



Employment alert

Council sacks staff for offensive emails

We see on the [BBC news website](#) that Lancashire County Council has dismissed four staff for gross misconduct and given warnings to five others for circulating offensive emails.

This is the end of an investigation which saw 14 employees being suspended back in April.

The emails were political in nature, comparing the Israeli treatment of Palestinians to the actions of the Nazis in World War II. The employer considered this to be anti-Semitic material.

The employees involved had brought memory sticks containing the material into work in order to bypass the Council's e-mail security system.

A councillor who also forwarded the email, said *"I wanted to share it. I have supported Holocaust Memorial Day every single year but if there are atrocities going on, not just in Gaza, I will say they are not acceptable"*. Councillors are not employees and cannot be sanctioned under the employer's equality or disciplinary policies but his words show how some of the employees involved may not have considered the e-mail to be offensive.

Conclusion

To discipline staff for misconduct like this you need a clear policy setting out what is considered offensive material in your workplace. What is racy or political to one person may be sexist or racist to another. Tribunals take the views of the complainant into account in deciding what is harassment.

If you do not have a clear policy then it can be difficult to resist challenges from employees who deny that they have done wrong, leaving you open to unfair dismissal claims from them if they are dismissed or if they resign during the disciplinary process.

You could also face complaints of discrimination from employees who may receive or view the material and if you cannot discipline the offenders you do not have the defence of showing you have done all you reasonably could to prevent the conduct.

The Council seems to have done the right thing by splitting the offenders into two groups; those who forwarded emails and those who brought them into the workplace, treating the second group more severely. In order for dismissals to be fair an employer must treat similar conduct consistently.

A handwritten signature in black ink, appearing to read "Stephen Conlan".

Stephen Conlan
Partner



For further information concerning any matter raised in this alert or other employment advice please contact Stephen Conlan at BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH Telephone No. 01235 836659 or alternatively e-mail Stephen direct at stephen.conlan@bsdr.com

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