Beststart Human Resources

HR Heads Up

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Keep references factual

Most employers, when faced with a reference request for a former employee, are only too happy to provide the necessary information. But what if you are faced with a request for an individual whose performance was not satisfactory, attendance was poor, or who was subject to disciplinary action resulting in their dismissal?

If you give a written or oral reference, you, as the employer, have a duty to take reasonable care to ensure it is true, accurate and fair, and above all that it is not misleading. Crossing that line into opinion, making misrepresentations or outright lies could make a reference illegal. Legal actions based on false information made in job references are typically based on defamation laws which prohibit anyone, including employers, from knowingly publishing or spreading false information about another person.

It is also important to understand the rights that an employee has in asking to see a reference that has been written about them, which are provided under the Data Protection Act.

If you are the former employer and someone asks for a copy of a confidential reference you have written about them, you do not have to provide it. However, you may choose to if it would seem reasonable as the reference is wholly or largely factual in nature.

If you are the new employer, in most circumstances you should provide the information received in a reference, or at least a substantial part of it, to the person it is about. However, there may be circumstances where it would not be appropriate for you to release a reference, such as where there is a realistic threat of violence or intimidation by the individual towards the referee. You should consider whether it is possible to conceal the identity of the referee, or to provide a summary of the content of the reference. This may protect the identity of the referee, while providing the individual with an overview of what the reference says about them.

Image courtesy of iosphere at FreeDigitalPhotos.net

So what are the pitfalls of providing a negative reference? If the former employee thinks they have been given an unfair or misleading reference, they may be able to claim damages in a court. If this were to happen you would be expected to provide evidence to back up the reference. The former employee must be able to show that the reference was either misleading or inaccurate and led to them 'suffering a loss', such as a job offer being withdrawn.

A sensible approach is to only provide basic, factual information about the former employee like dates of employment, job title, and salary. Stating that this is your policy on the reference you give means that the new employer does not read anything into the fact that you have not provided fuller details. However, consistency is key and whatever policy is adopted, it should be used for all reference requests.

If you would like further help on how to give or receive references, please contact Beststart HR on 01438 747 747 or enquiries@beststarthr.com.

Shared parental leave for grandparents?

It probably will not surprise many employers to know that the take up of Shared Parental Leave (SPL) has been low. The HMRC data, obtained by law firm EMW, showed only 3,000 new parents took SPL between January and March 2016 compared with the 52,000 fathers and 155,000 mothers taking paternity and maternity leave in an equivalent time period in 2013/14 before the legislation came in to effect.

The reasons for the low take up are likely to be numerous, including lack of awareness amongst employees and employers, especially in SMEs and the stigma that still exists in many industries surrounding fathers taking long periods of time away from their careers. In addition, the complexity of the rules around how it works for both the mother and father are unlikely to be helping and many employers are struggling with how to implement it in businesses with low levels of administration and HR resource.

The situation is unlikely to become simpler with the Government considering extending SPL to grandparents. Many experts in the field feel that instead, the Government should be focussing on creating a simpler way to offer shared leave on an affordable part-time basis.

For more guidance or if you have queries about SPL, contact Beststart HR.

CONTENTS

Legal News

How do you handle ill-health dismissals?

In the recent case of Holmes v Qinetiq Ltd, the Employment Appeal Tribunal (EAT) considered for the first time whether the power to increase or decrease an award of compensation for failure to comply with the ACAS Code of Practice extends to dismissals on the grounds of ill health. The EAT concluded that the ACAS Code does not cover such dismissals and is instead limited to disciplinary and poor performance situations.

Employers are required to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures and if they do not then employees may be entitled to an increase in compensation of up to 25%.

In this case, the Employment Tribunal (ET) had awarded the claimant, a security guard, compensation for unfair dismissal and unlawful discrimination. He had been dismissed on the grounds of ill health on the basis that he was no longer capable of doing his job but no disciplinary procedure had been invoked. At the tribunal the employer conceded that the dismissal was unfair because it had failed to obtain an up to date Occupational Health report about the claimant's ability to attend work. However, the decision regarding increased compensation was referred to the EAT.

The EAT's decision regarding whether the power to increase compensation for failure to comply with the requirements of the relevant ACAS Code of Practice extends to dismissal on ground of ill health was based on the issue of culpability. It stated that the Code "does not apply to internal procedures operated by an employer concerning an employee's alleged incapability to do the job arising from ill health or sickness absence and nothing more". The Code's application is therefore limited to disciplinary situations arising from misconduct or poor performance.

What is the impact of this decision for employers?

