018 is less than a year away, by putting the recommended GDPR measures in place, organisations should be able to minimise the risk of a breach, improve the security of data and minimise the risk of reputational and financial damage.

The priority is to understand what you are going to need to change. If you gain a clear picture now, you can make the changes in a manageable time scale and best handle any costs associated with this. In addition, it takes time to transform the mindset of employees to new ways of working.

Assign-IT is an IT service provider that delivers IT support and IT security services. It is approved by IASME (one of the four Cyber Essentials accreditation bodies appointed by the UK Government) to assess, advise, audit and certify on the Cyber Essentials and IASME schemes. For more information, call Dave Privett on 01727 843 888 or email their security team at [security@assign-it.co.uk](mailto:security@assign-it.co.uk).



## You're not hired ><

Increasingly, after attending an interview, applicants will often seek feedback. However, the information that graduate Anna Jacobs received before even walking in the door was not quite what she was expecting.

She had applied for an Office Administrator role at a ventilation company and was pleased to receive an email inviting her for an interview.

On scrolling down, she was greeted with comments such as "Can't get a job since leaving uni"; "Worth an interview if only for a laugh"; and "Difficult to assess from her CV – might be very good but equally could be a biscuit short of a packet or a left wing loon, tree hugger".

Following widespread reporting of the case on social media and an internal investigation, the company Director wrote to the graduate to apologise on behalf of the company and stated, "We genuinely felt your application and CV was interesting and you were shortlisted from a long list of over 40 candidates. We would be more than happy to interview you as one of the strongest candidates that have applied and, if you were to accept an interview, you can be assured that your application will be treated fairly and appropriately." Subsequently, she politely declined the interview.

This is not the first example of a case of this nature. Recently, a famous steakhouse restaurant was

outed for sending a teenage candidate a text a few minutes after the interview. The text described her as "basic" and said "It's a no x" followed by an emoji crying with laughter. The restaurant apologised immediately stating that the text was never intended for the applicant.



Whilst these cases are extreme examples of when things can go horribly wrong, interviewers should pay attention to comments scribbled on CVs and interview notes. A structured template with criteria-based evidence recorded can help mitigate any risk and provide credible comments if a candidate were to request feedback. Furthermore, this may even provide a defence against any litigation as a candidate who is rejected can make a claim for discrimination at any point throughout the selection process. Therefore it is imperative to have a set of specific criteria when selecting the right individual for a role.

As a golden rule nothing should be written down that you would not be prepared to say to the candidate face to face!



## Don't keep us a secret

Beststart's aim is to always provide you with the best possible advice and support you can depend on to ensure you achieve your right outcome.

Since 2007, we have helped hundreds of organisations with their HR. We are proud that despite not tying clients into onerous and long contracts, once an organisation becomes a Beststart client, it chooses to remain a Beststart client. We

hope this reflects not only the quality of our work but the trust and confidence we engender by dealing with the most challenging and sensitive issues within our clients' organisations.

Our business has been built on word of mouth, and in a digital age where many claim to be an expert, personal recommendation and referral carries even greater weight. If you know someone at a client, supplier or acquaintance who increasingly seems to be mentioning their staff for whatever reason – change, absenteeism, disagreements, performance issues, retention, etc., – please let them know we would be happy to have a friendly chat and explore where even small changes might help iron out their people challenges.



Registered Address:

1st Floor, Building 16, Gateway 1000,  
Arlington Business Park, Whittle Way,  
Stevenage, Herts., SG1 2FP

Registration Number. 06371479

Our Second Office Address ("Streets HR"):

Enterprise House, 38 Tyndall Court  
Commerce Road, Lynch Wood  
Peterborough, Cambridgeshire, PE2 6LR

T +44 (0)1438 747 747  
enquiries@beststarthr.com  
www.beststarthr.com

