

# Employment Law Dos & Don'ts

## Misconduct

### DO

- Do have a (non-contractual) disciplinary policy in your handbook and make sure you refer to it in every misconduct scenario
- Do refer to the ACAS Code and Guidance when developing your policies and ensure you meet the minimum standards set out in it.
- Do provide employees with a (non-exhaustive) list setting out common examples of misconduct and gross misconduct. Include things particular to your business as well as the usual suspects, like dishonesty and theft
- Do ensure that you have the contractual right to dismiss summarily, without notice or pay, in cases of gross misconduct (there is no automatic right to do so)
- Do consider carefully before suspending an employee – just because they are accused of potential gross misconduct that does not automatically mean suspension is appropriate or reasonable
- Do think about who will carry out each stage of the disciplinary process before you start. It's important to ensure you have enough people at the right levels to separately consider the investigation, disciplinary hearing and appeal

### DON'T

- Don't hedge your bets and provide multiple reasons for dismissal. Sometimes it is tricky to decide whether its performance or conduct, but pick one and stick to it. As long as you hold a genuine belief about the employee's conduct/performance a Tribunal is much more likely to prefer mis-labelling to sitting on the fence. It needs to be clear to the employee what the reason for their dismissal was.
- Don't be too concerned about carrying out a process to dismiss someone with less than two years' service, unless you have contractual policies in place or there is the potential for discrimination or whistleblowing allegations
- Don't jump the gun and head straight to a gross misconduct hearing – with proper investigation you might find that a lesser misconduct hearing is appropriate, or perhaps it's not even a conduct matter at all
- Don't confuse actual guilt with a belief in guilt. Much to the dismay of many employees, a Tribunal won't concern itself with whether an employee is actually guilty of the alleged misconduct – only whether the employer genuinely believed that the employee was guilty (having carried out a reasonable investigation, etc, etc)