In practice, this means that in scenarios where employers dismiss employees for ill health, they are not obliged to follow the ACAS Code of Practice and hence a full dismissal process. This does not mean that a formal process should not be followed – it is essential that communication is maintained throughout with the employee and medical opinion should be sought.

For anyone who currently has an employee on long-term sickness, please seek advice from Beststart HR on how to successfully manage the situation.

Image courtesy of Stuart Miles at FreeDigitalPhotos.net

Donovan v Greggs plc

An Employment Tribunal (ET) held that Greggs' decision to dismiss an employee for not having washed their hands before re-entering the food production area, was fair as an experienced employee should have appreciated the seriousness of breaching his employer's hygiene rules. Greggs took the decision to dismiss Donovan, a bakery worker with 11 years' service in the job, after he admitted not washing his hands before re-entering the food production area. Greggs took the decision to dismiss Donovan because of its zero-tolerance approach to breaches of its hygiene rules. The employee acknowledged that he had failed to wash his hands in a breach of the policy but argued that the dismissal was outside the band of reasonable responses and was too harsh.

The employment tribunal concluded that the employer's decision to dismiss fell within the range of reasonable responses. The tribunal accepted that the company's zero tolerance approach to food hygiene breaches was reasonable in a competitive industry where potential breaches could easily be traced back to them and have serious business and reputational consequences.

This case highlights the need for companies to ensure their disciplinary procedures are tailored to their industry and the needs of the particular organisation giving clear examples of conduct which will be considered gross misconduct.

			LEGAL TIMETABLE
1 Oct 2016	National Minimum Wage rises take affect for those between 21 and 24 years of age	April 2018	Changes to tax treatment of termination payments introduced
Autumn 2016	Increase to salary threshold for Tier 2 migrant workers	TBC	Reforms to rules on trade union ballots for taking industrial action
Early 2017	Tax-free childcare scheme comes into force replacing childcare vouchers	TBC	Caste to be introduced as an aspect of race under the Equality Act 2010

How are you growing your top line? by Francis Hooke, Director of Hooke & Co.

Imagine an IT support / outsourcing business, let us call it Grow IT Limited. They generate 100 decent leads per year, and manage to convert 50% into sales. If the company is selling monthly support agreements then they will sell 12 times to each client per year. On average, each invoice raised is worth £500. A very simple turnover calculation would be:

100 Leads x 50% Conversion x 12 Sales Per Year x £500 Per Sale = £300,000

It is not uncommon to find businesses of this size running ad hoc sales processes, with no performance measurement, no software being used, and no systematic efforts to improve conversion. In this scenario, what actions could they take to improve their business performance?

The typical actions they should take are:

- Write down what the sales process should be, perhaps half a dozen main steps.
- Set up a simple (and free) customer relationship management (CRM) system like Capsule (www.capsulecrm.com).
- Load all of their prospects into the CRM system, so they can see what their sales pipeline looks like.
- Set standard actions to proactively move prospects through the pipeline.
- Set follow-up schedules, so that if a prospect does not respond to an invitation, or tells them to "come back in three months' time", then they religiously follow-up, and let nothing slip through the net.

With these actions the company can be highly confident of closing more sales, and doing so sooner. Going back to our example, if Grow IT Limited were able to boost conversion from 50% to 55% – a modest 10% improvement – keeping all other variables the same, they would achieve a £30,000 turnover increase, i.e.:

100 Leads x 55% Conversion x 12 Sales Per Year x £500 Per Sale = £330,000

Now the main investment for this small hypothetical business will be time – a few thousand pounds to set things up and then communicating with prospects more frequently and running more sales meetings.

With a better sales process in place they might next decide to work on generating more leads through boosting marketing performance.

Where there is unsystematic sales processes, there is often unsystematic marketing processes. By analysing where leads are coming from, reducing spend on ineffective marketing channels and redirecting budget to the channels that are productive, SMEs often achieve good improvements with minimal extra spend.

the challenge for many small business owners is creating the time to work on these [sales] actions and completing them efficiently.

Returning to our example company, if they were able to generate ten more leads over the course of the year – another modest improvement – then their sales figures become:

110 Leads x 55% Conversion x 12 Sales Per Year x £500 Per Sale = £363,000

A £63,000 increase in turnover, or 21% improvement, is very respectable, especially as this would be achieved without them spending much money.

Whilst these calculations are simplistic, the results are perfectly achievable if the actions are undertaken. It all looks so simple on paper and the challenge for many small business owners is creating the time to work on these actions and completing them efficiently. The guidance of a credible expert can really make the difference helping you manage each stage of your sales strategy and ensuring it comes to life delivering the sales growth you target.

