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The Little Book of **Employment Law**

This booklet is only a brief overview of English employment law, and is for general purposes only. We would be pleased to help you with specialist legal advice for specific circumstances. Information correct as of April 2016.

General principles

Written evidence wins employment cases.

Ensure that every stage of the employment relationship is carefully and regularly documented – appraisals, appropriate disciplinary warnings, redundancy selection processes, grievance procedures etc.

If in doubt, write it out!

Policies are important...

Ask your staff to sign an acknowledgement to confirm they have read your most recent policies on equal opportunities, anti-harassment and bullying, email and internet use (including, if appropriate, social media), anti-bribery and corruption, data protection and, where applicable, code of ethics. You can then prove they are bound by them.

...But they're pointless without training.

Make sure employees, and especially line managers, receive training on equal opportunities, anti-harassment and bullying issues. And keep written training records. You can then prove you took reasonable steps to prevent any discriminatory actions or inappropriate behaviour by staff.

Discrimination damages people…

Discrimination because of sex, marital status, pregnancy or maternity, race, disability, sexual orientation, gender reassignment, religion or belief, and age is prohibited.

This applies to every stage before, during and after employment. Partners, contractors and agency workers are also protected.

…And profits. Compensation, based on the employee's actual and future losses (subject to mitigation) and injury to feelings, is the usual award in discrimination claims. There is no maximum limit to that compensation. For some employees (especially older workers) it could amount to several years' pay and benefits.

Whistleblowing

Employees are protected from dismissal and also detriment for reporting certain types of wrongdoing of the employer. To qualify for protection the employee must satisfy a number of tests, including that the disclosure must be in the public interest and relate to a specific type of malpractice, such as, for example, a breach of a legal obligation, a criminal offence or danger to health and safety.

Compensation in a successful whistleblowing claim is usually based on the employee's actual and future losses (subject to mitigation). There is no maximum limit and an award to injury to feelings is also available.

How comments can come back to haunt you:

Everything you write about an employee can potentially be requested by them under a data protection subject access request.

They pay £10 and within 40 days you must disclose all the information you are holding which relates primarily to them. This includes information on computers, smartphones and voicemail, and in manual filing systems from which their details are easily accessible.

It could even apply to manuscript notes about the employee. The results of the request cause significant embarrassment to employers and can provide ammunition to employees with potential employment claims.

Recruitment

Be objective:

Keep the recruitment criteria objective and discrimination-free.

Before interviewing, prepare a written job and person specification.

Ensure there are no discriminatory criteria or questions based on the candidate's sex, marital status, pregnancy or maternity, disability, race, sexual orientation, gender reassignment, religion or belief, or age.

At interview, try to ask all candidates the same questions and keep detailed (objective) notes of their replies.

Loose lips sink ships:

Be careful about the language you use in interviews, which might imply discrimination such as "energy", "fit", "flexibility", "home life", "lifestyle", "gravitas".

Be circumspect regarding questions about a candidate's health or potential disability. There are circumstances in which such questions may lawfully be asked, although these are limited.

Ask every successful candidate, and not just overseas applicants, to produce evidence of their entitlement to work in the UK.

Employment terms

Contractual rights are important:

A new employee should receive their key employment terms in writing within two months of starting work.

The statement of terms should include matters such as the parties' names, the date the employment (and continuous employment) began, the rate of pay and payment date, hours of work, holiday entitlement, sick pay, pension arrangements, notice, job title, place of work and applicable disciplinary and grievance rules.

But statutory rights rule:

Employees are entitled, subject to certain conditions, to a number of key minimum benefits which override lesser contractual provisions. These include, for example:

- 28 days' holiday a year
- statutory sick pay for up to 28 weeks
- a pension scheme provided by the employer
- not to work more than 48 hours a week (and the ability to opt out of that right)
- a statutory redundancy payment and
- minimum statutory notice of termination of one week for every year of service, up to a maximum of 12 weeks' notice.

Family friendly rights

Employees are entitled, subject to certain conditions and limits, to a number of key minimum family friendly benefits, including for example:

- up to one year's maternity leave or shared parental leave which allows parents to share a year's leave and pay between them and, if certain criteria are met, comparable adoption provisions
- two weeks' paternity leave and pay
- maternity (or shared parental leave) pay for 39 weeks
- non-cash benefits for the entire maternity (or shared parental leave) period
- 18 weeks' unpaid parental leave
- unpaid time off to care for dependants and
- the right to apply for flexible working (which is available to all employees).

Disciplinary and grievance procedures

Employee grievances: If in doubt, check it out.

If an employee raises a concern about their working arrangements in writing, even in a low key email, treat it as a grievance and follow the proper grievance and appeal process. Consider both your own internal grievance procedures, the ACAS Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide 'Discipline and grievances at work'.

