

Frequently Asked Questions on Employment, answered by John Pritchard

Q1.

I am fairly certain that one of my employees is stealing from me. Can I dismiss him without the fear an Employment Tribunal claim being made against me?

Answer:

Almost whatever the reason for the dismissal, an employer must follow established fair procedures. Although an employee with less than 12 months' continuous employment will not be able to make a claim of 'ordinary' unfair dismissal, it is nevertheless recommended that a fair procedure be followed in any event to ensure the reason for the dismissal is fully documented and the employee treated fairly.

Q2.

I have just received document from the Employment Tribunal that informs me of a claim by one of my former employees. What should I do?

Answer:

You must present a Response to the Employment Tribunal within 28 days of deemed receipt. The last date upon which the Response can be presented should be shown on the paperwork you have received from the Employment Tribunal. If you do not do so, judgment in default will be entered against you and you will be prevented from defending the claim. It would be sensible for you to seek legal advice promptly.

Q3.

My former salesperson has left the company and now works for a competitor. She is now seeking business from our customers. Her contract of employment contained restrictions preventing her from doing this but I have been told that 'they are not worth the paper they are written on'. Is this true?

Answer:

Not necessarily. The courts are now far less reluctant to enforce such contractual restrictions. However, the restrictions must go no further than reasonably protect the your company's legitimate business interests. Professionally drafted restrictions that are tailored to the employment circumstances usually have the best prospects of being enforced by the courts. You should not delay in seeking professional advice. If

you do delay, the court is likely to be reluctant to grant you an injunction to prevent your former employee breaching her contract.

Q4.

I wish to complain to the Employment Tribunal of unfair dismissal. Is there a time limit for doing so?

Answer:

Yes. The time limits for making claims in the Employment Tribunal are short and strictly enforced. Although extensions might apply or be granted in some circumstances, most employment related claims must be made within 3 months of the termination date or, in discrimination cases, within 3 months of the act of discrimination.

Q5.

I have just been made redundant but my former employer told me that I am not entitled to receive a statutory redundancy payment. Is this right?

Answer:

You must have been continuously employed for at least 2 years to become entitled to a statutory redundancy payment. If you have been employed for at least two years, you are entitled to make a claim in the Employment Tribunal. It would be sensible first to raise a written grievance with your former employer.

Q6.

Is it true that before I have the right to complain of unfair dismissal I must have been employed for 12 months?

Answer:

Not necessarily. Although you must have been continuously employed for 12 months before you have the right to complain of 'ordinary' unfair dismissal, if you have been dismissed for one of a number of certain reasons, for example, for having blown the whistle or because you are pregnant, then you do not need any qualifying period of employment. No qualifying period of employment is required if you wish to complain of discrimination – even job applicants can make such complaints.

