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## Employment Law Update November

### Recent Tribunals

#### This Newsletter

Our Employment Law Newsletters usually focus on forthcoming changes to employment law with the purpose of keeping our readers informed. As there are no more relevant employment law changes scheduled for the remainder of 2013 this newsletter will focus on the outcome of a recent employment tribunal and what we can learn from it;

#### Policies and Procedures

The policies and procedures within your company are tools that are there to be used on a daily basis. They are a set of rules and guidelines which set out the standards and expectations to be complied with by all employees. Companies will have policies and procedures in place to ensure that they are compliant with employment law and to also ensure that they are acting in line with ACAS guidelines.

#### Austin vs. West Sussex County Council

The case of Austin vs. West Sussex County Council 2012 is a good example of how dangerous it can be to not follow your own policies and procedures correctly. A female colleague of Mr Austin made a complaint about him which the management deemed to be sexual harassment, even though this phrase was not used by the female employee herself. Before a hearing could even take place the employer assumed the guilt of Mr Austin and due to the behaviour towards him Mr Austin felt he had no other option but to resign.

Mr Austin then raised a claim against his employer, now the respondent, for sex discrimination and constructive dismissal. He felt that if a woman were in the same position she would have been treated differently, but because of his gender he was treated in a much more accusatory way, leading him to feel he had no other option but to resign.

The Employment Tribunal found in favour of Mr Austin and stated that the respondent had made some serious flaws in their disciplinary procedure. Mr Austin had not been sufficiently informed of the allegations made against him, he only knew they were of a sexual nature, and therefore could not properly prepare and defend himself. He was not allowed access to witness statements or any other evidence and therefore had no ability to challenge it. Mr Austin was suspended from work due to the allegations, but due to being suspended over the telephone and then the suspension never being reviewed, the respondent was in breach of their own policy, i.e. they did not follow what was written in their own policy. The respondent then, after all of this, proceeded to carry out a disciplinary hearing against Mr Austin when he was too ill to attend.

Due to the actions of the respondent the Employment Tribunal rewarded Mr Austin a total of £169,000 for being a victim of sexual harassment and constructive dismissal. It was also recommended to the respondent that they review their disciplinary procedure in line with the ACAS code of practice and ensure their management are accurately trained.

## What This May Mean For You

This case highlights a mistake that is commonly made in many companies. It was stated during the case that assuming an employee's guilt prior to the conclusion of disciplinary proceedings is a common pitfall for employers. However, even though this is a common problem, this case highlights for the reader how dangerous it is to not follow policies and procedures carefully. Therefore it is recommended that internal activities are checked to ensure your policies and procedures are being carried out correctly, for the sake of both your company and your employees.

## How We Can Help

If this newsletter leaves you concerned about the way policies and procedures are acted upon in your company, please contact us for a confidential "no obligation" chat. One of the services we regularly provide to our current clients is reviewing and updating policies and procedures. Or if you are concerned your management may make the same mistakes whilst disciplining an employee, we also provide training on handling disciplinary and grievances cases.

If you have any queries relating to any of the subjects raised within this newsletter then please don't hesitate to contact us at [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk)

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing [hradvice@hasslefreehr.co.uk](mailto:hradvice@hasslefreehr.co.uk) or by calling 02476 664092.

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