

The Five Most Common 'Employment Myths' Held By businesses



Failing to follow the correct procedures for employee misconduct, minimum pay and even basic employment contracts, is putting employers at risk of potentially costly claims.

Each year there is a continuing growth in employment legislation, together with legal rulings on the application of current law. It is therefore not surprising that employers become confused and fail to understand how they should be treating their employees.

All businesses looking to stay within the law and save money should go back to basics and address their fundamental employment practices, especially when it comes to the hiring and firing of staff. Our experience has shown the following to be the five most common 'Employment Myths'.

1. "Smaller firms are exempt from paying staff the national minimum wage"

HM Revenue and Customs recently reported this as one of the top excuses of companies not paying the minimum wage. However, the national minimum wage must be paid to all employees, regardless of the size of the company. Enforcement teams are in place to identify companies not meeting these regulations.

2. "A monthly paid employee's period of notice is one month"

This is a widely held misconception, as the notice to be given by the employer is the longer of that shown in the contract or that laid down in legislation. The Employment Rights Act 1996 provides minimum legal notice periods that have to be given by the employer as follows:

- Over one month but less than two years' service - one week
- Two or more years' service - one week per complete year of service, to a maximum of twelve weeks. This is irrespective of how frequently someone is paid.

However, the employee only has to give one week's notice regardless of the number of years service, unless a longer period has been agreed in the contract.

3. "There is no contract of employment as there is nothing in writing"

A contract does not have to be written down and can take the form of a verbal agreement, after which the employer is legally required to honour certain employment rights.

Some of the terms of the contract may well appear in offer letters or other correspondence and may have also resulted from verbal agreements given at interview or at meetings both before and after employment commences.

4. "An employer can sack someone on the spot without following any form of procedure providing the employee is guilty of gross misconduct"

This is highly risky, leaving the employer open to an unfair dismissal claim if the employee has over a year's service and a possible breach of contract claim for those with under a year's service if contractual procedures are not followed. Even where an employee is caught red handed, stealing from their employer, the employer must follow a fair procedure before dismissing the employee and they should be given an opportunity to explain themselves at a properly conducted meeting before decisions are made.

5. "An employee with less than one year's service can be dismissed for any reason"

It is true that an employee with less than a year's service has fewer employment rights than someone who has a year's service or more, in that they cannot make a general unfair dismissal claim. However, there are over 20 employment issues where an employee with under one year's service can make an unfair dismissal complaint. For example, these include all forms of discrimination, which now include age discrimination, dismissal for asserting a statutory right or in connection with their trade union membership.

The 'Employment Myths' we have identified are commonplace in business practice, but in actual fact are little more than employers' folklaw. While many small business owners often remark on the cost and time involved in complying with complicated 'red tape', it's actually the most basic employment principles that are tripping them up.

However, most employers are unlikely to flout the law deliberately and many are probably unaware of the error of their ways. So it is important for employers to consider their employment practices now, rather than make mistakes that could cost them dearly later. Employers unsure about any aspect of employment law are advised to seek professional advice.