

Halloween Horror Stories from Ogier's Employment Law team

Insights - 31/10/2016

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Werewolves. Zombies. Vampires. They may be scary, but we've got something even scarier - the most terrifying, nerve-tingling, stomach-churning employment law horror stories that you can imagine. Read on if you dare...

When Halloween is here, the monsters appear...

Just like werewolves coming out when the Full Moon rises, some employees might undergo their own beastly transformations when the Hallowe'en celebrations take place at work.

There's no need to spoil the Halloween celebrations in the office (which can be fun, and which can be great for blowing off steam and getting teams together) but the evolving employment and discrimination laws can also bring challenges. Employers and employees ought to think about the inherent exposures to liability for what could become unusually lively behaviour in the office.

Watch out for the Jekyll and Hyde Personalities

Is there a manager at work who has a Jekyll and Hyde Personality? If so this should give you the spooks. Just like in the novel, a manager's Mr (or Mrs) Hyde can increasingly take over and cause serious damage to relationships with those employees working around them.

Signs of a Jekyll and Hyde boss could include:

- Undermining, demeaning and terrorizing employees.
- Self-promotion at the expense of their team.
- Stifling constructive criticism and encouraging cronyism.

- Failing to nurture future leaders.
- Isolating or scapegoating one team member.

It is important to deal with issues like this early, before Mr Hyde takes over and it's too late. Employers should consider whether an informal approach or a full capability process is needed to help bring back Jekyll and keep Hyde at bay. Either way, the issue should not be ignored. Otherwise this could quickly develop into a constructive unfair dismissal case.

A recent example is the case of *MacLagan v States Employment Board* in which an employee was treated in a “neglectful and dismissive” way after she complained about her manager’s style and comments. The employee successfully claimed constructive unfair dismissal.

Beware the creation of Zero Hours Zombies...

The use of zero hours contracts in the wrong situation might create division in the workforce, and lead to disenfranchised, some might even say soulless staff. Zero hours contracts can be appropriate for bank workers or seasonal staff, but employers should review their use of such contracts if workers are in fact providing full-time work.

In *Marchem v Carre* [2015] JRC075 the Royal Court clearly stated that the test for a genuine zero hours relationship is whether there is a "mutuality of obligations". If a worker is required to work a set number of hours each week, or if there is an exclusive service clause, then an employer is required to treat that worker as an employee (rather than a contractor) - and that means entitlements in terms of holiday pay, unfair dismissal and the right to redundancy.

There have been recent high profile protests about the use of zero hours contracts, with workers rising up to challenge their fairness. Employers should review the terms of such contracts, as it will become a horror show if employers unlawfully look to create a workforce of zero hour zombies - the uprising will inevitably follow...

What is ‘It’ about Creepy Clowns?

The global craze of people dressing up as creepy clowns to scare passers-by is a salutary reminder that not all fancy dress is innocuous. In the workplace, fancy dress can cause problems if appropriate boundaries are not in place.

In the English case of *X v Y*, an employee brought a successful claim for sex discrimination after a series of charity fancy dress days at his workplace. Some of the male staff would dress up as female celebrities, and use effeminate voices, limp wrist gestures and teasing X that he was trying to look up their skirts. X was homosexual, and he found his colleagues behaviour highly offensive and derogatory towards gay men.

In order to ward off the risk of a claim, employers should ensure that they have robust procedures in place so that their staff know what is and is not appropriate at work events - and if someone's clowning around has gone over acceptable limits, they need to be told.

Double, double, toil and trouble...

If you decide to celebrate Halloween with the odd Morgue-A-Rita, a Bloody Mary, or a Witches' Brew, make sure it doesn't come back to haunt you. Sinking your fangs into a cocktail or two is certainly a nice way to enjoy Halloween, but as always we suggest making sure that things do not get out of control.

Remember the Chief Constable of Lincolnshire Police v Stubbs case, where sexual harassment by a fellow police officer occurred when attending a pub immediately after work and at a leaving party for a colleague and the police force was held responsible.

An employer can be held responsible for what goes on during a work night out. And there's always the ghoulish problem of a sudden spate of absenteeism on Monday morning...

Kind regards (and don't have nightmares)...

About Ogier

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