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Employment pitfalls for SMEs

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Employment analysis: The Forum of Private Business has recently warned businesses of the risks of not paying suitable attention to employment law issues. Peter Doyle, senior partner at specialist employment law firm Doyle Clayton, discusses some of the employment issues facing small and medium-sized enterprises (SMEs).

What are the key employment law considerations for SMEs?

Very often the problems that SMEs face now are the same problems they've always faced:

- o how to deal with people who are not performing
- o how to deal with the long term sick
- o how to make redundancies, etc

New developments can catch SMEs unawares from time to time but the same old problems crop up again and again.

What employment law issues are currently challenging SMEs?

Flexible working and shared leave

One key new issue is flexibility of work. Flexible working rights started off informally with women returning from maternity leave requesting to work a different pattern than before. However, it was then extended to a formal right to request flexible working for working parents and then carers. The government has gone further by extending flexible working for everyone regardless of their circumstances (due to come into effect from 30 June 2014). There are also various family leave rights in the form of maternity, adoption, parental, and paternity leave.

Another area which is fairly complicated for SMEs is a person's ability to use their partner's unused maternity leave or adoption leave rights. This will be further complicated by the introduction of shared parental leave in April 2015 which will allow parents to share up to 52 weeks leave between them when a child is born or adopted, even enabling them to take leave at the same time.

People can get caught out on this if they don't understand all the grounds upon which employers can say no to a particular request or how they should go about dealing with it. Much of employment law is about the process or the procedure you follow. There are set reasons in the legislation for refusing a request and employers will have to rely on one of these. There is also a set procedure for considering a request, but this will become less proscribed when flexible working rights are extended in June 2014. If an employee asks to work flexibly you can't just say no--you have to consider the request properly and help them to understand your position. You may try to work out an accommodation but ultimately if the answer is no, both employer and employee must understand why the answer is no. So it's important that procedures are followed.

Mental health and disability

Another area that is difficult for SMEs to deal with concerns mental health issues and disability. Even very large companies have difficulties in dealing with these issues:

- o If someone is mentally ill what can we do to help them?
- o What can we do to support them?
- o What are we expected to do as an employer?
- o How much are we supposed to tolerate or accept if their behaviour is unacceptable or alternatively they are not present at work very much because of their condition or their absences are erratic?

That whole area is very difficult for SMEs to get a handle on and to come up with a sensible solution--the situation is made worse if the work situation has actually caused the person to have some kind of breakdown.

Both these areas are complex. But, if you take it down to a very simple level, mistakes are still made in that fair disciplinary and absence procedures are not followed and proper notes are not kept. One of the problems is that SMEs may decide they don't need HR support or they don't want lawyers because they want to save money. However, they can then make mistakes and lawyers or an HR consultancy are called in which costs money anyway.

Tribunals

When it comes to tribunals the government is generally speaking making things a little bit easier for SMEs. The introduction of tribunal fees for bringing claims means tribunal claims have gone down. We've had an increase in the length of service needed to bring an unfair dismissal claim (qualifying period from one year to two years) and the government has put a cap on unfair dismissal compensation by saying it's the lower of either one year's basic pay or the statutory maximum of £76,574.

How can SMEs best manage their employment arrangements?

SMEs should obtain good value for money support from people who are expert in their field, particularly in relation to basics such as:

- o disciplinary and grievance hearings
- o contracts and handbooks
- o employee training

Many SMEs may not have the resources to justify internal HR resources so a trusted external adviser is essential.

The best solution is to have very good value for money support from solicitors who give good practical commercial advice at a sensible price that the SME can afford. The insurance-backed services available, whether from solicitors or HR consultancies, may be cheap but there are distinct disadvantages in using this type of service. SMEs can and should go for more attractive options which are not saddled by the drawbacks of tribunal-type insurance schemes.

What are the challenges in dealing with employment disputes in SMEs?

I think the main thing is that SMEs may not have the internal resources, or access to good external advice, so they may not be aware of the issues that are raised by a particular problem and they go ahead and try and resolve it themselves.

SMEs should consider taking external advice before they take action. If they just go ahead they may make mistakes--particularly over disciplinary procedures, grievance procedures, reorganisations or redundancies.

Another challenge is not having detailed policies and procedures in place. Sometimes with SMEs we still see that they just haven't got round to updating things, or as they've grown they've not put in place more training for their managers or updated contracts or handbooks. As SMEs get bigger they need to think about

examining their structures and maybe how they document things--for example, why has someone been promoted over someone else? All too often you find that these records aren't in place.

What should lawyers advising SMEs do next?

Advise their clients to:

- o review policies and procedures
- o address training needs on flexible working rights and other areas
- o review how best to protect the business against leavers

Offering more attractive fee arrangements to give greater certainty over the legal spend is also sensible to encourage SMEs to take the next steps. Solicitors do not have to be traditional or conservative over how they charge for their services.

Interviewed by Fran Benson.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.