

Taking on apprentices in Scotland.

A very common query that we receive from clients, particularly in the automotive sector, is in relation to employing apprentices. Many employers find taking on apprentices to be a rewarding, cost-effective way to train up and retain skilled staff. However, there are important factors that employers should bear in mind before taking on an apprentice, which I will below.

A fair process when an employer does not intend to keep on an apprentice beyond the end of their apprenticeship is likely to include holding at least one formal meeting with the apprentice (but normally several), before their apprenticeship comes to an end, in order to discuss: (a) the reasons why the employer is proposing not to offer the apprentice a permanent role in their desired trade or profession; and (b) whether there are any other roles the apprentice could be offered as an alternative to dismissal.

Contract of apprenticeship

A contract of apprenticeship is a fixed term contract, the essential purpose of which is the education and training of the apprentice in the trade or profession that they are seeking to qualify into. The law therefore recognises that apprenticeships are of a special, distinct nature to the usual employment relationship.

Ending an apprenticeship early

Given that apprenticeships are of a special, distinct nature, apprentices in Scotland (the law is different in England) enjoy additional protection from day one of their employment, compared to ordinary employees.

There is also a higher threshold required for an employer to bring an apprenticeship to an end early. Essentially, there must be some fundamental frustrating event or repudiatory act that has the effect of fundamentally undermining the employer's ability to teach the apprentice.

If an apprentice's employment is terminated early, without the employer being able to satisfy this high bar of showing that the apprentice was untrainable, the apprentice may be able to bring a claim for breach of contract.

A breach of contract claim can be for: (a) the value of the remaining salary payable under the apprenticeship; and (b) loss of future earning potential as a result of not being given the chance to attain the qualification. Breach of contract claims are capped at £25,000 in the Employment Tribunal, however this cap

does not apply to claims brought before the civil courts.

Deciding whether to keep an apprentice on

As the apprentice nears the end of their apprenticeship, their employer will need to make a decision on whether to keep the apprentice on. If the employer does wish to keep the apprentice on, then the apprentice should be issued with a contract of employment setting out their new terms and conditions.

If the employer makes a decision that they do not wish to keep the apprentice on beyond the end of their apprenticeship then, as the apprentice will be likely to have two years' service by this point, and as a failure to renew a fixed term contract amounts to a dismissal in law, the employer will need to ensure that they have a fair reason for dismissal and that they follow a fair and reasonable process.

Where an employer does not renew a fixed term contract (including an apprenticeship), the potentially fair reason for dismissal that the employer can rely on is some other substantial reason (commonly referred to as SOSR), although other potentially fair reasons such as redundancy or capability may also apply depending on the circumstances.

It is not enough for the employer to show that it has a fair reason for dismissal (i.e. SOSR). The employer must also be able to demonstrate that it followed a fair procedure and that the decision to dismiss was fair in all the circumstances.

Summary

The key thing for employers to note when taking on apprentices is that, due to the additional protection that they enjoy from day one, employers should be prepared to keep an apprentice on for the full duration of their apprenticeship, even where there are conduct or performance issues that fall short of gross misconduct or gross negligence. It will only be in the most serious cases where an employer may be able to justifiably end the apprenticeship early.

Furthermore, where an employer does not wish to keep an apprentice on at the end of their apprenticeship, the employer should ensure that any conduct or performance issues have been clearly documented, and that a formal process is followed before the decision is made not to offer the apprentice a permanent position within the business.



Just Employment Law are employment law specialists, with expertise in advising on disciplinary and dismissal situations and on drafting contracts, policies and procedures. If you are interested in learning more about our services, contact us on 0141 331 5150 or at enquiries@justemploymentlaw.co.uk. You can also visit our website at www.justemploymentlaw.co.uk.