

Can You Dismiss For Conduct In A Previous Job?

In the know

Will information that comes to light about an employee's behaviour when with a previous employer be sufficient reason to fairly dismiss your employee? Will previous misconduct make an employee unsuitable for your organisation? Here, we look at recent news story about an employee losing his job for behaviour in an old job.

Current context

- As recently publicised, the women's England football team manager, Mark Sampson, was dismissed from his role after information came to light about his conduct during a spell at Bristol City from 2009 to 2013;
- No details were given about the conduct relied upon, however, Chief Executive of the Football Association (FA) said it was "not what we want from an FA employee";
- Clearly, Sampson was a prominent public figure meaning that the FA's concerns about its reputation may have influenced its decision. So could the same principle be applied to other less high profile employers?

Current context

- Normally, an employer will instigate a disciplinary procedure against an employee for behaviour during their current employment and what they did during previous employment will not be of any concern;
- Any significant instances of misconduct indicating unsuitability are likely to come up in thorough pre-employment checks. This may include criminal activity that shows up on a DBS check meaning that the employee is barred from taking up employment or would, in the employer's informed opinion, make them unsuitable for a role;
- However, depending on the seniority of the employee as well as other factors, there may be instances where information comes to light about conduct in a previous role which causes the current employer to rethink their recruitment decision.

Can the current employer do anything about this?

- The answer is yes. Employees can be dismissed for conduct in a previous role provided that certain criteria are met;
- The reason for the employer's decision on the new-found unsuitability of the employee is crucial. Employers must always act reasonably;
- If allegations are made by someone else about an employee's past conduct, don't take their word for it. Do your own investigations;
- Does the allegation, if true, really make the employee unsuitable in their role? What if they have been with you for many years and have a perfect disciplinary record? Have they proved their trustworthiness?
- If the employee is to be dismissed, you may be able to rely on the "some other substantial reason" defence at tribunal if a claim of unfair dismissal was brought;
- The tribunal will then make a determination, based on all of the facts, on whether dismissal was a reasonable sanction to apply

Croner Tips

- **Always follow a fair procedure when dismissing an employee, including allowing them to make representations**
- **The type of job that the employee currently undertakes is a key factor. If their misconduct during the previous employment is not something that may recur because their duties are completely different, it may not be reasonable to believe they are unsuitable to perform the role in your company.**

The content of this briefing is correct at the time of publishing.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this article