Know your rights

From the beginning of employment to termination, there are key employment law issues that businesses need to comply with, says David Seals

Issues of discrimination
It is unlawful for an employer to discriminate against an employee on the grounds of sex, race, disability, sexual orientation, religion or belief and age. Employers need to ensure that they adopt a fair recruitment process and do not discriminate on these grounds during the employment relationship. There is no limit to the sum of compensation that can be awarded to an employee where there has been a finding of discrimination, and damages can be increased if it is found that the employer’s behaviour was malicious or insulting.

Contracts of employment
Employers are under a legal obligation to issue a written statement of employment particulars to new employees within eight weeks of starting employment. The written statement should set out the main terms of employment, for example pay, hours of work and holiday entitlement. Any subsequent changes to the statement must be confirmed in writing within four weeks. An employee who wins at an employment tribunal against an employer who fails to issue a written statement of employment particulars may be entitled to receive any days not taken as holiday and on termination of their employment they are entitled to receive any days not taken as holiday on a pro rata basis.

Working time rules
Employees are generally subject to a maximum average working week of 48 hours. They can elect to opt out of this but this has to be in writing and can be withdrawn by giving the employer three months’ notice. Employers should implement a system for monitoring working time to ensure compliance with the Working Time Regulations 1998.

Employees are entitled to rest breaks at work, for example, they must be allowed at least 20 minutes’ rest after six hours’ work.

Family-friendly rights
This is the collective term for rights such as paid maternity leave, paternity rights and flexible working. Maternity pay rights have been significantly increased and there are Government plans to extend the right to paternity leave by introducing ‘additional paternal leave’. Also, there is a right for parents of young or disabled children to request shorter or different hours. An employer has to give such a request reasonable consideration, but the employer has to submit a reasoned request in writing and the arrangement should be on a permanent, rather than a temporary, basis. In practice such requests are easy to refuse but employees need to take care over the procedure adopted. If there is a refusal in working time, an employer is entitled to adjust an employee’s salary accordingly. There is also a right to take unpaid leave to care for a child or other dependants in emergencies.

Take a break
The statutory holiday entitlement increased on 1 October 2007 to 24 days for employees who work a five-day week. Those working part-time are entitled to the same level of holiday pro rata. However, there is still no general right to have paid leave on public holidays, contrary to what some think, though Bank and public holidays can be included in an employee’s minimum entitlement. Employers will usually reserve a right to refuse holidays when necessary to protect a legitimate business interest. Employees are entitled to receive normal pay for days taken as holiday and on termination of their employment they are entitled to receive any days not taken as holiday on a pro rata basis.

Cases of harassment
Every employer must take effective measures to ensure that their employees are not subject to verbal or physical bullying or harassment from their fellow employees, bosses, customers or suppliers. This duty is not confined to behaviour within the working day and can extend to out of work activities such as social functions. It’s important not to ignore this issue particularly as employers can be liable for their employee’s unlawful behaviour even if they are unaware of it.

Business sales and outsourcing
The Transfers of Undertakings (Protection of Employment) Regulations (TUPE) preserve employees’ terms and conditions when a business or undertaking, or part of one, is transferred from an employer. Under the provisos of TUPE any employees working in a business or relevant part or function will transfer to the new employer or outsourced service provider on their existing contracts. Affected employees have a right to be informed and consulted about the change in advance. Dismissals connected to a TUPE transfer will often be construed as automatically unfair.

Changing terms and conditions
Sometimes it will be necessary for an employer to change the terms and conditions of an employment contract because of economic circumstances. The business may need to be reorganised, moved to a different location or there may be a need to change because of new laws and regulations. If an employer wishes to make changes they should consult with an employee or a representative (such as a trade union representative). A contract of employment may include ‘flexibility clauses’, which give an employer the right to change certain conditions (for example, shift patterns) or a ‘mobility clause’, allowing changes to an employer’s job location. A flexibility clause that is vaguely worded (for example, ‘the employer reserves the right to change terms from time to time’) cannot be used to bring in unreasonable changes. This is because there’s an implied term of ‘mutual trust and confidence’ in all contracts that requires the employer not to act unreasonably.

Cases of dismissal
At some stage most businesses will face the difficult task of having to dismiss an employee or a group of employees. Dismissal is serious and has to be handled correctly. Each year usually half of all claims to the employment tribunal are about unfair dismissal. First, there is a legal minimum notice period, which is one week after one month’s employment, rising from the end of the second year at a rate of one week for each completed year up to 12 weeks’ notice after 12 years’ employment. Employees dismissed after 51 weeks of employment can claim for ‘unfair dismissal’, which could cost an employer up to around £70,000. In most cases, there is a statutory procedure which will need to be followed by an employer. Failure to do so will result in an automatically unfair dismissal. Briefly, the procedure involves: (1) written notice stating why the employer is contemplating dismissal; (2) a formal meeting to discuss the matter with the employee; (3) a decision from that meeting with a right to appeal.

Redundancy
Genuine redundancy is a fair reason for dismissal but an employer must ensure that they follow a fair procedure when deciding which employees are to be made redundant. Selection criteria must be objective and care needs to be taken with regard to criteria that could now be age discriminatory, for example, “last in, first out”. Redundant employees are entitled to notice or payment in lieu of notice and employees with two or more years’ service are also entitled to (tax free) statutory redundancy pay.

About the author
David Seals is a solicitor at Morrisons Solicitors LLP, a member of the ASPD. ASPD has over 27 members in the UK offering professional services to dentists. The members include major banks and firms of solicitors, accountants, financial advisers, practice valuers and sales agents, insurance advisers and leasing and finance companies. For further information on the ASPD, its members and services, call 0800 458 6773 or visit www.aspd.co.uk.