If you don't and the employee brings a successful claim to the tribunal, their compensation could be increased by 25%.

Disciplinary and dismissal issues

Similarly, an employer should follow the process set out in the ACAS Code of Practice in most disciplinary and dismissal matters (excluding redundancy).

Unreasonable failure to apply such a process (including providing a right of appeal), could result in a 25% increase in compensation if the employee succeeds at tribunal.

Remember the ACAS Code!

The basic steps in the ACAS Code of Practice, dealing with both disciplinary and grievance procedures include:

a. notify the other party in writing of the employer's complaint/proposed reason for dismissal or the employee's grievance

b. undertake any necessary investigations into the issues

c. hold a meeting to discuss and consider both sides of the matter; allow witnesses to be called if appropriate

d. write to the employee with the decision and provide a right of appeal

e. hold a further meeting to consider the grounds of appeal and

f. provide the employer's final decision to the employee in writing.

The ACAS Code of Practice also emphasises the importance of considering both informal and alternative resolutions where possible and the need for both parties to act fairly throughout the process.

Although the ACAS Code of Practice is not legally binding, failure to follow the recommended steps can be taken into account by an Employment Tribunal when determining whether a dismissal was fair and how much compensation to award.

There is also a duty on the parties and ACAS to attempt early conciliation before a tribunal claim is issued.

Don't go it alone:

The ACAS Code of Practice states that an employee has the right to make a reasonable request to be accompanied by a work colleague, or trade union representative, with whom they can confer at any disciplinary or grievance meeting.

If the request is reasonable and the companion can't make it, the meeting should be rescheduled to another day within the next five working days.

The employer should also be represented by both the person chairing the meeting and another employee to take detailed notes.

Unfair dismissal

A dismissed employee with at least two years' service benefits from the statutory unfair dismissal rules. Certain employees are exempt from this minimum service requirement, such as someone dismissed because of pregnancy or trade union membership.

In order to prove the dismissal was fair, an employer needs to show the following:

- a fair reason for the dismissal (taken from a limited set of reasons including capability and conduct) and
- a fair procedure was followed before taking the decision to dismiss.

Potential remedies

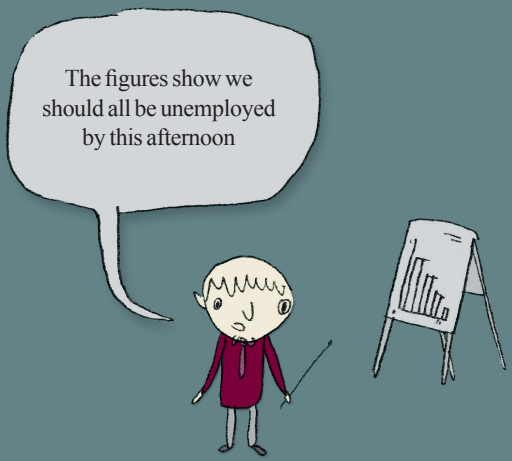
Reinstatement or re-engagement orders are rare. Compensation for unfair dismissal is the more usual remedy and is normally made up of basic and compensatory awards.

The basic award is based on a maximum weekly wage, age and length of service.

The compensatory award is based on the employee's lost earnings from the dismissal, subject in most cases to a maximum limit of the lower of the employee's usual annual salary or the maximum award which is £78,962 (from 6 April 2016, subject to annual reviews).

It is subject to reductions for pay from any new employment which the employee has or could reasonably have been expected to secure.

There can also be deductions to reflect, for example, that the employee contributed to their own dismissal.



Collective redundancies

If you are planning a large scale reduction in your workforce, you will need to undertake collective consultation with trade union representatives or elected employee representatives.

The consultation must occur before the first of the redundancy dismissals takes effect.

Specifically, there must be 30 days prior consultation where 20-99 redundancies are planned or 45 days prior consultation where 100 or more redundancies are planned, both within a 90 day period. Failure to consult can result in an award of up to 90 days' actual pay per redundant employee.

The employer must also notify the UK Government of planned large scale redundancies at least:

- 30 days before making 20-99 redundancies in a 90 day period and
- 45 days before making 100 or more redundancies in a 90 day period.

Failure to do so can lead to a criminal conviction and fine for the corporate officers responsible.

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"This 'hugely innovative' employment and partnership boutique has recognised strengths in advising clients on City team moves, high-value discrimination claims and senior executive exits. It has a notable presence in the financial services and broadcasting sectors.

The team frequently handles cross-border matters for both individuals and corporates."

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"CM Murray LLP led by the 'incredibly effective' Clare Murray, is frequently instructed to advise international subsidiaries in the UK, and has an excellent reputation for acting for senior executives. Bettina Bender is 'extremely solution focused', and David Fisher is 'the epitome of professionalism'."

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