

90 Day Trial Periods – New Case Enforces Strict Compliance

In the case of *Blackmore v Honick Properties Limited* the Employment Court has bolstered the “strict interpretation” approach taken to 90 day trial periods. For employers (particularly small businesses) this means that there are several technical requirements that you need to comply with in order for your 90 day trial period to be effective.

In October 2010 Mr. Blackmore met with a representative from the employer to discuss a job vacancy. While there was some contention over whether a 90 day trial period was discussed at this meeting, Mr. Blackmore was provided with a letter of offer afterwards which referred to an employment agreement which was to be provided to Mr. Blackmore confirming the conditions set out in the letter. There was no mention in the letter of a 90 day trial period. Mr Blackmore accepted the offer in the letter by email.

In November 2010 Mr Blackmore began work. He was provided with a copy of an employment agreement containing a 90 day trial period provision. Mr Blackmore signed the agreement as he felt he was required to sign it “then and there”.

On these facts Chief Judge Colgan found that Honick Properties Ltd had made two errors in entering into the employment agreement.

The first was that, for the purpose of an unjustified dismissal claim, the employment relationship begins at the time the offer of employment is accepted. As Mr Blackmore had already accepted the offer letter (with no mention of a 90 day trial) before he was presented with a draft written employment agreement, he was already employed by the time he signed that document. The employer was therefore not able to introduce a trial period as a condition of employment for someone who was, by that time, already an employee. This therefore meant that any dismissal had to satisfy the high justification threshold that normally applies.

The second error was that the employer did not give Mr Blackmore a reasonable opportunity to seek independent legal advice on the content of the written employment agreement. This amounted to a breach of section 63A of the act i.e. was unfair bargaining.

The judge then referred the parties to resolve the issues in good faith (by mediation if necessary). The judgment, however, leaves no doubt that if the matter is not settled then Mr Blackmore would almost certainly be deemed to have been unjustifiably dismissed (and the usual awards of damages and costs would be made in his favour).

If you are currently in the process of interviewing for a new employee (or thinking about it) and want to ensure you take advantage of the trial period law, we can provide cost-effective advice to ensure that all the procedures and prerequisites are met.

Jackson Russell Employment Specialists –

Glenn Finnigan, Partner
Simon Davies-Colley, Solicitor

For specific advice

If you have any questions or would like assistance with these or any other legal matter then please let your usual Jackson Russell contact, or Darryl King, Partner (Business Law); Glenn Finnigan, Partner (Employment); Mark Sullivan, Partner (Dispute Resolution and Insurance)

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