March 2017

You’ve got the job! ............ Oh wait!

We all saw what happened at the Oscars last week. A nightmare for all involved except for those cringing at home. This got us here at Empire HQ thinking about all the mishaps and missteps that have happened over the years, many of these revolve around recruitment.

We have heard some examples of the wrong candidate being phoned to be told they have got the job; people not being told whether they have been successful or simply poor general business practice.

As you will know, Empire has launched a new recruitment service, specialising in HR, business support, technical and engineering which aims to ensure that the best and most suitable people fill your most important roles. Recruitment can be a minefield at times, potential discrimination claims at every stage, ensuring you attract a diverse yet suitable group of applicants, etc.

Why use Empire Recruitment?

All agencies say they are specialists, focus on quality and form ‘real’ relationships with clients. In our experience that’s not always the case……so we won’t tell you that, instead we will simply make you a promise:

Our Promise to Clients

Let us reduce your cost of hire, support your brand and attract the right people whilst saving you time and money.

Please see the recruitment section of our website for more information or call our Empire Recruitment hotline 01224 701704
ECJ rules that it is not direct discrimination to ban the headscarf at work, but there are caveats

The European Court has ruled in favour of an employer who dismissed an employee who continued to wear a headscarf as an expression of her Muslim faith despite a rule stating that religious symbols were not permitted in the workplace.

The decision was based on the view that as long as all religious symbols were banned, it could not be argued that one particular group was being singled out for discrimination.

In the case of Achbita vs G4S the court ruled that the dismissal was fair as the aim of wanting a 'neutral image' was legitimate and that the employee had broken the unwritten rules prohibiting religious symbols. The court added that it is important that as G4S wanted to project the image of neutrality they need to look at why Ms Achbita could not be moved to a non-customer facing role.

The statement from the court read;

“The court of justice, finds that G4S’s internal rule refers to the wearing of visible signs of political, philosophical or religious beliefs and therefore covers any manifestation of such beliefs without distinction. The rule thus treats all employees to the undertaking in the same way, notably by requiring them, generally and without any differentiation, to dress neutrally”

The reaction to the decision has been varied. Some, like French Presidential candidate François Fillon praised the ruling, stating that it will help social cohesion and social peace in France. Unsurprisingly however, religious groups have been alarmed at the decision, with The Conference of European Rabbis saying that this ruling makes it clear that faith communities are no longer welcome in Europe. Maryam H’madoun from the Open Society of Justice Initiative said that it discriminated against people who wanted to express their religion in their dress. She went on to say that although this will affect all religions it will disproportionately affect Muslim women, nearly all of whom wear a head scarf with varying degrees of facial coverage.

Campaigners for a secular society believe that the Court’s decision was sensible as they think that when this law is applied equally to all it can’t be reasonably argued that it constitutes less favourable treatment for any particular group.

This is clearly a contentious area of law so please call Empire to seek advice and discuss potential risks before introducing or changing a dress code policy.

Call Empire in 01224 701383
Dismissing staff on long term sickness – What is fair?

The Court of Appeal has stated that dismissing an employee on long term sickness is not necessarily unfair, ruling on the case of *O’Brien vs Bolton St Catherine’s Academy*. Teacher, Georgina O’Brien, was attacked at the secondary school, she was not hurt and returned to work shortly after. After a few weeks however, she went off sick with stress claiming that she did not feel safe in some parts of the school and that the school had not taken the aggressive behaviour by the students seriously enough.

After being off sick for over a year, the school attempted to seek information on when she would be able to return and what adjustments that could be made to facilitate her return. This information was not forthcoming and Ms O’Brien did not attend a meeting as she felt it would make her too upset. She did however, fill in a questionnaire, but referred crucial questions about the time of her return to her GP who could not be confident in giving an accurate timescale.

The school dismissed her on the grounds of capability after following the school’s procedures around sickness management. Ms O’Brien appealed and produced a fit note during the appeal hearing stating that her return to work was imminent, but the school were dubious about its authenticity due to the sudden improvement in her health. Her dismissal was upheld.

Ms O’Brien subsequently won her Employment tribunal for unfair dismissal and disability discrimination but this was later overturned by the EAT. The Court of Appeal restored the original decision and gave some guidance to employers where they are unsure when an employee is going to return to work.

1. It is not necessarily unfair for an employer to dismiss an employee who has been off sick for more than 12 months with no certainty when they may return. Where it is simple for an employee to ask for a little more time to recover, the employer does need some finality.
2. When deciding whether or not to dismiss, the impact on the employer must be significant for the dismissal to be justified. A tribunal will need to see evidence of the disruption in order the make the decision.
3. When an employee produces medical evidence on appeal, the decision must be fair based on the evidence available at the time of the appeal hearing.

In this case the Court of Appeal ruled against the school, stating that when Ms O’Brien produced the updated fit note at the appeal it would have been reasonable to look for further medical evidence, therefore they didn’t meet the conditions made in point 3.
This case could be very useful for employers as it makes it clear that they cannot be expected to wait indefinitely for the employee to return and that if they can prove disruption to the business this will help their case. It is important therefore for employers to take a note of where disruption has occurred as this will be needed if they want to rely on it later. However it also emphasises the importance of obtaining up to date medical evidence to support any decision to dismiss.

**Empire can assist with cases relating to absence, please call 01224 701383**
Ask the Expert

This month, our HR and Employment Law Consultant Roslyn Smith talks about agency workers and Part-time workers regulations.

Q: Are agency workers covered by the Part-time Workers Regulations?

A: Workers (as well as employees) are covered by the Part-time Worker Regulations. However, whether an agency worker is covered will depend on the circumstances. The worker would need to consider who they are employed by because the rights conferred by the Regulations exist in relation to the worker's employer. For the worker to have a claim, they must also show that there is an actual full-time comparator, and the comparator must be employed by the same employer, under the same type of contract and engaged in the same or broadly similar work. It is therefore likely that the worker would need to establish that they are employed by the client (as opposed to the Agency). Even if they could do that, they would still need to show that there is a comparator, on the same type of contract, working for that employer. It is also possible that, if they are a worker of the agency, and the agency has a comparable full-time worker working for the same client then it may be possible to pursue the claim that way.

If a part-time worker can show that there is a comparator, they may be able to make tribunal claims that they have experienced less favourable treatment than a full-time comparator, or been unfairly dismissed due to their part time status if they have full employment status. It is important to note that part-time employees do not need the two-year qualifying service in order to make an unfair dismissal claim.
Upcoming Events

Anderson, Anderson and Brown are running a course on Anti-Bribery, Fraud and Corporate Governance on 25th April. If you are interested in attending, please see details below.

Training Course

We would be delighted if you could join us for our specialist training course on:

Anti-Bribery, Fraud & Corporate Governance

Date: Tuesday, 25th April 2017
Time: 9:00am - 12:15pm
Venue: AAB, Kingshill View, Prime Four Business Park, Kingswells, Aberdeen, AB15 8PU
Cost: £250 for first delegate
      £200 for each additional delegate per organisation

Details:
For HR and Finance Managers who are looking to enhance corporate governance and embed effective Anti-Bribery and Fraud policies and measures to safeguard their business from the threat of bribery, fraud and other types of wrongdoing.
For more information please see attached flyer.

If you, or a colleague, are keen to attend please RSVP to training@aab.uk