

Webinar Q&A

Protecting your organisation from people related risks

We have listed the questions received prior to and during our webinar hosted on 11 February 2021. Please see our responses below.

- **Have you got an example of where a response to a health question might not be satisfactory, especially in an office environment? I'm struggling to see the point of asking the question as it feels as though its just too risky.**

There may be many responses that will mean that further support may be necessary, such as dyslexia. In terms of when a response might not be regarded as satisfactory, I assume you mean a response that indicates safe employment is not realistic or achievable. That may be rare in the office environment but it is possible.

- **If an employee does not declare dyslexia and a history of anxiety and depression (long term medication) on their medical questionnaire and following successful completion of their probation period their performance declines to the point that colleagues have no confidence in her, does this complicate the capability process?**

Not really. Such an employee would be disabled and that will mean that any capability process will need to be handled with care. The non disclosure is probably not relevant to the capability process

- **Probation - What if they do the job well, but are rude to colleagues?**

Providing you are satisfied that the behaviour towards colleagues is inappropriate, then you might want to discipline the individual or even use it as a basis to bring the probationary period to an end. Disruption within the team or bad feeling will not make for a productive work environment. The employee is unlikely to have sufficient service for an unfair dismissal claim, so as long as you are satisfied that complaints are not being made about them due to a protected characteristic (with the pre-existing team 'ganging up') we would usually recommend dismissal.

- **With companies now using Teams or Zoom where general chat can take place would it be reasonable for a business to monitor 'chat' between employees or use it for disciplinary purposes if required? Who owns this type of comms?**

No, not if the chat room has been set up for the purposes of chat. There would be an expectation of privacy. If you were to monitor you should tell staff that that is what you are doing.

- **If you are going to dismiss during probation for poor performance, do you compromise your position by offering a longer notice period than specified in the contract, for example to give them more support/time to find a new role in times like these (Covid) when it's harder to find a role.**

There is a risk of this, if the probationary period is inadvertently 'completed'. However, so long as the position is very clearly set out in writing, identifying the fact of termination, the reason for it, and that 'long notice' is being given, then the risk should be managed effectively.

- **Post lockdown there seems to be a growing theme for employers to move to a more 'hybrid working model', where employees are given the choice / freedom to live and work anyway and freedom around hours and more output working - what are the risks contractually and how to minimise them?**

We are increasingly being asked to advise in relation to such requests, which raise a number of potentially complex issues. The main concerns for an employer where the request is to work remotely in the UK will be around monitoring the employee's performance, and so an agreement as to the particular 'outputs' expected may help. Another area of concern might be mitigated by requiring the employee to attend at the workplace periodically and for certain key events, so that contact with the rest of their team is maintained. There are further issues in relation to the health and safety of the workstation, where an audit/assessment of the arrangements is likely to be necessary.

Where the request from the employee is that they be allowed to base themselves abroad, the added risks are that the employee may have employment rights as a result of their working in another country, and there are likely to be additional considerations around tax and social security liabilities. There is also the risk that the employer may be taken to have set up an 'establishment' in the particular overseas country which might give rise to taxation and other regulatory obligations which the employer may have unwittingly incurred. Many of those obligations cannot be effectively managed through the contract with the employee, and will require more detailed professional (likely legal and accounting) advice.



Rustom Tata
Head of Employment

0207 822 1590
Rustom.Tata@dmhstallard.com



Simon Bellm
Partner, Employment

01293 558511
Simon.Bellm@dmhstallard.com

DISCLAIMER

This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking, or refraining from taking, any action as a result of the contents of this document. DMH Stallard LLP is a limited liability partnership registered in England (registered number OC338287). Its registered office is Griffin House, 135 High Street, Crawley, West Sussex, RH10 1DQ