



ActifHR

Where people matter...

May 2016 Update

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

The story that made us smile was the employee who put in a request to work flexibly to avoid his family.....

In this edition we report on:

- Dealing with Reference Requests
 - Ten top HR tips for losing in the Employment Tribunal
 - Do you have to extend PHI cover for employees who are over 60?
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Dealing with Reference Requests

A reference is far from being a box ticking exercise and can cause employers worry depending upon the circumstances the employee leaves under. What do you say to a new employer if the employee has underperformed, misbehaved, or is just not the sort of person you'd happily recommend to other employers?

Do you have to write a reference? You could say no - although if your refusal is due to a discriminatory reason - or they had brought a discrimination claim then be careful.

In what form should the reference be? It is increasingly common to give basic references - just stating what the employee did, dates employed and that they had a clean disciplinary record

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for example. Other employers go a lot further detailing their work capabilities, how they got on with colleagues and attitude. Be careful about giving out details on sickness if you are asked - it is acceptable to state the number of days off work in say a 12 month period but not the reason of the sickness (as this may be breaching Data Protection rules by giving out sensitive personal information).

The bottom line is that as long as it is not misleading, the reference can be as bland as you like. It does not have to be detailed or comprehensive - which is often the way employers write references for employees who leave under a cloud. In this scenario to give a simple statement of facts can often get around the problem - although be careful stating this is your policy of reference writing if you give much more detailed references for other employees who are 'good leavers'.

What about an employee who resigns half way through a disciplinary process for serious misconduct? You need to weigh up being fair to the employee but balance that with being truthful to the new employer, particularly if it a serious misconduct issue, which perhaps the new employer should know about. Be careful in telling new employers about allegations of misconduct that have not run their full course. Unless you have carried out a proper investigation and had reasonable grounds for believing the misconduct had happened, it would be negligent to mention it in a reference. Of course if you had already concluded the disciplinary process and a sanction had been given and the new employer asks about the disciplinary record this would be different.

Employers: opinion can be dangerous territory, whichever type of employee you are dealing with, avoid subjectivity - stick to the facts. And remember be just as careful when giving a verbal reference.

Contact us if you need help with Employment contracts and reference requests

10 Top Tips for Losing an Employment Tribunal Claim

There are 3 mantras we always recommend employers to stick by:

- be reasonable
- be consistent
- be nice - until it is time to not be nice

Here are our top 10 tips:

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1. Don't have Company policies cluttering up the office unless your managers use them
2. Don't allow office banter to get out of hand
3. Don't duck dealing with performance issues with bland appraisals which don't highlight -
problems
4. Don't hope grievances will just go away - don't ignore them
5. Don't create a culture that appeals are never successful and nothing is ever agreed to
6. Don't panic when an employee tells you they are pregnant - just be more careful
7. Never allow a friend/spouse to be a companion at a disciplinary meeting - it depends 8.
Don't write disparaging comments about employees to other managers on email
9. Don't allow employees to work in different ways than set out in their contracts -
and then when you need it try and revert to the contract
10. Don't ignore employees when overworked/stressed by thinking they should 'man up'

Employers: if your line managers are consistent, stick to the facts and deal with issues fairly as they arise it will go a long way.

Contact us if you need help with any of these

Refusing to extend PHI cover beyond age of 60 is not age discrimination

In this recent case, the employer's decision not to extend the PHI policy introduced in 2007 to provide cover to age 65 to an employee was not found to be direct age discrimination. She could not benefit from the new PHI policy because she was already claiming under the previous policy. She did not meet the conditions of the new scheme as she was not actively working immediately before beginning to claim.

This decision clearly held that if an employer ceases to make PHI payments on the grounds that the insurance provider's rules state that benefits will cease at that age then this will not constitute direct age discrimination on the part of the employer. However, in this case the PHI scheme was entered into prior to the age discrimination legislation coming into effect and at that stage it was common practice to have set retirement ages.

Still this decision emphasises the importance of employers having clear and precise wording in contracts or handbooks when referring to benefits, including PHI schemes. This is

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important to protect employers from liability for having to continue to provide benefits if for any reason the insurance provider ceases to provide the benefits or refuses to provide them in the first place.

Employers should also note that under the Equality Act 2010 employers are able to cease offering PHI and other insured benefits at the age of 65 or state pension age, whichever is higher.

Employers: if your line managers are consistent, stick to the facts and deal with issues fairly as they arise it will go a long way.

Contact us if you need any help with wording in your contracts or handbooks

Caroline Robertson, CEO

Qualified as a Solicitor in 1999.

Caroline has a wealth of experience supporting business clients with practical hands on HR advice.

Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations.



John Wade

John has successfully led several SME sized businesses as Operations Director and COO. His experience includes managing businesses and coaching business owners through development. John has led redundancy, disciplinary and grievance procedures. He is renowned for solving problems quickly, efficiently and fairly.



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