



Welcome to the latest employment law update from Benson Wood.



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**Managing Mental Health - PTSD** – many businesses are facing the challenge of an increasing number of staff, presenting mental health symptoms – what can you do to detect and support employees who have suffered a traumatic experience?

**Fixed Term Contracts** – what can we learn from high profile owners and managers in the world of football such as Mike Ashley and Rafa Benitez?

**Religious Freedom** – The case of Israel Folau highlights the potential risks of openly expressing religious beliefs that are counter to popular opinion and culture. What can we learn from this?

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## This Month

### Managing Mental Health at Work - PTSD

*Please note the following article covers the topic of suicide and in particular events on the rail network*

Setting off on a positive note with this article it is worth referencing the increased awareness and consideration of mental health issues in the workplace and response by the business community. A number of dedicated campaigns are making a difference not least the effective collaboration between commercial and charitable organisations such as the Campaign Against Living Miserably (CALM) and London North Eastern Railway (LNER), *more of this partnership below.*

Unfortunately, with one in four of us likely to be impacted by some form of mental health problem in any one year the scale of the challenge remains huge.

In many cases businesses are able to effect positive change by educating managers and staff so they are more aware of the signs and signals that may require a compassionate and empathetic rather than “man up” response. In some ways this internally driven education programme is the easy part, for many organisations the challenges lie not only in supporting their workforce but being aware of and dealing with mental health issues of those impacting the day to day operations.

The term Post Traumatic Stress Disorder (PTSD) is most commonly associated with servicemen who've seen active duty, but it can also occur domestically when emergency services deal with incidents such as that of the tragic events of Manchester Arena, Tower bridge or severe injury or death as a result of fire or road traffic collisions.

PTSD is identified as a severe anxiety disorder which manifests after an event or series of events, which results in psychological trauma. An imminent threat of death to the individual or others nearby may result in debilitating symptoms. Symptoms of PTSD can include replaying the original traumatic event through flashbacks or nightmares, avoidance of any potential triggers linked to the trauma and generally hypersensitivity around certain noises or visual stimuli.

Left untreated a sufferer may be more likely to be involved in a workplace accident, take lengthy periods off work sick and potentially erratic, irrational sometimes aggressive behaviour that may result in dismissal. This could lead to a significant legal battle for the employer if the correct steps and support have not been offered.

One example of an employer that has identified the risks and need to support staff is the rail operator London North Eastern Railway (LNER) who cover 936 miles of track and carry passengers from London to Inverness and back each day of the week. The business employs 3250 staff in offices, depots, stations, onboard and at the headquarters in York.

This extensive and very busy network is however seeing a rather worrying trend which results in a tragic loss of life and major distress for the family and friends of the deceased but also those involved in the incidents. Incident is hardly a suitable word, what we're referring to here is suicide and it's on the increase.

Mike Ross, Customer Relations Manager at LNER explained, “With Suicide being the single biggest killer of men under 45 in the UK and 75% of all suicides being male, through our partnership with CALM we want to actively encourage those who may be going through a difficult time to seek support.” CALM stands for the Campaign Against Living Miserably and was first launched as a pilot by the Dept of Health in Manchester in 1997, rolled out to Merseyside and Cumbria in 2000, later Luton and Bedfordshire becoming a national charity in 2006.

The statistics relating to rail network suicides are quite shocking. In 2017-18 there were an estimated 292 suicides on the rail network across the UK which includes 43 on the London underground. This is an increase on prior year and the trend is upward.

[https://orr.gov.uk/data/assets/pdf\\_file/0016/39103/rail-safety-statistics-2017-18.pdf](https://orr.gov.uk/data/assets/pdf_file/0016/39103/rail-safety-statistics-2017-18.pdf)

A disturbing development in addition to the rise in incidents is the location chosen. Historically such tragic events would occur on rural, remote stretches of the rail network but increasingly that

is being swapped for occurrences close to mainline station platforms.

