

Top Employment Law Challenges Faced by Businesses

In today's modern economy, many employers face challenges brought about by managing employees, whilst at the same time navigating the ever changing wealth of employment legislation and case law.

Below are a number of issues that employers commonly seek our advice upon:-

1. Short Term Sickness Absences

Persistent short term sickness absences can be extremely problematic for an employer. The unpredictable nature of the absence means that it is often almost impossible to prepare for or cover for the absence.

It is possible to place employees on an absence management plan, which ultimately could lead to dismissal if sufficient levels of attendance are not possible.

Despite this, employers need to be cautious of issues that may arise due to disability discrimination legislation.

If the employer suspects that the employee is not actually sick, and is instead enjoying a long weekend break for example, it may be possible to deal with the issue via a disciplinary process.

2. Long Term Sickness Absences

Although it may be easier for internal purposes to manage long term sickness absences, the risk of disability discrimination issues arising increases in these circumstances.

Whilst it is possible to dismiss an employee who is too ill to return to work in the foreseeable future, to do so fairly often requires medical evidence and consideration as to whether there are any steps the employer can take in order to facilitate the employee's return to work.

3. Failure to Make Reasonable Adjustments

If an employer knows (or ought reasonably to know) that an employee is suffering from a disability as defined in the Equality Act 2010, it has a duty to make reasonable adjustments in order to prevent the employee from suffering a substantial disadvantage as a result of that disability.

The list of potential reasonable adjustments is very wide ranging and is often fact sensitive.

If the employer fails to make these adjustments, it could be found liable for disability discrimination.

4. Under Performing Employees

A fair performance management process, ultimately leading to dismissal, can take between four to six months to complete. At each stage the employee must be set goals and given an opportunity to improve.

It is therefore vital that employers formally address under performance issues early on, and not once the problem has become intolerable.

5. Disciplinary Action

The ACAS Code of Practice states that all disciplinary action must consist of a number of minimum steps in order to be deemed fair. These include steps such as carrying out a reasonable investigation process, giving the employee an opportunity to respond to the allegations and reaching a reasonable conclusion.

Many employees fail to comply with the requirements of the Code and often face unfair dismissal claims as a result, even where the employee could have been fairly dismissed if the correct procedure had been followed.

6. Leaving Employees

It is possible to include a number of clauses within an employment contract that offer enhanced protection to an employer when an employee moves on to pastures new.

These clauses can include confidentiality and intellectual property clauses, and also post termination restrictions preventing the employee from targeting the employer's existing clients for a period of time.

7. Social Media

Employee use of social media both in and outside of the workplace is becoming an increasing problem for employers. A clear policy can outline what the employer considers is acceptable conduct, and what will be dealt with as a disciplinary matter.

8. Grievances

Any written complaint from an employee can amount to a grievance.

The ACAS Code of Practice states that grievances must be dealt with in accordance with a specific procedure. If an employer fails to do so and ultimately issues a claim in the Employment Tribunal, any award made to the employee can be increased by up to 25%.

At KBL we are able to advise employers in relation to a broad range of employment issues, including those outlined above.

We offer a number of funding arrangements to suit all businesses, including one off project work charged at an agreed hourly rate and annual retainers for a fixed monthly fee.

For more information contact Sarah Collier, Head of Employment on 01204 527777 or scollier@kbl.co.uk.