

Common Employment Law Claims

Insight for business owners and risk managers—provided by **Crendon Insurance Brokers Ltd**

Skilled employees are the backbone of any successful organisation. In the past, these valuable employees did not always get the fair treatment they deserved. As a result, numerous regulations were passed to ensure that every person gets treated reasonably when at work.

Significant changes to past employment laws opened up whole new areas of risk for employers, leaving them to redesign workplace policies in an attempt to limit their exposures. Employers today don't just need to make sure that they follow all the rules; they need to ensure that employees follow them as well. To manage this risk, most companies create a human resources team that is able to give advice and look out for the well-being of workers.

The landscape of employment law is continually evolving. With every new piece of legislation or court decision, employers learn about workplace

discrimination and employee rights that previously may not have been relevant. To protect both employees and the company, management must stay up to date on the risks and issues inherent to the employer-employee relationship.

Unfair Dismissal

“Unfair dismissal” is a claim made by employees whose employment was terminated for reasons perceived by the employee to be unfair. Whistle-blowing, discrimination, taking leave for maternity/paternity care and missing work for jury service are all reasons that employers have (wrongly) used to fire employees. The Employment Tribunal may award the employee compensation if they find the employer unfairly dismissed the employee.

Hiring

Often reported as one of the most dangerous times for employers, the hiring process can be a drawn-out event where an inappropriate question can lead to expensive litigation for a company.

Employers cannot discriminate based on race, colour, nationality, sex, disability, age, religion, sexual orientation, gender, marital status, or union membership in the recruitment process. There are no laws restricting the gathering of information on race or ethnicity in the hiring process; however, applicants are not required to respond. Health checks may also be required if it is a legal requirement of the job, but a disability should not be used as a reason to conduct one. It should depend on the nature and the disability and the nature of the job.

The best method to avoid the appearance of discrimination is to be as clear as possible about job requirements. When doing interviews, only ask questions directly related to the position, and make no implication that the interview is a job offer. Small talk can be essential for getting a feel for an employee, but conversational questions posed during this time can be as much of risk as any official question. Interviewers should always prepare a list of official questions for an applicant to answer.

Non-criminal Action

Offensive and litigation-worthy actions against employees are not just limited to termination of employment. Ranging from assault to defamation of character, there are any number of civil offences that can land a company in a legal action. The following are the most common:

Negligence

Though it comes in several specific forms, negligence is usually the suit that follows an incident the employer was indirectly responsible for. Negligence is typically claimed by employees who were affected by the actions of another worker. Affected employees blame employers for being irresponsible in their decision to hire (or continue to employ) an individual who is a known threat in the workplace.

Harassment is possibly the biggest source of negligence claims. Employers are held responsible for the workplace environment. If direct acts of harassment from co-workers, vendors or customers are not dealt with immediately, claims could be made that manager negligence led to a hostile work environment. Any vendors and contractors should fill in signed agreements affirming that they will abide by company harassment policies.

In all situations of reports of misconduct or punishment, it is essential that managers thoroughly investigate the situation and respond quickly and appropriately. Since legal actions could be the result of punishing or not punishing the alleged offender, managers should document everything and discuss the situation with others only as necessary.

Personal Facts

Employers, especially those who hire certain positions that allow for a Disclosure and Barring Service (DBS) check, should take caution to prevent any breaches of privacy. Any leak of an employee's personal information can violate the Data Protection Act and make the employer liable for compensation. At any point when personal information is disclosed from employee to management, the employee should fill in a form of written consent.

Employers need to take special care while conducting DBS checks during the hiring process; it is likely the most sensitive information that will ever be handled by the company. If a DBS check is allowed for a certain job, application forms should clearly state the requirement of a DBS check and present guidelines for how the information will be used.

Connected with this, tort suits will often be filed because employees thought they had private use of something that was, in fact, company property. The most common instance of this is email records. Employees have sued their employers for firing them over company emails. Though usually unsuccessful if clear handbook policies are in place, these claims are avoidable by having employees sign disclosure agreements when they are hired. Additionally, reminders about company rights (email ownership, locker searches) should be posted around the workplace.

Mistakes

The greatest threat to employers from employees usually starts with the employer making a mistake. An email or small talk might not be received as intended, or a general statement of idealism could be misconstrued as a promise. Employers and managers must take time to understand their exposures.

As stated earlier, employees are an essential part of any business. For employers, the employer-employee relationship is ripe for potential miscommunications. Review your company's handbook so you know what everyone is supposed to understand and what rights are to be expected.

In the end, no company is perfect and a mistake from a manager or employee could result in costly litigation, regardless of the tribunal's decision. Employment Practices Liability insurance can provide cover for employer risks inherent to your organisation and the unsanctioned actions of employees. Contact **Crendon Insurance Brokers Ltd** to discuss your company's exposure and how you can prepare for imminent risks.