Common employment law issues and how SMEs can avoid them

Top 10 employment law enquiries received by our Advice Line

- Disciplinary action (38.5%)
- Redundancy (12.4%)
- Dismissal (12.2%)
- Contracts of employment (11.4%)
- Incapacity (11.1%)
- Resignation (6.1%)
- Grievances (4.5%)
- Holiday queries (3.6%)
- TUPE (2.7%)
- Maternity (2.5%)

• £13.6B is lost by SMEs every year from neglecting to seek legal advice
• Companies employing <10 staff are likely to face at least three issues a year costing an average of £2,240 on each occasion
• This figure increases for larger firms, and those trading in the finance, food and property sectors, where average costs can be as high as £22,400

* Source: YouGov and CEBR cost to SME of Legal business survey 2017

The do’s and don’ts for common employment law issues

Issuing contracts

Like most contracts, employment contracts may be verbal or written – but if they’re verbal, you must follow up with written particulars of certain key points within two months.

✔️ Do
- A written contract is best
- Tailor to the individual’s circumstances
- Clarify contentious and tricky issues, for example holiday entitlement and pay

✔️ Don’t
- Forget to provide written particulars within two months
- Provide written particulars that are inconsistent with the contract, whether it was verbal or written

Dealing with sickness absence

For the good of the employee and the business, managing sickness absence is essential. Excessive absence can be a fair reason for dismissal, but be aware of disability discrimination.

✔️ Do
- Have a written sickness absence policy
- Set out who to contact, how it should be done and your process for completing a fit note
- Pay sick leave at the correct level: contractual or statutory

✔️ Don’t
- Proceed without investigating the reasons for sickness absence
- Dismiss for sickness absence without considering adjustments that might enable continued employment

Source: YouGov and CEBR cost to SME of Legal business survey 2017
Managing poor performance

Poor performance is a potential fair reason for dismissal, but it’s essential you follow a fair procedure.

✔ Do
  - Follow the Acas’ Code of Practice on disciplinary and grievance procedures
  - Act quickly, it’s easier to dismiss before two years of employment than after that period
  - Explain concerns and give them the opportunity to improve

✘ Don’t
  - Confuse misconduct and capability issues
  - Dismiss without notice
  - Forget to document performance concerns as you proceed
  - Discriminate

Responsibilities to pregnant employees

You must specifically address the health and safety of pregnant employees, allow time off for antenatal appointments and grant maternity leave or shared parental leave as appropriate.

✔ Do
  - Assess workplace risk to new/expectant mothers
  - Alter conditions or offer suitable alternative work to avoid risk
  - Suspend on full pay if no suitable changes can be made
  - Grant up to 52 weeks’ maternity leave, which can be shared with other parent

✘ Don’t
  - Treat unfavourably because of pregnancy related reason
  - Deprive an employee of contractual right (there are exceptions regarding pay)
  - Make an employee redundant whilst on maternity leave without offering a suitable alternative vacancy

Conclusion

Employment law is an area that is becoming increasingly more complex and is governed by more than 30 pieces of major legislation. Invest in legal advice to make sure you are compliant – don’t try and wing it.

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