Our Top Tips to Avoid Employment Claims

Employment Law has an impact on the daily operations of every business. Employment relationships are highly regulated there are currently more than 40 pieces of employment legislation in force in Ireland. New legislation whether by way of an Act or by way of a Statutory Instrument are enacted frequently. It is difficult for employers to keep up to date with changes in Employment Law. However not knowing the law is not an excuse to an employment claim.

Our top tips are here to hopefully assist you avoid claims.

1. Use Probation Periods

It is important your contracts of employment set out a probationary period. Up to six months is normal. Try not to extend probationary periods. If any employee is not suitable it is better for you, as an employer that they leave early. Your probationary clauses should reserve the right to use a shortened disciplinary procedure or no disciplinary procedure during probation. Our advice is that you would use a shortened disciplinary procedure. As employees do not acquire rights under the Unfair Dismissal Legislation except in limited circumstances dismissing and employee within 12 months, if they are not suitable, will mean that they will not have, normally an Unfair Dismissal claim. You do have to be careful of the Equality Legislation to make sure that a person is not dismissed on any of the protected grounds.

2. Working Time Records

It is surprising the number of employers who lose cases under the Organisation of Working Time Act because of failure to have records. You should consider a digital clock in system. If you have a digital clock in system this should be checked regularly to make sure that you are in compliance. All employers must keep records of start and finishing times, hours worked each day and each week and leave granted to employees. These records must be kept for three years. Some employees are automatically entitled to these records such as mobile workers. Other workers can easily obtain these records by putting in a request under the Data Protection Act. In a working time case in the absence of records the burden of proof will be on the employer. Working time records, properly kept will identify to you if there are any breaches so that you can rectify them. They will also make sure that in any proceedings you are in a position to defend same with the best evidence.

3. Hiring Employees

If you are hiring an employee you should check whether there are any restrictive covenants or non compete covenants existing relating to their most recent employer. This will make sure potential legal actions from competitors are reduced. This confirmation could be included in the offer letter or the contract of employment. It is best practice to have the employee confirm in writing that there are no restrictive covenants or non compete clauses applying to their former employment.

It is also useful to get employees to confirm, in writing that information provided in their CV or as part of the application process is completely true and accurate. We advise that you include a clause stating that failure to provide true and accurate details may lead to dismissal or withdrawal of the offer.

4. Sick Leave

Your contracts and policies should be clear on how your employees communicate absences to you. It would be our view that you include a provision that a text message is not sufficient communication. You should set out clearly when a medical certificate is required. You should reserve the right to send employees for medical assessment with your medical advisor or with a medical practitioner nominated by you. Regular contact should be maintained with employees during sick leave to facilitate an early return to work.

To avoid claims you should be aware that while on sick leave employees will be entitled to at least to be paid public holidays for the first three months of the absence. This can be extended up to twelve months where an accident occurred in the workplace. Even if the employee is absent due to an accident outside the workplace you are still liable to pay public holidays for the first six months.

New legislation is being introduced which will provide that you must provide for holidays during sick leave to cover a period of up to fifteen months absence. In effect this means that the employee will retain those rights to holidays, on their return to work for up to five weeks holidays. The entitlement only applies to the statutory entitlements being 20 days per annum. This is a cost to employers but failure to provide for is may result in a claim under the Organisation of Working Time Act where compensation in addition to any monetary loss can be awarded. There is no reason why you should fall foul of this test.

5. Do You Have Employees from Different Countries?

If you have employees who do not have English as their first language then you may be vulnerable to a personal injury or accident at work claim. To minimise potential claims appropriate training should take place for every system of work. These training and documentation should be in a language capable of being understood by the employee. It is useful to have employees complete a test after training to ensure the employee fully understands the procedure. This is just good health and safety prevention. Accidents in the workplace are a considerable cost to the employer is lost productivity, disruption to your business and the cost of increased insurance premiums.

To ensure the employees understand important provisions in your policies and procedures it is useful, where you have a multinational workforce, to ensure that appropriate documentation in a language likely to be understood by the employee is available to them. Certainly health and safety documentation should be in a language likely to be understood by them. Disciplinary and Grievance procedures also should be translated. It is very useful to have the contract of employment translated. There then can be no issue but that the employee would have understood the terms and conditions of their employment. It is beneficial to make sure that it is stated in any documentation that the English version will always take precedence if there is any ambiguity or difference because of the translation.

6. Do you have Employees who require a Work Permit.

This is can be subject to reviews by NERA and the Garda National Immigration Bureau.

You should make sure that you have up to date copies of all work permits on file for all employees requiring a work permit. New rules were introduced in October 2014. Make sure that senior managers the rules relating to work permits.

7. Have a Social Media Policy.

Nearly everybody nowadays is on social media. Your good name and the good name of your business can be destroyed over night because of inappropriate postings on social media. You should have a very clear and precise and well communicated policy to employees which makes it clear that any failure to comply with your policy can result in dismissals. Where you have any social media sites operated by your business it is important that passwords to these sites are retained by management to avoid a disgruntled employee from posting inappropriate material on a social media site where you may not know then who posted it.

8. Bullying and Harassment

Bullying and harassment claims are now arising quite frequently. It is important to have a bullying and harassment policy in place. If you receive a compliant it is important that the compliant is investigated. You should ensure that you have a dignity in the workplace policy posted where the employees will have access to same. You might want to consider mediation. Mediation can have a high success rate and can often stop litigation claims starting.

9. Make Sure your Managers Know What the Law is.

The individuals most likely to land you in an employment claim are senior managers right down to supervisors. It is important to have an annual meeting with managers and supervisors to highlight employment law trends and updates. It is important that managers and supervisors are advised on the law. Managers and supervisors should know the maximum hours which an employee can work. If you have proper time keeping records this should alert the company to any potential breaches which might arise. Managers and supervisors should be given a role to ensure compliance. Rest and break periods and notifications of requirements to work overtime often result in claims under the Organisation of Working Time Act. Managers and supervisors have a role in applying the Dignity in the Workplace Charter to minimise the risk to the company from an Equality claim. Making sure that managers and supervisors understand their role and their obligation to apply the law reduces the risk of claims against you as an employer.

We are a boutique law firm. We specialise in three areas of law. Employment Law is one of those. We are well known as employment solicitors. It is our job to know more than just the law. We know how to deliver relevant legal knowledge to you in business quickly, efficiently and in a cost effective way. We understand business.

We help employers manage people risks. We know how to and are well used to dealing with sensitive issues. We advise business how to reduce employment claim risks and disputes. We can provide Employment Law training to HR managers and those who are managing your employees.

The question we ask our commercial clients is which will be cheaper for you? Is it avoiding a claim or having to defend a claim. Defending a claim is always more costly in time and expenses than the cost of avoiding a claim.