ActifHR

Where people matter...

October 2019 Update

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

In this Edition we report on:

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

Are your job adverts accidentally putting off potential applicants?

A LinkedIn report has inquired into how the language and way this is phrased, when used in job adverts can potentially deter an applicant from applying.

A survey of more than 250 recruitment managers and 1000 employees found that in a workplace that is described as 'aggressive', just over half of women won't apply for a job. Whereas for men only a third are deterred. The surprising fact is that there are more than 50,000 jobs on LinkedIn which include the word 'aggressive' in the description.

More women are put off by the term 'born leader' than men. The company's view on flexible working and annual leave also was different between genders, with less men than women giving these issues top priority.

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The survey uncovered that most employers don't consider gender when writing job adverts/descriptions. Also, they don't track the genders proportion responding to these adverts. As an employer you may not realise the impact an advert may have on potential job applicants. The pool of talent may be reduced if certain groups are put off when applying for jobs.

Assess 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 and training

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Unfair dismissal – covert recordings

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

Secret or covert recordings of meetings by an employee could be valid if the tribunal thinks the information is valid, although this could lead to misconduct, depending on the rules set by the employer.

In *Phoenix House v Stockman,* an employee made a covert recording in a meeting with HR. The tribunal accepted the employee's explanation that she recorded the meeting because she was flustered, and it was not for malicious intent against the employer.

Accordingly, her compensation was reduced by 10 percent. On appeal the employer said they would have dismissed the employee based on gross misconduct had they known about the covert recording; therefore, her compensation should be none.

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

These days, mobile phones make meetings more simple and easier to record, when previously it was seen that a secret recording was used to entrap the employer. Secretly recording a meeting is rarely gross misconduct and usually just misconduct. In this case the disciplinary rules state that covert recording was not listed as gross misconduct.

A covert recording can be used to assist with getting legal advice or used for record keeping, so it doesn't always undermine trust. In this case the employee's compensation was slightly reduced.

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This case gave employers guidance and an insight on secret recordings, especially because all employees carry mobile phones which have the potential to 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 affect what the employee can do both after and during their employment.

They are there to help protect a legitimate business interest. The clause must firstly be reasonable and secondly not go further that is necessary.

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

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

In the employee's contract, a clause prevented her from being "engaged, concerned or interested in" a competing business for 6 months after her employment was terminated.

She said the clause was unreasonable as she wanted to work for a competitor in the 6 months, as the term 'interested in' was too wide.
An injunction was granted for the company by the High Court, confirming the clause was valid and did not stop her from owning any shareholding in a minor investment.

The Court of Appeal disagreed with this and said that 'interested in' prevented her from any shareholding.

This went on to the Supreme Court who found despite the clause being too wide, the words 'interested it' could be removed if it still made sense.
The clause was therefore enforceable.

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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.

Caroline Robertson, CEO

Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

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