



FIVE EMPLOYMENT LAW RISKS FOR EMPLOYERS*

Employment Law can be complex. There are regular developments in Employment Law. We are setting out five common problems which employers can come across and need to be aware of.

1. HR policies and procedures.

Most employers will have policies and procedures dealing with disciplinary issues, performance management, grievance, equality and dignity at work. There are often challenges in making sure these policies are applied in a fair and consistent way. However, many employers do not have policies on such issues as whistleblowing, social media, email usage and the use of CCTV.

It is important that all employers should regularly check their employment policies. As an employer it is important to make sure that your policies and procedures are in line with changes in Employment Law.

2. Independent Contractors.

A new issue which is coming up regularly now is the issue of independent contractors. Where the relationship is more closely that of employer/employee then this can be costly for employers. If a person who is classified as an independent contractor is subsequently deemed to be an employee there can be issues relating to tax, pensions and significant legal issues. It is important that you as an employer make sure that you get appropriate legal advice before engaging anybody as an independent contractor. If considering taking on a person as an independent contractor there is a very useful Revenue Guide on this issue which sets out questions to be asked. Basically if more of the answers are on one side or the other the individual will be deemed to be an employee or a contractor. Simply calling somebody an independent contractor is not sufficient.



3. Contracts which are not fit for purpose.

Every employee is entitled to receive a document which complies with Section 3 of the Terms of Employment (Information) Act. However a contract is much more than this. Employers need to look at the issue of confidential information, intellectual property. They need to look at the issue of gardening leave, notice periods. Employers need to look at the issues such as restrictive covenants. These are complex areas and it is important that appropriate legal advice is obtained to make sure that your contracts are suitable for your company.

4. Retirement.

Employers must be aware that mandatory retirement ages are now difficult to enforce. As an employer you will need a clear policy on retirement ages and you must be able to show that there was objective basis for putting that retirement age in at the time that you inserted the retirement age in the contract. It is therefore important that appropriate document is put place at that time. We have a separate article on this important issue in this publication.

5. Employees leaving employment.

Dismissing an employee in breach of contract or without following fair procedures is a common mistake and can result in significant claims against you as an employer. There are strong legal protections for employees in such circumstances. You may in the case of some employees, particularly higher paid employees in senior positions, not only face a prospect of a claim to the Workplace Relations Commission but also to the High Court.

Conclusion

In dealing with Employment Law it is a specialist area of Law. It is important for you as an employer to make sure that you get advice from a specialist Employment Law firm. There are many such firms based around the country. Failing to obtain appropriate specialist advice can be more costly than getting appropriate advice and assistance from an employment lawyer at the start.



***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**