What many passengers fail to appreciate when taking to social media to complain about their chosen rail service delays is the far-reaching impact of a suicide and the consequential effect with families, witnessing passengers and rail staff. From the driver who can often do little more than sound a warning horn to the crew who may also witness the death such events can be hard to recover from. But it doesn't stop there, Mike Ross as the Customer Relations Manager at LNER has the unenviable task of talking to the recently bereaved families whilst also simultaneously dealing with the flack and subsequent knock-on effect for delays to subsequent trains on that route.

LNER take proactive steps with their staff and offer specialist counselling for those affected. Mike continued, "It can be difficult to determine the real impact of such events on for example an experienced driver, they may on the face of it seem unaffected but over time you may find behaviour and personality changes which can be clear markers for an underlying issue." Men in particular, find it hard to address their problems or talk openly about their mental health. They believe that they will be branded as weak, going "cuckoo" or just not fit for the job and they do their best to "muddle" through without calling on the help freely available.

### **What can Employers Do?**

The culture of the organisation needs to be one of openness and honesty enabling staff to freely report any problem without fear of repercussion. This culture must start from the very top and Directors lead by example.

Often a sufferer of PTSD will feel isolated and very worried about the extent of their untypical feelings. This reaction is entirely normal and can affect anyone. Whilst managers and supervisors may want to try and help, talking about the problem may offer some support but in truth a sufferer of PTSD will require specialist support and counselling.

If your organisation is one that is likely to encounter such tragedies it is advisable to train managers and supervisors on the signs and how best to communicate in such circumstances as a colleague displaying behaviours or symptoms matching that of PTSD.

If the member of staff has visited a GP, they may have been prescribed medication to improve mood via anti-depressants. Current thinking on the effective treatment of PTSD moves away from drugs however as GP's are often not specialists in trauma it is worth suggesting one to one counselling with a trained trauma therapy expert.

If you manage a staff member who has experienced a potentially traumatic event of which you are aware, and their behaviour seems to have changed, it could be a sign that they need help. When an employee does not seem to be returning to their normal attitude and behaviour after a few weeks following an incident, it is a good idea to open a dialogue about how he or she would like to be helped to recover. Be sure to notify a member of your team who can organise the most appropriate support at the earliest juncture.

If you have had direct experience of the impact of suicide or simply want to learn more about the work undertaken to support those vulnerable and at risk you can contact CALM at <https://www.thecalmzone.net/> or also review the support to business via MIND <https://www.mentalhealthatwork.org.uk/organisation/mind/>

## Fixed Term Contracts – Own Goal or Winner?

Unusually for the Premier League Rafa Benitez, Newcastle United's beloved manager, found himself coming towards the end of his three-year contract but without a firm offer that would entice him to stay. The majority of football managers are lucky to survive for full two seasons let alone three, but the Spaniard has an excellent track record.

Rafa joined the Magpies following the departure of Steve McLaren whose disastrous tenure saw the club facing almost certain relegation to the Championship with only 10 games to go. Although he steadied the ship it was too late, and the club was indeed relegated and spent the following season in the Championship. An excellent season in the lower league saw Rafa bring the club back to the top tier and see two years of relative comfort sitting mid table, achieved despite limited investment from owner Mike Ashley.

Clearly Benitez is a strong and very capable manager with an ability to maintain Premiership status on a budget far below many other clubs their fans would wish to be competing with.

With so much at stake it would seem logical to extend the Benitez contract, but it appears the appetite to offer an improved deal and essentially invest in new players is not sufficient and the club are now actively searching for a new coach.

In many ways football operates in a bubble and rarely reflects the commercial world but here we have an example of the application of a commonly used contractual arrangement however in this occasion it has worked against the club's owners.

When it comes to deciding on the contractual basis for your employers many will opt for a traditional employment contract but when business is more fluid and need for resource either seasonal or time limited in other ways there are two main options.

1. Fixed Term Contract – such as Benitez
2. Temporary Contract – more often used for lower paid seasonal workers.

### Fixed Term Contract

Typically, a business will use fixed term contracts when they have a very specific resourcing requirement over a defined period. This may be to provide maternity cover, someone on long term sickness absence or to manage a project.