There are numerous SME business consultants, so what might a SME look for when choosing an adviser that will mean they select an expert that stands out from the crowd?

Features might include:

- Rigour – systematic measurement of your performance data and publishing the results.
- Flexibility – offer pay-as-you-go services.
- Minimise risk – give a 100% satisfaction guarantee.
- Price transparency – publish their charges

As we approach the fourth quarter of 2016, no doubt many companies are starting to look at how they grow their top line in 2017, is now the time to get that expert help to take your company to the next level?

Hooke & Co. work with organisations with turnovers from £50K to £10M per annum on their business strategy. They systematically measure performance across 14 criteria and re-measure performance every three months to track changes over time. A live feed of their average client performance improvements is published on their website www.HookeCo.com. At the time of writing, on average, their Small Business Strategy clients achieved 12.7% improvement after three months of working with them and went on to achieve a 21.4% improvement after six months.

Start to see your business like you have never seen it before and take advantage of Hooke & Co.'s Free Business Health Check by visiting http://hooke.co/sf.

Hiring Contractors or Freelancers? New changes to enforce IR35

Image courtesy of Stuart Miles at FreeDigitalPhotos.net

Determining whether someone is self-employed or an employee is something that has troubled business owners, HR professionals and HMRC for many years. In the main, this is because employment status has ramifications on tax and national insurance contributions; employment law, and most recently pension membership – so getting it wrong can be very costly.

For most businesses that contract out for services, the status of the relationship between employer and sub-contractor has always been a 'grey area'. After years of trying, and largely failing, to apply existing rules – commonly referred to as IR35 – the Government is now seeking new ways to tackle this area of 'disguised employment'.

IR35 uses employment legislation and case law to determine employment status. This is a highly complex area and requires experts to interpret the law but essentially the key tests boil down to where the contractor is controlled, whether they can send a substitute in their place and where there is 'mutuality of obligation'. The latter means that the employer is obliged to offer the worker work and the worker obliged to take it.

Under the current rules, contractors and freelancers are responsible for determining their employment status, or in some cases their limited company should. This applies to both the public and private sectors.

From April 2017 however, there is Government proposed legislation that will place the responsibility for compliance squarely on the shoulders of the public sector body, agency or third party employer (this includes consultancies and outsourcing specialists). The engager will therefore be liable for associated income tax and National Insurance Contributions (NICs). The tax burden for the contractor or freelancer will be roughly the same as if they were a permanent employee, although they will not gain any employment rights.

Currently, the proposed new IR35 legislation will come into force only in the public sector, with potential for a roll out into the private sector in due course. Suggested solutions include: *an 80% test* – if a contractor or freelancer derives 80% or more of his/her income from a single source they should be deemed an employee of that organisation; *a 6 month rule* – if an engagement lasts more than, for example, six months it would automatically be deemed an employment relationship.

If this legislation goes through, it will be the smaller, less resourced, SMEs who may struggle with compliance. If you need advice with IR35, please contact Beststart Human Resources on 01438 747747 or email enquiries@beststarthr.com

Peace of mind if things blow up

HR has a reputation for putting a straitjacket on Managers. Beststart's expert HR Specialists are different, presenting creative and strategic solutions to employee related problems. Knowing and managing the risks associated with various courses of action allows Managers to act decisively and with confidence.

We understand that most businesses can tolerate some uncertainty but the threat of big tribunal costs can be unsettling and financially unpalatable; now there is a solution.

We have teamed up with Irwin Mitchell Solicitors - one of the UK's major law firms - to offer peace of mind through their IMHR*plus* platform. Irwin Mitchell are renowned for their forward thinking and this is reflected in IMHR*plus*' main benefits:

- A fixed price employment law and HR advisory service that complements Beststart's hands on HR consultancy
- Direct and unlimited access to a dedicated employment law solicitor – no call centres, no telephone queuing and consistent advice
- Optional insurance for employment tribunal claims. Irwin Mitchell will defend a claim and all representation costs will be covered by the insurer. Awards insurance will help pay successful compensation claims against you

To view the complete IMHR*plus* benefits visit https://www.imhrplus.com/about

Registered Address:
1st Floor, Building 16, Gateway 1000,
Arlington Business Park, Whittle Way,
Stevenage, Herts., SG1 2FP
Registration Number: 06371479

Our Second Office Address ("Streets HR"):
Enterprise House, 38 Tyndall Court
Commerce Road, Lynch Wood
Peterborough, Cambridgeshire, PE2 6LR

T +44 (0)1438 747 747
enquiries@beststarthr.com
www.beststarthr.com