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1

Have you accessed  
the Webinar  
Resource Centre?



2

# Bang on Time!



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3

## Disciplinary Procedure

- The law does not provide for a manner in which fair and just disciplinary proceedings must be conducted
- Provides clarity and consistency
- Ensures fairness and adequate opportunity for the employee to defend oneself
- Assures a sense of certainty in case of a claim before the Industrial Tribunal



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4

## Points to keep in mind:

- Maternity (high risk claims)
- ***“pregnant employee”*** means an employee who ***informs her employer in writing of her pregnancy*** and who subsequently, within fifteen days, formally informs her employer of her pregnancy and of the expected date of confinement by means of a ***certificate issued by a registered medical practitioner or midwife;***
- ***“discriminatory treatment”*** means...*any less favourable treatment of a woman related to pregnancy or maternity leave*



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5

## No more parties?



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6

## Sick Leave

- Sickness absence is generally a very complex and sensitive issue for employers to handle
- Sickness absence may be:
  - Short- or long-term
  - In relation to illnesses
  - A consequence of issues such as pregnancy, disabilities etc.
- In general, sickness absence may also be given due to issues relating to mental health, not simply physical health



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7

## Sick Leave Policies

- Employees must be informed of the terms and conditions relating to the incapacity to work due to ill health
- A policy should highlight the employees' entitlements and whether the company provides additional entitlements
- Uniform standards of attendance will give information to employees to avoid disciplinary actions or dismissal



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8

## Reasonable Accommodation

- Disability can come in various forms, and is furthermore considered to be a **protected characteristic** at law
- Employers are obliged to provide reasonable accommodation – but to what extent? What about situations when this is not at all possible?



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9

## WhatsApp-ing can get you into trouble



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10

# Discrimination

- Protected Characteristics – what are they?



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11

# Discrimination

- Protected Characteristics – what are they?
  - *Marital status*
  - *Pregnancy or potential pregnancy*
  - *Sex*
  - *Colour*
  - *Disability*
  - *Religious conviction*
  - *Political opinion or membership in a trade union or in an employers' association*
- When is discrimination **direct** or **indirect**?



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12

# Discrimination

- Direct discrimination: *“where one person is treated less favourably than another is, has been, or would be, treated in a comparable situation”*
- Indirect discrimination: *“where an apparently neutral provision, criterion or practice would put persons ... at a disadvantage when compared with other persons”*
  - Certain exceptions apply



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13

Do I give it or do I not?



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14

## GDPR applicability

The employee is a Third Country National (not a European Union citizen) asking for right of access under GDPR.

Does GDPR apply in this case?



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15

## GDPR applicability

The GDPR applies to:

- a company or entity which processes personal data as part of the activities of one of its branches **established in the EU**, regardless of where the data is processed; or
- a company established outside the EU and is offering goods/services (paid or for free) or is monitoring the behaviour of individuals in the EU.



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16



# Subject Access Request

- Individuals have the right to access and receive a copy of their personal data, and other supplementary information.
- Can be made verbally or in writing, including via social media.
- A third party can also make a SAR on behalf of another person.
- In most circumstances, you cannot charge a fee to deal with a request.
- You should **respond without delay and within one month of receipt of the request.**



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17

# Subject Access Request

- You may extend the time limit by a further two months if the request is complex or if you receive a number of requests from the individual.
- You should perform a reasonable search for the requested information.
- You should provide the information in an accessible, concise and intelligible format.
- The information should be disclosed securely.
- You can only refuse to provide the information if an exemption or restriction applies, or if the request is manifestly unfounded or excessive.



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18

## Fines - SAR

Year	Type	Description	Decision	Corrective Action	Decision Appealed
2020	Data Protection Complaint	Personal data undergoing processing was partially provided following a right of access request. Privacy Policy not satisfying the transparency requirements	Infringement of Articles 13 and 15 GDPR	Administrative fine of €20,000, in terms of Article 83.2 GDPR	No
2020	Data Protection Complaint	Controller failed to provide information following a right of access request and failed to inform the data subject about a restriction	Infringement of Articles 12.3 and 15.3 GDPR, and regulation 4(e) of S.L. 586.09	Administrative fine of € 5,000 and orders, in terms of Article 58.2 GDPR.	