The fixed term contract will be set up between the employer organisation and the contractor/ fixed term employee and is used by organisations when they have a specific end date for the work required. The contract will include the length of tenure required to fulfil the terms. There may be an option to serve notice to quit before the end of the contract but if no such option exists the contract will automatically expire on the end date stipulated.

By contrast a temporary contract provides resource for short term periods of staffing requirements. Temps can leave on short notice and they are often paid by an agency rather than directly by the employer. The employer will contract with the agency for the supply of such temporary workers.

### Employer Benefits

- Often a wider range of available talent for fixed term gigs enabling access to a larger more varied pool of talent.
- Flexibility of meeting business demand without committing to a standard full-time employment contract.
- Planned or unscheduled departures of staff who will return can be covered without concerning the incumbent role holder.
- Can be quicker than normal recruitment process
- Helps manage budgets with certainty of contract terms
- Option to switch to permanent employment as and when need arises.

### Employee Benefits:

- Many fixed term contract applicants don't appreciate that they have the same rights as a permanent employee entitled to; the same pay, working con redundancy or dismissal and to be informed of permanent roles within the company.
- Occasionally, if the work is highly specialised or skills in short supply the employee may be paid on a higher equivalent rate to a full time employee to accommodate the short term tenure.
- Very often, if it suits the employee and employer the contract can be extended or the arrangement made permanent. Something that won't be happening in either case with Rafa Benitez.

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## Religious Freedom vs Foul Play

**Israel Folau is an Australian rugby player who found himself sacked as a result of an Instagram post in May which caused uproar and breached Rugby Australia's code of conduct.**

Folau's post had his \$4m rugby employment contract terminated, because of its offensive comments— here's the full text

"hell awaits drunks, homosexuals, adulterers, liars, fornicators, thieves, atheists and idolaters".

The Instagram posts were deemed a high-level breach of Rugby Australia's code of conduct having previously warned not to denigrate people on the basis of their sexuality.

Folau is claiming unlawful termination on the basis of religion under the Fair Work Act.

The heat of this dispute was turned up when Folau commenced a Crowdfunding appeal to help pay his legal fees. His opponents claimed the move a cynical play to garner sympathy from religious groups however it was proving successful in raising over \$2m of the target \$3m in only a few days, before being taken down. The collective view from the lawyers commenting on the case suggest the maximum likely costs would be less than \$500k and only then if the highest charging lawyers in Australia were appointed.

The matter is expected to go to mediation as the case has proved a PR disaster for the sport, splitting opinion and driving a conversation about an entirely negative topic not the positives of the game.

But what if something similar were to happen in the UK?

The Equality Act 2010 goes some way to protect the rights of employees to discuss their beliefs however this should not be at the risk of discriminating or denigrating another group included within the clearly set out protected characteristics.

Protected Characteristics: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

### **Talking about religion or belief at work**

An employer should not try to ban discussion of religion or belief at work. However, an employer may be able to justify some restrictions for reasons such as:

- protecting the rights of others
- protecting the firm's reputation
- preventing a figure of authority forcing their personal views on others - for example, an executive on a junior employee, a teacher on a pupil or doctor on a patient.

In light of the Folau case it is essential that an employer has a policy on what use of social media is acceptable or unacceptable at work and away from the workplace when the use may still be connected to the employer in some way. This includes views on religion or belief.

In conclusion if the matter occurred in the UK it is likely that a tribunal would see Mr Folau's remarks on Instagram as being in direct breach of the Equality Act.

Article 9. of the Human Rights Act refers to freedom of religion or belief but essentially qualifies such freedoms such as;

Article 9 is a qualified right – meaning the freedom to manifest a religion or belief can be limited, so long as that limitation:

- is set out in law
- is necessary and proportionate, and
- pursues a legitimate aim, namely:
  - the interests of public safety;
  - the protection of public order, health or morals, or
  - **the protection of others' rights and freedoms.**

The final point in the Folau case is clearly a breach and again suggests a UK Tribunal would uphold the position of the Rugby Association.

