

# Growth through innovation

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# From Hiring to Firing!

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# This Session

This workshop will give an overview of the essentials for managing people lawfully and effectively from the beginning of employment to its end covering:

- Recruitment essentials, from avoiding discrimination to the advantages of competency based interviewing techniques.
- Main employee rights at work.
- Dealing with difficult issues such as grievances, ill health, disciplinary and poor performance.
- Dealing lawfully with the different ways employment ends.

# General Employment Law Quiz

# Contract Formation

- Offer and acceptance
- Intention to be legally binding
- Consideration (benefit for each party)
- The contract is formed at the point of acceptance and therefore notice under the contract could have to be given
- Entitled to a statement of employment particulars under s1 of the Employment Rights Act 1996
- Every employee however has a contract whether in writing or not

- Express
- Implied
- Statutory
- Incorporated

# Equality Act 2010 – Protected Characteristics

- Race (colour, ethnic or national origin and nationality)
- Sex
- Pregnancy and maternity
- Gender reassignment
- Sexual orientation
- Marriage and civil partnership
- Disability
- Age
- Religion or belief

# Positive Discrimination

- Some jobs are GOQ/R roles.
- Positive discrimination is currently unlawful, however positive action is not if it is action taken to encourage more applicants from a particular minority group currently statistically under-represented in the organisation to apply.
- From April 2011 employers will be able to choose a candidate from an under-represented group if they are equally qualified for the role.

# Fixed-Term Workers – key provisions

- Effective from 1 October 2002
- No less favourable treatment
- Permanent comparator
- Objective justification
- Permanent after 4 successive years
- Notification of permanent positions
- Term by term or equal package
- Written statement of reasons
- Failure to renew can be an unfair dismissal



# Part-Time Workers – key provisions

- Effective from 1 July 2000
- Applies to employees and workers
- No less favourable treatment
- Full-Time comparator
- Objective justification
- Term by term equal package
- Written statement of reasons

# References

- Duty to supply?
- Reasonable care in compiling
- Ensure fair and accurate
- True and based on reasonable enquiry
- Base on fact rather than opinion (state if referee has no personal knowledge)
- Avoid giving an unfair impression or being misleading

# Interview Feedback

- If written and on file then yes, under the Data Protection Act
- If a policy to provide feedback then not to do so could give rise to discrimination complaints
- If no policy to do so then no need to give verbal feedback

# Paternity

- To qualify the employee must have responsibility for the upbringing of the child and be the biological father, or mothers husband or partner, and
- Have 26 weeks service by the qualifying week (15<sup>th</sup> week before the EWC).
- Then entitled to SPP of one or two consecutive weeks, payable at £136.78 per week (or 90% average earnings if less).
- To be taken within 56 days of the babies birth if notice provisions have been satisfied (state intention 15 weeks before EWC then gave 4 weeks notice of actual dates).

# Additional Paternity Leave

- New right from 03/04/11
- Continuous employment for 26 weeks ending with the fifteenth week before the baby is due
- Additional Paternity Leave Regulations 2010 (min 2 weeks leave max 26 weeks)
- Available to the father or partner/husband of the mother or adopter
- Mother must have ended her maternity leave
- APL can be taken from week 20
- Must return within 52 weeks of birth / adoption

# Maternity

- 6 months OML for everyone
- 6 months AML for everyone
- 6 weeks @ 90% average pay, 33 weeks @ £136.78 (or 39 weeks at 90% if less).
- Advise of intentions by the 15<sup>th</sup> week
- Start leave no earlier than the 11<sup>th</sup> week
- Employer to respond within 28 days
- Notice provisions 8 weeks
- 4 week sickness trigger
- Right to return to work in the same job after OML, after AML same job or if unavailable a suitable alternative
- KIT days and contact

# Pregnancy

- Can work up until the baby is born
- Must take a minimum of two weeks leave (4 weeks if a factory worker)

# Parental Leave

- An unpaid right for men and women
- Eligibility is one years continuous service and responsibility for the child
- Child under the age of 5 or if adopted before the 5<sup>th</sup> anniversary of adoption or aged 18 if sooner
- Up to 18 weeks total leave to care for the child
- Default scheme is no more than 4 weeks in any year, in blocks of a week (single days if child is disabled)
- Notice provisions (21 days)
- Increased from 13 weeks in April 2013



# Flexible Working

- Can request 14 days before a child's 17<sup>th</sup> birthday (18 if disabled) or if the carer of an adult
- Eligibility is 26 weeks continuous service at the request date
- Purpose is to care
- Change is to hours, times or place of work
- Reasons specified to refuse
- Strict procedure to follow
- 12 months between requests

# Flexible Working – Scope

Applies to mother, father, adopter, guardian, foster parent - or the spouse or partner of any of these who has or will have responsibility for the upbringing of the child.

