

## Top ten employment law tips

### Tip 1: Disciplinary procedures

- ▶ Investigate all allegations – is a disciplinary hearing appropriate?
- ▶ Decide who will deal with the investigation, the disciplinary hearing and an appeal.
- ▶ Consider suspension in serious cases of misconduct.
- ▶ Send the employee a copy of the company's disciplinary procedure.
- ▶ Take minutes of all hearings and ask employee to confirm they are correct.
- ▶ Allow the employee the right to be accompanied at all hearings.
- ▶ Do not inform employee of decision at the disciplinary hearing. Reconvene the meeting to discuss the outcome and confirm decision in writing.
- ▶ Follow the ACAS code – failure could result in uplift in compensation of 25%.

### Tip 2: Performance management

- ▶ Deal with any performance issues informally at first.
- ▶ Follow the ACAS code and company procedures.
- ▶ At all hearings:
  - Clarify the standards the employee has failed to meet
  - Allow the employee to explain poor performance and ask questions
  - Discuss measures, set targets and timescale for improvement.
- ▶ Timescales must be reasonable and realistic.
- ▶ Allow the employee the right to be accompanied at all hearings.
- ▶ Employee has the right to appeal against any warnings and dismissal.

### Tip 3: Sickness absence

- ▶ Investigate the likely cause and the likely length of the absence.
- ▶ Always carry out return to work interviews.
- ▶ Keep in contact with an employee on long term sickness.
- ▶ Consider obtaining medical evidence – must get consent from employee.
- ▶ Discuss medical evidence with employee.
- ▶ Consider reasonable adjustments to enable the employee to return to work or alternative employment.
- ▶ If the employee fails to attend the hearing or asks for it to be adjourned, consider this request.
- ▶ Consider venue for all meetings/hearings to be held either at work, employee's home or at a neutral location.
- ▶ Allow the employee the right to be accompanied.
- ▶ Prior to dismissal, always follow a fair procedure.

### Tip 4: Disability

- ▶ You must not discriminate against an employee or job applicant with a disability.
- ▶ Disabilities include physical disabilities and mental impairments and also include cancer, depression, diabetes, blindness, multiple sclerosis.
- ▶ Check with HR if you are unsure whether discrimination has or may be happening or if you are unsure if an employee is disabled.
- ▶ Consider obtaining medical evidence either from employee's GP or an independent occupational health therapist.
- ▶ You are under a duty to make reasonable adjustments to premises or working practices to help disabled applicants and employees.
- ▶ Do not ask potential employees to complete pre-employment health questionnaires.

## Tip 5: Grievances

- ▶ First try and resolve the grievance informally.
- ▶ Send the employee a copy of the company's grievance procedure.
- ▶ If you receive a formal grievance – investigate and then invite employee to a grievance meeting and allow employee to explain their grievance.
- ▶ Take minutes of all hearings and ask employee to confirm they are correct.
- ▶ Allow the employee the right to be accompanied at all hearings.
- ▶ Confirm your decision in writing setting out your reasons.
- ▶ Employee has the right to appeal against any decision.
- ▶ Follow the ACAS code – failure could result in uplift in compensation of 25%.

## Tip 6: Discrimination

- ▶ Discrimination normally happens when an employer treats one employee less favourably than another.
- ▶ You must not discriminate on the grounds of race, sex, sexual orientation, disability, religion or belief, age, transsexualism, pregnancy, marriage/civil partnership, working part time or on a fixed term contract.
- ▶ There are four forms of discrimination:
  - Direct discrimination – when someone is treated less favourably than others in the same circumstances.
  - Indirect discrimination – when someone puts in place rules that apply to everyone but put someone else at an unfair disadvantage because of a protected characteristic.
  - Harrasment – unwanted or uninvited behaviour that is offensive, embarrassing, intimidating or humiliating.
  - Victimisation – when a person is treated less favourably than someone else because they have complained about discrimination, or supported someone else who has.

## Tip 7: Probationary periods

- ▶ Monitor the employee during the probationary period.
- ▶ Consider extending the probationary period – inform employee and confirm in writing.
- ▶ If the employee is still not performing, consider dismissal - see above re: disciplinary procedures/ performance management.
- ▶ Consider whether employee has raised any issues such as health and safety, trade union involvement, whistleblowing, discrimination - if so, speak to HR before taking any further steps.

## Tip 8: Dismissals

- ▶ You must be able to show you have a fair reason for dismissal. Currently five fair reasons for dismissals – conduct, capability e.g. performance or sickness, redundancy, illegality and some other substantial reason.
- ▶ Note – retirement is no longer a fair reason.
- ▶ You must be able to show you followed a fair procedure - refer to company's disciplinary procedure.
- ▶ For employees in employment before 6 April 2012 the qualifying period is one year. From 6 April 2012 any employee employed from this date onwards will need two years service to qualify for unfair dismissal.
- ▶ Note – no qualifying service required where dismissal is because of a discriminatory factor (such as their age, sex, race, disability etc) or because of health and safety reasons, trade union involvement, pregnancy, whistleblowing.

## Tip 9: Bullying and harassment

- ▶ Familiarise yourself with the company's procedures.
- ▶ Bullying and harassment comes in many forms e.g. work place “banter,” emails containing “jokes,” incidents at work place functions (which may take place outside working hours).
- ▶ Any concerns raised, deal with sensitively and follow company procedures.

## Tip 10: Contact HR

- ▶ Any doubts or concerns contact HR or your legal adviser!

To discuss any HR or employment queries call our team on 0113 320 5000 or email [employment@winstonsolicitors.co.uk](mailto:employment@winstonsolicitors.co.uk)

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