



Individual Highlights:

Page 1

*No smoke without fire(ing)!

* Dress Codes and Discrimination

Page 2

*Flexible Working

* Take care to avoid claims!

No Smoke without Fire(ing)!

A dismissal of an employee breaking the smoking ban is likely to be fair if the employer's no-smoking policy:

- Specifies that smoking in an unauthorised place is breaking the law, and will result in disciplinary action, and possibly dismissal.
- Has been communicated to all employees and has been applied consistently.

Treating employees differently for breaking the smoking ban could result in claims for breach of mutual trust and confidence and constructive dismissal.

What should employers do?

We recommend that a clear statement on smoking should be included in your employee staff Painter and Cole's template handbook includes the following statement:

"Smoking in enclosed areas in any UK workplace is unlawful. Breaches of these rules will be regarded as misconduct, and smoking on smoke-free premises or in vehicles will be a disciplinary offence and may lead to dismissal..."

Dress Codes and Discrimination

A dress code requiring employees to act against their religious beliefs risks being indirectly discriminatory, although it may be possible for an employer to objectively justify such a code. Most religious observances can be accommodated in the workplace and employers should be reasonable in their approach to dress. An employee who loses a claim for direct or indirect discrimination, but can show that they were treated less favourably than other people after making the allegations, might still bring a successful claim of victimisation.

Example:

Azmi v Kirklees MBC is the much – publicised claim by a devout Muslim teaching support worker in a C of E junior school that she was discriminated against on the grounds of religious belief when she was suspended because she refused to comply with an instruction not

to wear a niqab, which covered her head and face save for her eyes, in the presence of male members of staff when teaching. The EAT upheld the case. This shows that employers can justify restrictions on religious dress in the workplace where they are able to demonstrate that it would otherwise interfere with job performance and ways of accommodating the employee's beliefs have been explored.

What should employers do?

Employers need to tread carefully when introducing dress codes and understand that members of certain ethnic or religious groups are subject to religious or cultural requirements in terms of clothing and appearance. These requirements should be accommodated where possible and where it is reasonable to do so.



Flexible Working - Update

The recent Queen's Speech announced the intention to extend the right to request flexible working. At present only parents of children under 6 years or disabled children under 18 years and - since April - carers, have the right to make such requests.

The Independent Review will consider whether the right should apply to parents of all children up to the age of 11 years or include those with children as old as 17.

What action should employers take?

Employers need to ensure that they adhere to current legislation and

have systems in place to adequately consider requests for flexible working from parents/carers (with appropriately aged children).

Many employers have gone beyond the legal requirements by providing carers policies and work/life balance initiatives. A 2007 survey of employment by the CBI found that 74% of employers saw the right to request flexible working as having a positive impact on employee relations.

Take care to avoid claims!

In a recent case, **Deadman v Bristol City Council 2007**, the employee alleged that his stress had arisen from the way the employer had notified him of disciplinary proceedings - by leaving a letter on his desk.

The employee argued that such insensitive conduct was a breach of contract, which caused his illness and loss of earnings

The court disagreed. It held that there was no contractual duty on an employer to act sensitively and, in any event, it was not reasonably foreseeable that the employee would suffer psychiatric illness.

What action should employers take?

Whilst this case was unsuccessful, employers should tread carefully when dealing with staff who raise grievances or who are subject to disciplinary procedures, to avoid potential claims for breach of contract.

ADDRESS: 70a Guarlford Road, Malvern, Worcs WR14 3QT
TELEPHONE: 07815 090139 / 07833 907724
EMAIL: info@painterandcole-humanresources.co.uk