If caring for an adult must be: married to, the partner or civil partner of the employee; a relative of the employee; or living at the same address as the employee.

# Reasons to refuse

- The additional costs involved will impose a burden.
- Detrimental effect on ability to meet customer demand.
- Unable to re-organise work among existing staff.
- Unable to recruit additional staff.
- Detrimental impact on quality or performance.
- Insufficient work during the periods the employee proposes to work.
- The employer has planned structural changes.

# Dependant Leave

- Reasonable amount of unpaid leave
- No service requirements
- Provide assistance in illness, giving birth, injury or assault
- To make arrangements for the provision of care for a dependant who is ill or injured
- In consequence of the death of a dependant
- In problems with the care of a dependant
- To deal with an unexpected incident which involves a child and their school

# Direct v Indirect discrimination

**Direct Discrimination** - When a person treats another person less favourably on because of their .... ie religion, sexual orientation, age, sex etc than he/she would treat someone else.

**Indirect Discrimination** - This occurs when an applied provision, criterion or practice has the effect of disadvantaging members of a particular group. Unlawful unless objectively justified.

# Discrimination Defined (1)

**Victimisation** – less favourable treatment because they brought or are bringing a claim of discrimination, giving evidence or alleging/ making a complaint about a breach of the discrimination Regulations

**Harassment** – unwanted conduct that violates a person's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

## Discrimination Defined (2)

**Post Employment Discrimination** – in some circumstances individuals have protection and can make complaints to Employment Tribunals if discrimination takes place after the working relationship has ended.

Others ie third party discrimination and discrimination by association or perception

# Disability Discrimination - definition

A physical or mental impairment which has (or has had) a substantial and long-term adverse effect on his/her ability to carry out day to day activities.



# Disability Discrimination

Reasonable adjustments include:

- Adjusting premises
- Reallocating some of the duties
- Transfer to new job / location
- Altering working hours
- Allowing absence for rehabilitation, treatment or assessment
- Training
- Acquiring or modifying equipment
- Modifying procedures, instructions or reference manuals
- Providing a reader, interpreter or supervisor

# Dismissal Definitions

- Capability / Qualification
- Conduct
- Redundancy
- Statutory ban
- SOSR

## Unfair dismissal

- ✓ Dismissal with or without notice which is in breach either substantively and/or procedurally.
- ✓ TUPE does not give rise to a dismissal.
- ✓ Unless automatically unfair 1 years service is required or 2 if the employee joined on or after 06/04/12

## Constructive dismissal

Individual resigns and alleges that the company's action left them no alternative, goes to the "root of the contract of employment" and is repudiatory

# Fair or Unfair?

Reasonable belief on the  
“Balance of probabilities”

VS

“Beyond all reasonable doubt”

# Accompanying person rights

- TU official or work colleague
- Full paid time off
- Pre, actual and post hearing meetings
- Can be accompanied at relevant grievance, disciplinary and flexible working request meetings

# Variations to Employment Terms - Choices

- by agreement with the employee(s) (either contract allows for change, conduct of employee shows acceptance or possibly with a cash "sweetener");
- by collective agreement
- by unilateral variation of contract terms (or of works rules applied by the contracts); or
- by giving required notice to terminate existing contracts and offering new contracts on new terms.

# Options available to Employees

- consent ie go along with the employer's proposals;
- reject them and resign, perhaps claiming constructive dismissal, or
- reject them but continue to work on an “under protest” basis
- wait to be dismissed and then claim unfair dismissal

# Remedy in Unfair Dismissal

- Re-instatement
- Re-engagement
- Compensation

# Compensation

- In unfair dismissal there is a basic award – equivalent to SRP (£450) and a compensatory award capped at £74,200
- In discrimination there is a compensatory award which is unlimited, injury to feelings and interest.
- Uplifts available of up to 25%



Any questions?