

In the Know....

Withdrawing offers of employment



A recent employment tribunal case has highlighted the risks of withdrawing an offer of employment. This case, and the options available to employers, is explored below.

Damages of £3,000 for withdrawn job offer

An employer appointed a recruitment agency to find candidates for vacancies. A candidate had telephone conversations with the agency and the tribunal accepted that he was offered a post and this offer was accepted. The employer then withdrew the offer of employment, thereby terminating a contract which came in to existence when the offer had been accepted. As the employer terminated the contract without notice the tribunal awarded the claimant damages of one month's salary for breach of contract, as well as the cost of tribunal fees.

When an unconditional offer is made

Unconditional offers of employment mean that once the offer is communicated to the candidate, and the candidate accepts the offer, a binding contract is created between the employer and candidate, even though the candidate has not yet joined the company. Even if the offer is made verbally and the acceptance is verbal, this is effective to make a valid contract.

When employers decide they no longer want to employ this particular candidate, or internal matters mean there is no longer an opening, a withdrawal of the accepted offer without notice will be a breach of the employment contract. Until the offer is accepted the employer can change the offer or withdraw it completely without any risk.

How to withdraw an accepted unconditional offer

An accepted unconditional offer can be withdrawn by providing notice to terminate in accordance with the contract. Employers who provide for a probationary period, with a shorter period of termination notice, will be better placed to terminate job offers than where there is, for example, a senior role which has a long period of notice. If there is no contractual notice provided for, then the employer should give reasonable notice to terminate the

contract of employment. What is reasonable will be for the employer to decide but should take in to account the position offered, how salary is paid and what the normal contractual notice would have been.

When a conditional offer is made

Most offers of employment are made conditionally meaning that unless all conditions are satisfied there is no obligation to employ the candidate. General conditions are usually based on the requirement for satisfactory references, having certain qualifications, satisfactory criminal record checks and proof of eligibility to work in the UK. A failure to meet any of the required conditions, such as receiving an unsatisfactory reference, means employers can withdraw the offer without any risks. When the conditions have been met, this creates a contract of employment. A withdrawal of the offer, without notice, when the conditions have been met will constitute a breach of contract and will require contractual notice to terminate.

Value of Risks

Withdrawing an accepted offer of employment without notice can leave employers open to claims of breach of contract. The value of the claim will be the salary and value of any benefits that the candidate would receive in their contractual notice period or during the reasonable notice given by the employer.

Where the reason for the withdrawal of the offer is discriminatory, for example withdrawing an offer of employment because the candidate informs you they are pregnant, this could lead to a discrimination claim which carries an unlimited compensatory award.

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

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