



EMPLOYMENT CLUB UPDATE

Reynolds Parry Jones
SOLICITORS

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Merry Christmas

We at Reynolds Parry Jones would like to wish all of our readers a very merry Christmas and a happy and prosperous New Year. We hope that you have enjoyed our newsletter and membership of our Employment Club and have found it informative. However, if you have any comments or suggestions as to how we can improve it, please let us know.

Having a Firm's Xmas Party?

It's that time of year again and you may well be making the final arrangements for the Christmas party to reward your staff for all of their hard work over the past year. Without wishing to put a 'damper' on your festive arrangements, it may just be worth considering that you may well still be responsible for your employees and their antics at the firm's Christmas party.

Common problems include unwanted amorous advances, religious offence to the use and gifting of alcohol and personal injury claims, often sustained directly or indirectly from the liberal consumption of alcohol.

Firms have also been sued where their staff have been offended by politically incorrect after dinner speeches.

We do not propose to be prescriptive as to how you should avoid such problems as they will largely be a matter of common sense and preparation. Your duty is to take reasonable precautions. We would merely remind you that whilst our offices close on 21st December, we re-open on 27th December to advise you on any employment related issues that may arise from the festive season!

Vetting Applications Using Facebook—is it Legal?

Employers are increasingly vetting potential employees on internet sites such as Facebook before making the decision to recruit. However, are they acting lawfully?

The Information Commissioners Office has confirmed that just looking at such sites is not unlawful in itself. However, the use and storage of such information might constitute unlawful processing if any of the eight principles under the Data Protection Act 1998 have been breached.

Further information on this can be obtained from the Information Commissioner's website and will form the basis of future RPJ employment seminars.

Also, if information gleaned from such an internet site was used in

the recruitment process, then such use could be unlawful. For instance, if it was discovered that an applicant was homosexual, a member of a particular religious group or had particular philosophical beliefs and they were not employed because of this information, then they would be entitled to bring a discrimination claim.

Employers should remember that all employees and job applicants may bring a discrimination claim at any time in the employment process including before recruitment and post termination. There is no 'length of service' requirement as there is with unfair dismissal (1 year less period of notice).

Discrimination on Grounds of Accent

A British Asian call centre trainer from Northampton who was sent to work in Delhi has successfully sued Talk Talk Direct because he was discriminated against on grounds of his accent.

He was awarded damages for 'injury to feelings' and expenses after he was replaced with a "better English speaker" despite being employed for his technical, as opposed to customer service skills.

Although the case relates to an Asian accent, the case relates equally to other strong local accents and dialects. Employers should also note that if an employee is bullied or harassed in the workplace because of their accent, then it is likely that the employer will be found to be vicariously liable for the harassment.

Alcoholic Employee was Unfairly Dismissed

Wandsworth Council was found to have unfairly dismissed an alcoholic employee who turned up to work drunk (twice) because it had not supplied him with its alcohol policy and had not told the employee what steps he needed to take to avoid dismissal. Furthermore, his damages were NOT reduced on appeal for contributory conduct.

These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as sufficiently accurate or full to apply in any specific situation without first referring to us. We would be pleased to advise on any specific issues or problems. Please tick the box if you would prefer not to receive further Commercial Alerts from us