

Recruitment

When recruiting, you need to be aware that those who apply for a job are automatically protected from unlawful discrimination based on protected characteristics such as: sex, race, orientation, age, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity.

To avoid unlawful discrimination you need firstly to make sure that your advertisement, or job specification, does not preclude in any way persons of a certain characteristic from applying for the job.

Secondly, when short-listing, holding interviews, or making the final selection, you need to ensure that your decision is based on clearly defined objective criterion. These should include the relevant needs for the person to do that specific job, such as: qualifications, skills, knowledge, and experience etc., and that you can show evidence of this, if requested.

Thirdly, when going through the process of short-listing and interviewing, make sure that any written notes cannot be interpreted as being discriminatory or derogatory, and refrain from highlighting any statements on their CV or application form, that could be construed as being the reason why they were not selected. For example, highlighting the person's age, sex, race, or that they have children, etc.

A person that has failed to be selected for a job has the right, under the Data Protection Act, to request their file, including any notes that formed part of the selection process; such as the interview notes. In addition, if they believe that they have been unlawfully discriminated against, they have the right to make an application to an employment tribunal.

We recommend that you use a criterion matrix based on objective requirements that are applicable for that specific job, and that you assess each candidate against these under a scoring system. In addition, before interviewing, you should define a set of relevant questions and assess each candidate against these.

Selecting the right candidate is important for the business, and if appropriate you can set a task for the candidate to perform. For example, to give a presentation on why they are the right candidate, or how they would manage a difficult workforce, etc.

If you need any assistance with recruitment do contact us, we can provide examples of a selection criterion matrix and advise on the interviewing and selection process.

Disciplinary action – employee on sick leave

What happens when there is a conduct or performance issue and the employee goes sick?

This may be of course be due to a genuine illness, or as often happens the employee goes sick with the belief that they are safe from the disciplinary procedures. What can you do?

Firstly, it is important to consider the nature of the illness, its seriousness and whether it is work related. But if there is a disciplinary matter, there are potential ways in which it can be progressed; as the reason(s) for the disciplinary may erode if not dealt within a reasonable period of time.

The first action is to invite the employee to a disciplinary meeting, outlining the reasons, and that they have the right to be accompanied etc. If the employee refuses to attend because of their health, you can request consent to ask their GP if they are well enough to attend a disciplinary meeting, or how long it will be before they are fit to attend. Alternatively, you can refer the employee to an occupational health specialist for an opinion; they will be able to assess whether or not the employee is fit to attend and any reasonable adjustments that may assist in the meeting taking place.

If the reason for not being able to attend a meeting at the company is due to their illness, such as a mobility problem, be flexible, and offer to hold the meeting at another location; this is often a difficult one for the employee to refuse, unless their illness is such that it would not be appropriate.

If the illness is likely to be long-term you can progress the disciplinary matter by offering to conduct the disciplinary procedures through written communication, or by asking them to nominate a representative to attend the meeting on their behalf.

Every situation is different so if you are faced anytime with this position, do contact us for advice.

Has the employee resigned?

When an employee decides to leave your employment, it is best practice to request that they put their resignation in writing. This makes it clear what the employee's intentions are, it reduces misunderstandings and enables the employer to respond and accept the resignation formally; by confirming termination date, whether they are required to work their notice or payment will be made in lieu of notice, payment of any accrued and untaken holiday, (or where holiday entitlement has been exceeded - deductions) and any other terms concerning the notice period and termination date.

But what of the employee who resigns (either verbally or in writing) following an altercation or other incident at work; should you accept their resignation?

Case law has held that a resignation by an employee might constitute dismissal, if there were special circumstances attached to the reason for the resignation. For example a resignation in the heat of the moment and/or when the employee was in a state of emotional stress. That is, if you jump the gun you could end up with a claim by the employee for unfair dismissal.

The courts have held that where there are special circumstances, it may be unreasonable for the employer to assume a resignation and accept it forthwith.

So what should you do if faced with this situation? The employer should allow a reasonable period of time to lapse, during which time the employee is given the opportunity to confirm what their intentions are and to withdraw their resignation if it was not intended. A reasonable amount of time should be no more than a day or two; depending on the circumstances.

If you are faced with this situation please do contact us for advice.

The danger of encouraging an employee to leave

There can be occasions when an employee indicates that they are looking to resign. Should the employer encourage them to do so? The answer is a definite NO!

In a recent case an employee intimated verbally to her manager that she was unhappy and may resign. This triggered the manager to keep asking her what her intentions were and when she was going to put her resignation in writing; to the point that he gave her a deadline.

She subsequently resigned and submitted a claim for constructive dismissal. The tribunal upheld her claim and awarded her £49,000.

If an employee says they are unhappy and they are going to resign, do not push them to make the decision; the decision must rest entirely with the employee. If you have a situation like this, do seek our advice; there may be other ways to handle it.

Driver licence checking

If an employee is driving a company vehicle or driving on behalf of the company using their own private vehicle; the vehicle becomes an extension of their workplace and the company is potentially liable.

It is therefore important that an employer checks that they have a valid driver's licence, and whether there are any convictions that may affect the company's insurance or liability. If they use a private vehicle, it is also important to verify if the vehicle is insured for business use and, if appropriate, has a valid MOT.

With the decision by the Government to abolish the paper counterpart to the driving licence in June 2015, details of driving convictions can now only be obtained by accessing the DVLA records.

Some employees have argued that access to their DVLA records would be a breach of the Data Protection Act.

However, the ICO has confirmed, that there would not be a breach of the Data Protection law, when requesting employees to sign a mandate giving access to their driving records; where it is necessary.

Overtime and holiday pay

In a recent case law judgment, concerning ambulance workers, the Court of Appeal held that voluntary overtime should be factored into holiday pay; provided such overtime is sufficiently regular to form part of a normal remuneration package. The Court added, "where overtime is voluntary or otherwise, is sufficiently regular and settled, it implies that the employee relies on those payments as part of their regular remuneration, and loss of such payments would be a disincentive to take their annual leave; which would mean that the employer is in breach of the Working Time Regulations".