

PROTECTION AGAINST EMPLOYMENT TRIBUNAL CLAIMS

Written by Rebecca Blake



Rebecca Blake explains how you can protect your practice against 'opportunistic' employment and HR claims

If you've ever been on a ski trip, you will know that preparation and practise is key, that is all worthwhile when you are carving your way down the slopes, rather than stuck in the emergency room at the bottom, but, it is surprising to see that so many employers are falling down by 'winging it' when it comes to dealing with employment and HR matters in their practice.

WHY IS IT SO IMPORTANT?

Employment disputes are stressful, costly and time consuming, and since the abolition of employment tribunal fees in July last year, the amount of single employment tribunal claims had already increased in September 2017 by 64%. There are many mistaken beliefs that employers hold when it comes to employment law and so getting advice from friends or family who run practices doesn't mean that you're in the clear... do any of these sound familiar to you?:

- You can't discriminate against someone unless they're an employee
- You can dismiss someone in their probationary period for any reason and without following process and they can't make a claim
- Job applicants can't make claims, it is only employees that can.

These are just some of the things that employers mistakenly believe to be true and, as making a claim is now free of charge, we are also expecting an influx of 'opportunistic claimants' who apply for jobs waiting to catch you out on mistakes like these. With this in mind, now is the time to protect your practice before you end up with a claim on your hands.

REBECCA BLAKE

Rebecca is an employment and HR specialist at FTA Law.



1. REMEMBER YOUR DOCUMENTATION

It is a legal requirement for employers to give their employees a written statement of employment particulars and not having one in place is one of the first failings that can lead to employment tribunal claims.

An employment contract governs the employment relationship and individuals purchasing practices often presume that these things will be in order, but unfortunately, we come across many dental practices where their contracts breach current legislation, or they do not have any contracts in place at all. Well-drafted associate agreements and/or hygienist agreements are also vital to get right. Without the correct drafting, individuals may be held to be employees rather than self-employed and so the issues continue.

2. TAKE OUT INSURANCE

It's not the most exciting thing, but not having the right insurance in place could be a costly mistake. Did you know that in legal fees alone it could cost you tens of thousands of pounds simply to defend an employment tribunal claim and that even if you win the case, costs were awarded in a mere 0.57% of cases in 2016/17?

Then you also have to take into account any compensation if you lose the case (which is uncapped in discrimination claims), or any out of court settlement. Taking out indemnity insurance that covers these costs makes sure that your practice is protected in the event that someone does make a claim.

3. LEARN THE RULES OF THE SLOPE

Before dealing with any situations at your practice, look to see if you have a policy or ▶

procedure that you should be following, this will form the basis of what you do next.

Sometimes it is not always clear which policy or procedure to follow, but conducting an investigation into the matter will help you to figure this out. Although you might think that you are doing the 'right thing' in a situation, you need to know that you are following the correct policy or procedure, as you can end up losing an employment tribunal claim simply on these grounds.

4. TAKE LESSONS TO APPLY WHAT YOU'VE LEARNT

Practise makes perfect, but first you've got to learn the basics. Training courses on matters such as how to conduct disciplinary and grievance procedures, or how to deal with sickness absence, are a great starting point for any practice owner or manager. These courses can often be tailored to you and your practice and can help to deal with some of the trickier issues such as what to do if someone is off sick with work-related stress, or what to do if someone raises a grievance during a disciplinary investigation.

5. REMEMBER YOUR HELMET

Obtaining legal advice from a dentally aware employment and HR specialist can help to protect your practice from getting hurt. The earlier you seek advice, the more likely it is that you will get the outcome that you want and signing up to an employment and HR subscription service when you buy your practice is a great way of achieving commercial outcomes whilst preventing claims.

Even if you have run your practice for many years, it's not too late to seek advice to make sure that your practice is up to scratch when it comes to employment and HR.

6. IF YOU FALL, GET BACK UP AND TRY AGAIN

If you haven't followed the correct process, don't be afraid to get back up and start again. Not everyone gets things right first time and often correcting what you've done wrong is much better than burying your head in the snow hoping that someone won't make a claim.

Of course, you do need to think about matters commercially and so seeking advice as to the most cost-effective way forward, whilst still minimising risk, is generally the best option here.

7. THINK ABOUT PROGRESSION

Employment law is one of the most fast-paced areas of law and so your practice needs to keep progressing as the law changes.

Annual reviews of contracts, policies and procedures are advisable to make sure that you are up to date with current



ENHANCED

CPD

AIMS AND OBJECTIVES

To provide strategies for practice principals to carry out recruitment and team management in order to avoid the possibility of an employment tribunal.

EXPECTED OUTCOMES

Correctly answering the CPD questions on page 66 shows the reader has understood the recommended ways in which to avoid being called to an employment tribunal.

VERIFIABLE CPD HOURS: 1

TOPIC: Practice management

GDC DEVELOPMENT OUTCOME: B

legislation and you can also sign up to receive employment law updates, which report major changes that you should be aware of.

8. ENJOY THE APRÈS-SKI!

Rewarding your staff for all the hard work they do is more important than you may think... whether it's the end of year party, using an employee rewards scheme or a simple well done, staff members who feel appreciated are generally less likely to make claims.

Although it doesn't negate the importance the other protections, building good relationships with your staff, treating them fairly, and with respect, is a great help when it comes to keeping yourself out of the employment tribunal.

Whilst spending time dealing with employment and HR may not be top of your priorities, don't be the person who wonders why they came crashing down the mountain, take the time to get it right and protect your practice, so you can enjoy the spectacular view from the top! ●

MORE INFORMATION

FTA Law is a full service independent law firm providing bespoke legal solutions to the healthcare sector.

TELEPHONE: 0113 834 6035

EMAIL: rebecca.blake@fta-law.com

WEBSITE: www.fta-law.com

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@ThePDmag