

# ELiACTION

Employment Law in Action

# Working Practices

Ros Hammond

# Overview of your obligations

- Clear contractual terms in accordance with the Employment Rights Act
- Right to work in the UK  
<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>
- Pay – tax obligations
- Pension scheme – Auto Enrolment  
<https://www.thepensionsregulator.gov.uk>
- Compliance with statutory rights – ACAS  
<https://www.acas.org.uk/>
- Health and Safety for more than 5 employees  
<https://www.hse.gov.uk/pubns/indg449.pdf>

# Employed, Worker or Self Employed

## **Employed:**

- The three principle tests that must be met are:
  - personal service;
  - mutuality of obligation; and
  - control

Employment rights such as unfair dismissal, redundancy, working time, contractual terms, family leave, right to request flexible working, discrimination claim

# Employed, Worker or Self Employed

## **Worker:**

- The elements required to satisfy the statutory definition of a worker under section 230(3)(b) of ERA 1996 are:
  - There must be a contract between the worker and the employer
  - The contract must require personal service
  - No mutuality of obligation (unless accepted work)
  - The other party to the contract is not the customer or client of any business undertaking or profession carried on by the individual

# Employed, Worker or Self Employed

## **Worker Rights**

- Holiday
- National minimum wage
- Working hours
- Discrimination claims
- No right to bring an unfair dismissal or statutory redundancy

# Employed, Worker or Self Employed

## **Self employed:**

- run your business for yourself and take responsibility for its success or failure
- have several customers at the same time
- can decide how, where and when you do your work (control)
- can hire other people at your own expense to help you or to do the work for you
- Right of substitution (same level)
- provide the main items of equipment to do your work
- are responsible for finishing any unsatisfactory work in your own time
- charge an agreed fixed price for your work
- sell goods or services to make a profit

# Employed, Worker or Self Employed

## Cases

- Yorkshire Window Company Ltd v Parkes UKEAT/0484/09
- Uber BV and others v Aslam and others [2021] UKSC 5
- Pimlico Plumbers Ltd and Mullins v Smith [2018] UKSC 29



# Working Time

- Required to work an average of / no more than 48 hours a week, unless they specifically opt-out
- Entitled to 5.6 weeks' paid time off per year
- 20-minute rest break (for working days longer than six hours)
- 11 consecutive hours rest between working days
- Given a minimum of one day off per week or two days every 2 weeks
- Night shifts limited to eight hours - in any 24-hour period
- Restricted to 8-hours per day and 40-hours per week if aged 16-18

# DBS Checks

You can request:

- a basic check, which shows unspent convictions and conditional cautions
- a standard check, which shows spent and unspent convictions and cautions
- an enhanced check, which shows the same as a standard check plus any information held by local police that's considered relevant to the role
- an enhanced check with barred lists, which shows the same as an enhanced check plus whether the applicant is on the list of people barred from doing the role

# DBS Checks

You can only request a basic check for yourself.

<https://www.gov.uk/request-copy-criminal-record>

<https://www.gov.uk/find-out-dbs-check> - to find out what type of check to have

# DBS Checks

DBS Customer Services

[customerservices@dbb.gov.uk](mailto:customerservices@dbb.gov.uk)

Telephone: 0300 0200 190

Welsh: 0300 0200 191

Minicom: 0300 0200 192

International: +44 151 676 9390

Monday to Friday, 8am to 6pm (9am to 5pm for appeals and disputes)

Saturday, 10am to 5pm

# Dealing with Poor Performance and Capability

# Basic Elements of Fairness

- Raise and deal with issues **promptly**
- Act **consistently**
- **Investigate** to establish the facts
- **Inform** employee of the problem
- Give opportunity to **put case**
- Right to be **accompanied**
- Right of **appeal**

# **‘Nipping things in the bud’ before things need to become formal**



# Informal Counselling

- Opportunity to discuss performance or minor misconduct informally
- Individual has the chance to improve performance /cease minor misconduct
- If further acts, revert to formal procedure
- Meeting notes retained on individual's file
- Should be used in '*first instance*' or minor misconduct cases



# Principles

- Fully investigate, establish facts, decide if formal disciplinary hearing needed
- Take witness statements from the employee and relevant witnesses
- Gather evidence to support any allegations, consider what is admissible

# Disciplinary Process

- Ensure employee is aware of required standard of conduct
  - rules explained
- Consistent action
- Employee is aware of consequences resulting from misconduct
- Gross misconduct clearly defined
- Employee is written to at each stage
- Right to be accompanied

# Formal Disciplinary Sanctions

## ➤ **1st Written Warning**

- remains on file for 6 months

## ➤ **Final Written Warning**

- for more serious matters, or where employee has not improved or committed a further act of misconduct

- remains on file for 12 months

## ➤ **Dismissal – Procedural or Summary**

## ➤ **Alternative Sanctions**

# Right to appeal

- Employee has the right to appeal against a disciplinary sanction
- Any such appeal should be made in writing to the nominated manager within five working days of receipt of the disciplinary outcome letter

# Gross Misconduct

- A single act of misconduct that is serious enough on its own to justify the employee's summary dismissal
- Employers must clearly define Gross Misconduct
- Employees and managers need to understand the types of conduct that will lead to dismissal

# Establish the Facts

## **British Homes Stores Ltd v Burchell 1980 ICR 303**

Following a thorough investigation, the employer must have a genuine belief of the employee's guilt based on reasonable grounds

# Clear Codes of Conduct

***Lock v Cardiff Railway Company Ltd*** IRLR (1998) 358 EAT

It is necessary to set out clearly what will constitute summary dismissal, else dismissal for gross misconduct will be too harsh, as no prior warning given

# Bringing a Claim

## **Discrimination**

- No minimum service required by the individual

## **Unfair Dismissal**

- Two years service



# Contractual Obligations

- Every employment contract contains an implied term that the employee will serve their employer with good faith and fidelity. In *Attorney General v Blake* [1998] 2 WLR 805, Lord Woolf MR described this duty as follows:
- *"The employee must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third party without the informed consent of his employer".*

# Employment Law in Action Ltd

[www.eliaction.com](http://www.eliaction.com)

01494 817193

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