With such strong feelings on either side the suggestion of mediation is sensible albeit there's as yet no sign of each side compromising their positions.

## Humour

There was a safety meeting at work today. They asked me, “what steps would you take in the event of a fire?”

“Big Ones” was the wrong answer.

**Yesterday I did nothing and today I’m finishing what I did yesterday.**

I complain to HR, “Sorry, but the salary doesn’t even remotely match the effort I put into my work.”

HR nods, “I know, but we can’t let you starve to death.”

**HR: “What’s your biggest weakness?”**

**Me: “Interviews”**

**HR: “And besides that?”**

**Me: “Follow up questions”**

## Trending # HR related stories in the news

### »Backlog of employment tribunals grows

Claims to employment tribunals have more than doubled in the last two years, latest official figures show, causing a growing backlog of cases.

While the Ministry of Justice received 4,291 single claims from January to March 2017, it received 9,500 from January to March of this year. Employment tribunal fees were declared unlawful by the Supreme Court in July 2017.

Although single claim receipts grew by just 6% compared with the same quarter last year, the outstanding caseload rose by 39% to 26,664.

### »Skills minister to launch youth pre-employment programme

The programme, would prepare 16- to 25-year-olds for employment, whether that be apprenticeships or another route.

### »Employment programme has helped 150+ UK refugees

IKEA and Breaking Barriers’ world-leading refugee employment programme includes English classes, customer service training and assessment days, to improve the employment prospects for refugees living in the UK. Since the partnership began, more than 150 refugees have received support with 29 gaining jobs at IKEA across four London stores.



## Events of this Month

Event Title	Start Date	Hashtag Name
Canada Day	01/07/	<b>#CanadaDay</b>
International Reggae Day	01/07/	<b>#InternationalReggaeDay</b>
National Picnic Month	01/07/	<b>#NationalPicnicMonth</b>
Talk To Us	01/07/	<b>#TalkToUs</b>
International Plastic Bag Free Day	03/07/	<b>#InternationalPlasticBagFreeDay</b>
Independence Day	04/07/	<b>#IndependenceDay</b>
Action Mesothelioma Day	06/07/	<b>#ActionMesotheliomaDay</b>
International Kissing Day	06/07/	<b>#InternationalKissingDay</b>
World Chocolate Day	07/07/	<b>#WorldChocolateDay</b>
SPANAs World Tea Party	08/07/	<b>#SPANAsWorldTeaParty</b>
Donâ€™t Step on a Bee Day	10/07/	<b>#Donâ€™tSteponaBeeDay</b>
World Population Day	11/07/	<b>#WorldPopulationDay</b>
National Simplicity Day	12/07/	<b>#NationalSimplicityDay</b>
World Youth Skills Day	15/07/	<b>#WorldYouthSkillsDay</b>
Festival Of British Archaeology	15/07/	<b>#FestivalOfBritishArchaeology</b>
World Day for International Justice	17/07/	<b>#WorldDayforInternationalJustice</b>
World Emoji Day	17/07/	<b>#WorldEmojiDay</b>
National Parks Week	21/07/	<b>#NationalParksWeek</b>
National Tequila Day	24/07/	<b>#NationalTequilaDay</b>
24/7 Samaritans Awareness Day/ The Big Listen	24/07/	<b>#24/7SamaritansAwarenessDay/TheBigListen</b>
National Fishing Month	26/07/	<b>#NationalFishingMonth</b>
Walk The Night (Breast Cancer Care & Prostate Cancer)	27/07/	<b>#WalkTheNight</b>
National Marine Week	27/07/	<b>#NationalMarineWeek</b>
World Hepatitis Day	28/07/	<b>#WorldHepatitisDay</b>
International Tiger Day	29/07/	<b>#InternationalTigerDay</b>
World Friendship Day / International Day Of Friendship	30/07/	<b>#WorldFriendshipDay/InternationalDayOfFriendship</b>



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