



ActifHR

Where people matter..

May 2024 Update

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

In this Edition we report on:

- The first 100 days of a new hire
 - Volunteer was a 'worker'
 - Individual liability for discrimination
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The first 100 days of a new hire

Recruitment, preboarding and onboarding processes are the golden opportunity for businesses to make a good impression on candidates and new starters. So why do some still get it drastically wrong?

Around 1 in 5 employees do not make it through their probationary period. This may be because the employee finds the role is not for them or simply that they did not meet the expectations of the employer, for the role they were brought in to do.

When you look deeper, this may be because the interview process did not properly explain the expectations of the role or seek examples from the employee of work done previously, to take a view on their experience level and capability.

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Some employees state that the lack of professionalism at the start of their employment, with a haphazard employee documentation process and lack of induction, training and support has made them feel as if the organisation did not have proper processes in place.

Employer: use the recruitment stage to properly test the candidates and make sure the offer process, induction and review are done properly.

Contact us: we can assist with interviews, job specs, induction and probationary development plans to make sure your employee is on track.

Volunteer was a 'worker'

In the recent case of *Groom v Maritime and Coastguard Agency*, the court has considered the question of whether a volunteer was a 'worker' when carrying out some activities which attracted a right to remuneration.

The claimant volunteered for the coastguard rescue service. The handbook stated that the relationship was a "voluntary two-way commitment where no contract of employment exists". The documentation also included provisions stating that volunteers were expected to comply with a code of conduct and maintain competence, which including through training.

Importantly, volunteers were also entitled to remuneration for some activities. After the volunteer's membership was terminated following a disciplinary hearing, the claimant issued a claim with regard to workers' rights.

Initially the tribunal held that the claimant was not a worker, as there was no automatic right to remuneration for any activities. On appeal, it was found that the right to remuneration was the important factor and the claimant was a worker when he carried out activities for which he was entitled to remuneration.

Employers: make sure you are aware if you pay a volunteer for anything they do they may become a 'worker' for those activities.

Contact us: we can assist with volunteer arrangements.

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Individual liability for discrimination

Where acts committed by an employee in the course of their employment are found to be discriminatory and meet the test for individual liability, those employees are liable regardless of whether the employer is also found to be liable for their discriminatory conduct.

In the case of *Baldwin v Cleves School and others*, the court upheld the claims made against the school arising from an email sent by the mentor teacher and a comment in a report completed by the headteacher.

However, it dismissed the equivalent claims and found against the mentor teacher and headteacher because it held that their acts were misguided attempts to address a complex situation.

On appeal the court disagreed with the tribunal and held that if a discriminatory act took place and the act amounts to a breach of the Equality Act 2010 by the employer, the court is bound to conclude that the individual is liable.

There is a statutory defence to this (broadly, where the individual reasonably relies on a statement by the employer that the act is not in breach of discrimination protections).

Employers: be aware that if an employer is found to be liable this does not take away the individual's liability.

Contact us: if you have a grievance lodged or dealing with a disciplinary.

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Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

Caroline Robertson, Director



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