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19

## Reprimands - SAR

Year	Type	Description	Decision	Corrective Action	Decision Appealed
2021	Data Protection Complaint	Controller failed to reply a data subject access request within one (1) month of receipt of such request	Infringement of Articles 12.3, 15.1 and 15.3 GDPR	Reprimand and orders, in terms of Article 58.2 GDPR	
2020	Data Protection Complaint	Controller failed to provide the data subject with information about the processing and a copy of his/her personal file	Infringement of Article 15.1 and 15.3 GDPR	Reprimand and instruction, in terms of Article 58.2 GDPR	Yes
2020	Data Protection Complaint	Controller failed to provide the data subject with information about the processing and a copy of his personal file	Infringement of Articles 15.1 and 15.3 GDPR	Reprimand and instruction, in terms of Article 58.2 GDPR	



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20

# The Case

## Assumptions

- Policies
- Procedures
- Forms

to process employees' personal data lawfully under GDPR are all in place



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21

# The Case

## Assumptions

- Policies
- Procedures
- Notices
- Forms

to lawfully process employees' personal data under GDPR are all in place

## What about?

- SAR Policy
- SAR Procedure
- SAR Form



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22

## The Case

Can you avoid answering?

- if a SAR is "manifestly unfounded or excessive", you can charge a fee or refuse to respond;
- if the employee has made the request for the primary purposes of causing trouble and expense to the employer or is insisting on production of information with no conceivable value, you may be able to rely on the doctrine of abuse of rights and refuse to respond to the SAR; and
- you could withhold personal data if disclosing it would "adversely affect the rights and freedoms of others".



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23

## The Case

Considering the content of the previous slide...

1. The request is excessive and enough reasons to considering that the employee may be asking for information for reasons which go beyond his data protection rights
2. Not enough grounds to consider excessive and request has to be entertained
3. Narrow the scope of the request, rather than reject it outright and entertain part of



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24

## The Case

Which are entertained and which not under SAR?

- unredacted statements made by his colleagues about him as part of the investigation process
- his colleagues' sales data
- client data and a breakdown of sales figures for each client
- all documents in which he is mentioned by name
- any documents that refer specifically to his race and religion
- company documents that refer to race or religion generally
- any complaints received by the company about his team leader's management style



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25

## The Case

Which are entertained and which not under SAR?

- cctv footage showing him at his work station
- whatsapp communication between you and his team leader where he is mentioned



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26

# Whatsapp

- Company device or employees' devices?
- Company policy on Whatsapp use?
- Risks with Whatsapp use;
  - Consumer messaging app meant for private use only
  - Backed up messages not encrypted
  - Account hacks
  - Claims of discrimination, bullying and harassment



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27

# Them or Her?



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28

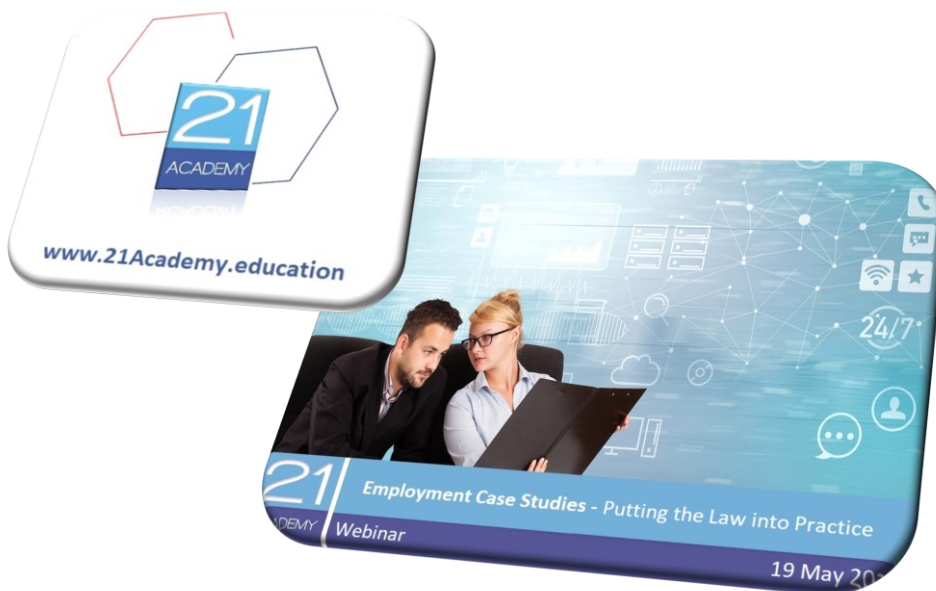
# Harassment

- Do you have an Anti-Harassment & Bullying Policy in place?
- What should such a policy include?
- Why is it essential?
- Always draft such policies in line with your Disciplinary and Grievance Procedures and make sure that by following one, you do not deviate from the provisions of another
- Always leave room for the possibility of **informal resolution**



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29



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30