



# EMPLOYMENT LAW ESSENTIALS



## **GAME OF THRONES:** HOW HR MISTAKES SINK EMPIRES

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### 1.

#### // MAKE SURE THAT YOU ARE UP-TO-DATE ON CHANGES TO EMPLOYMENT LAW

- Ignorance of the law is not a defence.
- Sign up to legal updates.
- Be proactive instead of reactive: know what is on the horizon far enough in advance to be able to position your organisation ready for change and manage outcomes.
- By the time the law has changed, it could already be too late, exposing your organisation to potential financial/legal liabilities and negative publicity and may damage employee relations.

### 2.

#### // TEAM MOVES AND BREACHES OF RESTRICTIVE COVENANTS/ CONFIDENTIALITY

- It's a myth that restrictive covenants are not enforceable: they can be enforceable if they protect a legitimate business interest and are no wider than reasonably necessary.
- Ensure your contracts and settlement agreements include appropriate restrictive covenants and provisions regarding confidential information and return of any company property (which covers electronic data and devices).
- Know how to spot the signs and act quickly to protect the business – delay could have damaging consequences.
- Take steps to preserve evidence. Digital communications leave a record – consider whether forensic experts are needed.
- Take specialist legal advice early.



## 3.

### // COLLECTIVE REDUNDANCIES

- 20 or more dismissals in a rolling 90-day period – make sure you have a system to keep track of the total numbers of dismissals.
- At one ‘establishment’ e.g. workplace/site/branch – this is narrower than the employer as a whole.
- Early termination of fixed-term contracts count.
- Consequences for failure to comply: up to 90 days’ gross pay for each dismissed employee, plus negative publicity and impact on employee relations.
- It is not possible to compromise claims for failure to inform and consult with appropriate representatives under a settlement agreement.

## 5.

### // PRIVILEGE

- Make sure you understand when communications from external/in-house lawyers are ‘legally privileged’.
- Privilege is not the same thing as confidentiality.
- Privilege can be ‘lost’ if you or members of your organisation (e.g. senior management/HR) forward privileged communications on within the organisation.
- Potentially serious consequences for inadvertently ‘waiving’ privilege. Documents may need to be disclosed during litigation.
- Take steps to ensure that you and the relevant members of your organisation understand and protect privileged communications.

## 4.

### // MANAGING POOR PERFORMANCE

- Policies and procedures are important but they need to be implemented. Ensure managers are well-trained and take responsibility for managing poor performance.
- Issues should be dealt with early – make the most of probationary periods and extend them (where permitted by your contracts).
- Be consistent: reasons for inconsistent treatment (e.g. skipping stages of process) should be justified and documented.
- Consider whether there are any reasons for poor performance e.g. health issues particularly where this may give rise to disability protection and the duty to make reasonable adjustments.
- Document process throughout to protect business in case of contentious dismissals.

## 6.

### // IMMIGRATION

- Know the law and keep up-to-date. The Immigration Rules (and, more particularly, Home Office policy) change regularly and at short notice.
- There are potential fines and criminal liability for failure to comply. There may also be bad publicity and you could lose your ability to sponsor migrant workers.
- Prevention of illegal working checks and record-keeping obligations are essential. Ensure you have a method for checking that yours are adequate (e.g. regular audits?).
- Be aware of the impact that complying with immigration requirements can have on the recruitment timetable. Failing to comply prior to making an offer can add 2-3 months to the start date.
- Ensure immigration policies are implemented consistently to avoid allegations of race discrimination.