

## LEGAL UPDATES AND FACTSHEETS

### CHECKLIST FOR EMPLOYERS: DISMISSAL OF EMPLOYEES

#### 1 CONTRACTUAL TERMS.

- 1.1 Identify the terms of the contract of employment which may be recorded in one or several documents and obtain copies of all relevant documents, including:
- Offer letter.
  - Written contract.
  - Staff handbook.
  - Policies or procedure.
  - Collective agreements.
  - Correspondence.
  - Board minutes.
- 1.2 Establish who is the employer and its address or registered office.
- 1.3 Establish who has authority to dismiss.
- 1.4 Check the employee's gross and net salary.
- 1.5 Check the next salary review date and any obligations to increase the salary.
- 1.6 Check the notice period.
- 1.7 Identify any benefits, and whether they are contractual (for example, car, fuel for private mileage, bonus, commission, pension, incentives and medical, life or permanent health insurance). Check the effect of termination on any benefits, in particular pension and employee share schemes.
- 1.8 Check if there is a right to pay in lieu of notice and, if so, any terms relating to the amount of the payment.
- 1.9 Check if there is a right to send the employee on garden leave.
- 1.10 Check if there are any restrictive covenants or confidentiality obligations.
- 1.11 If the employee is a director, pension trustee or other officer, establish what has to be done to remove them.
- 1.12 Check if the employee holds any nominee or qualifying shareholdings that need to be transferred on termination.
- 1.13 Check any share rules to establish the effect of termination.
- 1.14 Check shareholder agreements and articles of association if the employee is also a shareholder.

#### 2 EMPLOYMENT HISTORY.

- 2.1 Establish the employee's start date and the reasons for any breaks in the contract so as to calculate statutory period of continuous employment.
- 2.2 Check the employee's date of birth (for calculating any statutory entitlements).
- 2.3 Check employee's disciplinary record and performance appraisals, and if any warnings have been given.
- 2.4 Identify any reasons to think the employee might have a claim against the employer as a result of the dismissal or otherwise. Establish obvious risk areas, for example:
- Disability discrimination.
  - Discrimination on grounds of sex, or for reasons related to pregnancy or maternity leave.
  - Discrimination on grounds of race, colour, nationality or ethnic or national origin.
  - Discrimination on grounds of religion or belief, or sexual orientation.
  - Membership of a trade union committee, works council or other body of employee representatives.
  - Whistleblowing or health and safety issues.

**3 CIRCUMSTANCES OF DISMISSAL.**

- 3.1 Establish the reason for the proposed dismissal.
- 3.2 Identify any steps that have already been taken towards implementing a dismissal, for example:
  - Giving any oral or written warnings.
  - Giving the employee a written statement of reasons for proposed dismissal under Step 1 of the standard DDP.
  - Holding a meeting under Step 2 of the standard DDP to discuss the possibility of dismissal.
  - Giving notice of dismissal.
  - Notifying the employee of the right to appeal against the dismissal under step 3 of the standard DDP.
  - Holding an appeal meeting.
- 3.3 Check if the employee been suspended, and on what terms.
- 3.4 Identify any claims that have been raised by the employee.

**4 PRACTICALITIES OF DISMISSAL.**

- 4.1 Establish the proposed termination date.
- 4.2 Establish the extent of any unused or overused holiday entitlement and any terms relating to payment or repayment.
- 4.3 Identify any company property held by the employee that should be returned on termination.
- 4.4 Decide if new restrictive covenants are needed.
- 4.5 Identify existing confidentiality requirements and decide if additional protection will be needed.
- 4.6 Identify any outstanding expenses or loans that need to be paid or repaid.
- 4.7 Calculate the value of salary and benefits for the full notice period.
- 4.8 Identify any job offers or discussions that the employee has had with potential future employers?

**5 MATTERS FOR FURTHER DISCUSSION.**

- 5.1 Amount of any severance payment.
- 5.2 Whether to offer staged termination payments.
- 5.3 The extent (if any) to which full payment of notice period should be reduced for mitigation and accelerated receipt.
- 5.4 The extent (if any) to which the employee's loss may exceed the notice period.
- 5.5 Whether to offer to continue any benefits after termination or to offer to sell any company property to the employee.
- 5.6 Whether to offer any enhanced pension rights.
- 5.7 Whether to pay the employee's legal fees.
- 5.8 Whether to pay for outplacement counseling.
- 5.9 Whether to offer an agreed reference.
- 5.10 Whether to put the employee on garden leave if employer has that right.
- 5.11 Whether to require confidentiality as to the existence and terms of any severance agreement.
- 5.12 Whether to specify in the severance agreement that there should be no derogatory comments?
- 5.13 Whether to seek a compromise of statutory claims.
- 5.14 Any conditions the employer wishes to attach to compensation or continuation of benefits. In particular, does the employer want a warranty that the employee does not have an existing job offer?
- 5.15 Establish the tax treatment of the payment and consider an indemnity from the employee.
- 5.16 Content and timing of any internal announcements.
- 5.17 Content and timing of any external announcements (in particular if the employee is a director of a listed company).



The practice is a niche commercial legal practice providing business, property, and employment law services mainly to the business sector in Northern Ireland.

#### KEY BUSINESS SERVICES

##### **Business Law; Business Disposal/ Acquisition & General Commercial Work**

The practice has practical experience in all facets of business formation operation and succession or transfer. With past experience in several corporate finance and company brokerage businesses, its principal also brings 'coal face' exposure to business disposal, merger & acquisition, forged in a variety of sectors.

##### **Property**

The practice has experience in all transaction work in commercial and residential property. Utilising leading edge IT capability Kappa Solicitors offers both residential & commercial conveyancing, undertaken to an exacting standard at negotiable rates.

##### **Employment Law**

Ever-accelerating change in the complex employment, discrimination and related fields brings increased risk. Good specialist advice is expensive. A dedicated focus in these areas produces an accessible yet affordable service in all contentious and non-contentious aspects of HR management to the SME sector. In these fields we also render consultancy advice and legal services with a practical & robust commercial edge.

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#### CLIENT IDENTIFICATION AND REGISTRATION

In common with other commercial law firms, we must comply with the Money Laundering Regulations 2003. This is part of the government's drive against money laundering and terrorism. The Regulations require us to obtain satisfactory evidence of identity for substantially all new clients and those in respect of whom there has been a break in the relationship. We will be unable to start work for you until this evidence is obtained.

#### TERMS OF ENGAGEMENT

- 1 By instructing us, you shall be deemed to have accepted our terms of business, from time to time applicable, which shall apply to the exclusion of any standard terms of purchase or any other terms which you may propose or supply to us.
- 2 Northern Ireland Law will apply to our relationship with our clients and any dispute or claim shall be subject to the exclusive jurisdiction of the Courts of Northern Ireland.
- 3 There shall be no variation of these terms without the prior written agreement of the Principal of the practice.

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