EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

October 2019 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Are your job adverts accidentally putting off potential applicants?
- Unfair dismissal - covert recordings
- Restrictive covenants

Are you job adverts accidentally putting off potential applicants?

A LinkedIn report has looked at the language used in job adverts and found that the way the advert is phrased can deter a potential applicant from applying.

The survey of more than 1000 employees and 250 recruitment managers found that more than half of women don't apply for a job where it describes the workplace as 'aggressive'. This comes as no surprise by comparing this with only a third of men being put off.
What is surprising is there are more than 50,000 jobs on LinkedIn which include the word 'aggressive' in the description.

More women than men were put off by the term 'born leader' as well.
The company view on annual leave and flexible working also differed between the genders, with more women than men giving these issues top priority.

The survey found that many employers don't consider gender when writing job descriptions / adverts. They don't track the genders of those responding to adverts.
Employers may not realise the effect that an advert might have on potential job applicants. If certain groups are put off applying for jobs, the pool of talent may be reduced.

Review the culture in your workplace. It's no good talking the talk if your workplace doesn't walk the walk.

Employers: review your job adverts / descriptions with an objective eye

Contact us: we can assist with equal opportunities policies and training

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Unfair dismissal – covert recordings

In unfair dismissal cases, any compensation awarded can be reduced by the tribunal, potentially to zero, based on the employee's conduct before dismissal.

Secret recordings of meetings by an employee could be admissible evidence if the tribunal thinks it is relevant, although this might amount to misconduct, depending on the employer's rules.

In *Phoenix House v Stockman*, an employee secretly recorded a meeting with HR. The tribunal accepted the employee's explanation that she recorded the meeting because she was flustered rather than to trip up the employer.
They reduced her compensation by 10 per cent accordingly. The employer appealed, saying they would have dismissed the employee for gross misconduct had they known about the secret recording so her compensation should be nil.

The Employment Appeal Tribunal (EAT) upheld the tribunal's decision.

Previously it was seen that a covert recording was part of a plan to entrap the employer. These days, mobile phones make it easier and more common to record meetings.
Although secretly recording a meeting may be misconduct, it is rarely gross misconduct. Here covert recording was not listed as a gross misconduct in the disciplinary rules.

A secret recording doesn't always undermine trust as it could be used for record keeping or to assist with getting legal advice. In this case the employee's compensation was reduced.

This case gives employers helpful guidance on secret recordings, especially as every employee carries a device which can secretly record events.

Employers: consider adding covert recording to your disciplinary policy

Contact us: we can help with reviewing your policies

Restrictive covenants

Restrictive covenants are clauses in employment contracts which restrict what the employee can do both during and after their employment.
They are there to protect a legitimate business interest. The clause must be reasonable and not go further than is necessary.

'Non-compete' restrictions (where an employee is prevented from competing with the business for a period after their employment ends) are often found to be unreasonable.

The recent case of *Tillman v Egon Zehnder* found that words can be deleted from a restrictive covenant, which is otherwise too wide, to make it enforceable.

The employee's contract contained a clause which stopped her from being "engaged, concerned or interested in" a competing business for 6 months after her employment ended.

She wanted to work for a competitor in the 6 months and said the clause was unreasonable as the term 'interested in' was too wide.
The High Court granted the company an injunction, saying the clause was valid and did not stop her owning a minor investment shareholding.
The Court of Appeal disagreed and said the words 'interested in' did prevent any shareholding.

It went onto the Supreme Court who found although the clause was too wide, the words "interested in" could be deleted if it still made sense.
The clause was therefore enforceable.

Employers: this is a good decision for employers but make sure clauses are not too widely drafted.

Contact us: we can help with employment contracts and restriction clauses.

For more information or assistance Email: enquiries@employmentlawsupport.co.uk

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