

# Key employment law issues for sports organisations

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This update highlights a few recent developments in employment law with particular relevance for professional sports organisations:

- the National Minimum Wage and what can happen when you get it wrong;
- lessons from the Eva Carneiro case; and
- what sports organisations need to consider to comply with the new General Data Protection Regulation.

## National Minimum Wage

Running a professional sports organisation can require a broad range of staff - everyone from full-time management executives and elite level athletes to dedicated "volunteer" supporters and students looking for casual work at the weekend.

This variety (especially on match days) means that sports organisations are particularly vulnerable to unwittingly falling foul of National Minimum Wage ("NMW") legislation.

Arrangements in which individuals are working for less than the NMW (or for no pay at all) may, of course, be mutually beneficial (providing experience for the individual at no cost to the organisation). However, if it is deemed by an Employment Tribunal or HMRC that an individual has (or had) a legal entitlement to NMW, the consequences can be financially and reputationally damaging.

### What happens if you get it wrong?

If an individual (or, more likely, group of individuals) have not been paid NMW where they were entitled to it, you may be liable for claims for unlawful deduction from wages stretching back for up to two years (provided there was no break in this arrangement during that time).

NMW is also enforced by HMRC. If HMRC undertake an inspection or audit and determine that NMW hasn't been paid where it should have been, you could be ordered to repay the amount of NMW that you were obliged to pay as well as a penalty of up to 200% of the total underpayment (up to a maximum of £20,000 per unpaid worker) within 28 days.

Ignoring an enforcement notice can also lead to criminal liability and an organisation being named publicly as an employer contravening NMW legislation.

### How Lewis Silkin can help

Compliance with NMW is a tricky area, and we are seeing HMRC taking an increasingly proactive approach to its enforcement.

From explaining the requirements in further detail and discussing the "hot spots" of non-compliance, to undertaking a full audit of your organisation (before HMRC does), Lewis Silkin can support you in a variety of ways to ensure that you don't fall foul of the law.

## What can sports organisations learn from the Eva Carneiro case?

Eva Carneiro, the former Chelsea Football Club (CFC) first team doctor recently settled her Employment Tribunal claims against CFC for constructive dismissal, sex discrimination and harassment for an undisclosed sum; reported in the press to have been in the millions. This cost (and the barrage of negative publicity surrounding the matter) might have been avoided if Ms Carneiro's initial complaint had been handled differently.

### How do you do this?

Having a robust grievance policy in place will help you deal with complaints swiftly and appropriately and can often lead to a resolution without the need for formal legal action.

If a matter is particularly serious or sensitive, you might consider instructing an external investigator to delve deeper into the details of the complaint to demonstrate how seriously you take it.

Workplace mediation is often overlooked by employers, but it can help to reach an amicable solution and avoid ending up in court.

Introducing arbitration clauses into the documents governing any high profile appointments can help to prevent disputes being fought in public (arbitration is essentially a private form of litigation). Whilst such a clause is unlikely to have prevented Eva Carneiro going to the Employment Tribunal (it is not possible to limit an employee's ability to bring statutory employment claims) it would stop a breach of contract claim being brought in the High Court. In many sports disputes, a contractual claim will be the most valuable to the employee (as damages for unfair dismissal in the Employment Tribunal are subject to a cap).

### How Lewis Silkin can help

Lewis Silkin are expert sports employment lawyers with vast experience handling personnel issues both on and off the pitch in the most high profile media environments. From advising on and running investigations and mediations to drafting grievance policies and providing training for managers involved in disciplinary and grievance processes, we can help to ensure that you are prepared when tricky situations arise.

### Data protection goes to the top of risk register – what can you do?

Despite a future Brexit, it is very likely that UK companies will have to comply materially with the new General Data Protection Regulation (the "GDPR") if they want to do business across the EU.

The GDPR places greater emphasis on the documentation that data controllers must keep to demonstrate compliance. Businesses are going to need to be far clearer and more transparent about what data they process and how, as well as their legal basis for processing. The rules around all of this are changing and the consequences for getting it wrong are going to be far more serious. In particular, the GDPR includes radically increased penalties of up to 4% of annual worldwide turnover or €20,000,000, whichever is greater, for the most serious offences and a pan-European approach to enforcement means that organisations are not necessarily going to be able to rely on a relatively pro-business regulator in the ICO.

For most businesses, the first step in getting to grips with the above will be a data protection audit so that you can understand the What? Why? and How? of your current data processing practices and where you might need to improve to comply with the GDPR (e.g. What personal data do you process? How do you process it? Why do you process it? What do you tell data subjects? What policies/documentation do you already have in place?).

A particularly interesting aspect for sports organisations is around the player/athlete data that is gathered on a routine basis (using devices to monitor performance, such as heart rate, temperature, calories burned/consumed etc). This is all sensitive health data and how it is processed needs particularly careful consideration.

### What Lewis Silkin can do to help

With a specialist data protection group, we have developed an audit service to assist you in getting up to speed quickly and efficiently, and can also provide tailored training.

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