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Human Resources & Health and Safety

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Do you employ staff?

Interesting Employment Law News

Sexual Harassment

On 17th May 2019, the Trade Union Congress (TUC) released the results of a nation-wide survey into LGBT (Lesbian, Gay, Bisexual, Transgender) workplace sexual harassment. Both sexual orientation and gender reassignment are protected characteristics under the Equality Act 2010, but concerningly the survey has shown that 68% of the responding individuals have suffered sexual harassment at work when the following definition is considered:

"unwanted conduct of a sexual nature which had the purpose, or effect, of violating their dignity or creating an intimidating, degrading, hostile or offensive environment."

Findings of the survey included:

- 42% of respondents had received unwanted comments or questions about their sex life
- 27% of respondents had received unwanted verbal sexual advances
- 16% of respondents felt the sexual harassment affected their mental health
- 16% of respondents left their job because of the sexual harassment

The TUC is now calling on the Government to impose a mandatory duty on employers to protect LGBT employees from harassment. The government is currently taking steps to introduce a statutory code of practice on sexual harassment and we will provide more information when this becomes available.

Epsom St Helier University v Starling (April 2019): Constructive Dismissal Case Law

In this case an employee resigned after she received an informal “improvement notice” after she committed a workplace error due to health reasons. The employee disputed the notice because, despite Company policy saying informal “improvement notices” should only be given after a meeting with the employee, no meeting to discuss the issue had taken place. Her employer decided the informal “improvement notice” should remain on her employee file. After leaving her employment, the employee claimed constructive dismissal.

An employment tribunal upheld her claim as there was no reason for the employer to not have discussed the error with her before issuing the notice. The tribunal went on to explain that this failure to follow internal procedures was likely to result in serious damage to the mutual trust and confidence between employer and employee. The employer disagreed with the ruling and attempted to appeal the decision, but the employment appeal tribunal agreed with the findings of the employment tribunal.

This case shows the importance of not only complying with the ACAS Code of practice for all disciplinary procedures, but for also complying with your own policies and procedures. Some employers do prefer to have the option of modifying procedures, but if you would like to do this, we would recommend a clearly worded clause that notifies employees that this is a possibility and to only apply it in justifiable circumstances.

Royal Mail Group Limited v Glassford (November 2018): Employer Reasonableness Case Law

An employee was placed on “suspended dismissal” after he attended work under the influence of alcohol on numerous occasions. During this period the employee also took an unauthorised absence which he claimed was to assist his mother coming out of hospital. His employer decided to dismiss, and he appealed, citing an alcohol problem that should have been taken into consideration and making reference to the Company’s policies and procedures that were in place to assist employee addictions. After consideration, the appealing officer upheld the dismissal due to the belief that the employee was not taking steps to manage his own addiction, regardless of the policies available.

The employee raised a claim for Unfair Dismissal, arguing his right to Time off for a Dependant had been breached. However, the employment tribunal found the actions of the employer to be procedurally and substantively fair. The tribunal found that the employee’s mother’s situation had been known about for several weeks, it had not been an emergency situation the employee had needed to respond to, but was actually used as an excuse to enable the employee to have time off work to drink and avoid management from his employer.

The employee appealed this decision, arguing that the Company should have taken more time to consider if dismissal was appropriate for someone who had recently acknowledged an alcohol problem. However, the employment appeal tribunal upheld the employment tribunals original decision, confirming that the employer had acted reasonably towards the employee because the alcoholism had been clearly acknowledged and considered during the appeal process.

This case shows the importance of acting reasonably and taking a measured approach to managing employees. Our clients often ask us “what does “reasonable” mean?”, which is the million-dollar question. Being reasonable means being fair. In the context of the above case, being reasonable was not dismissing the employee’s claims of alcoholism but giving them due consideration during the appeal process. Had the employer ignored the employee’s

defence, the employment tribunal may have decided that a fair process had not been followed, but instead the Company investigated how the employee managed / failed to manage his condition before forming the opinion that the dismissal was appropriate. It is easy to worry that having to be reasonable makes dismissals more difficult, but this case shows that this is not the case. Dismissing an employee is entirely possible, if it is done in a fair, objective and procedurally correct way.

How Can We Help

If you have any queries relating to the content of this newsletter, or any other HR related topic, please don't hesitate to contact us via hradvice@hasslefreehr.co.uk