

**Introduction to Employment Law – Day Two**  
Friday 24th November 2023

**Chair:** Michelle Clarke, Shoosmiths and member of the ELA Training Committee

**9.00am** **The Disciplinary Process**  
Linda Ruan and Katharine Savage, Hogan Lovells International

- ACAS Code of Practice
  - The investigation
  - What is required (Burchell; A v B; Roldan; Turner)
  - Before you start (clear allegation, check disciplinary policy, consider time scale, confidentiality etc)
  - Suspension
  - Police involvement
  - The investigator (who should conduct the investigation?)
  - Role of the investigator
  - Obtaining evidence (incl reluctant witnesses)
- The Disciplinary Hearing
  - Information to be provided before the disciplinary hearing
  - Right to be accompanied
  - Requests to postpone
  - Disciplinary officer
  - Procedure at the hearing (incl adjournments for further investigation)
  - Decision considerations (standard of proof, alternatives to dismissal, consistency etc)
  - Communicating the decision
  - Appeals

**10.00am** **Tea/Coffee**

**10.15am** **Dismissal**  
Polly Rodway and Theo Nicou, BDBF LLP

- What is a dismissal?
  - wrongful dismissal
  - constructive dismissal
  - unfair dismissal
  - fixed-term contracts
  - vanishing dismissals
- Unfair dismissal

- Who can claim unfair dismissal? (incl exclusions, qualifying service & territorial jurisdiction)
- Fair reasons for dismissal
- Fairness of dismissal
  - Acas Code
  - S98(4)
  - Range of reasonable responses test
  - Procedural fairness
- Automatically unfair reasons for dismissal
- Remedies in the Employment Tribunal

**11.15am      Tea/Coffee**

**11.30am      TUPE**

Francesca Baker and Amy Bird, Clifford Chance LLP

- Different types of TUPE transfer
  - Ordinary TUPE
  - SPC
- Effect of TUPE
  - ELI
  - Automatic transfer
  - Protection against dismissal
  - Duty to inform and consult
  - Reg 4(9)/4(11)
- Key practical issues to consider
  - Identifying types of TUPE
  - Negotiating and drafting TUPE provisions
  - What to do when a client involves you too late(!)
- TUPE litigation
- Key points for Claimant and Respondent lawyers to consider

**12.45pm      Lunch**

**1.45pm      Managing Sickness Absence**

Charlie Rae and Amy Leech, Shoosmiths LLP

- Employer's obligations
- Contractual terms and Company policies
- Short term/intermittent absence
- Long term absence
- Obtaining medical advice
- Data protection issues
- Disability and sickness absence
- Dismissal special considerations

**2.30pm      Tea/Coffee**

**2.45pm      Discrimination**

Daphne Romney KC, Cloisters

- Who is an employee for the purposes of the Equality Act?
- Protected characteristics
- Focus on disability and religion/ belief
- Main types of discrimination

- Direct
- Indirect
- Harassment
- Victimisation
- Proving your case – implications of the burden of proof rules
- Additional protection against disability discrimination
  - Pre-employment questions about health
  - Discrimination arising from a disability
  - Reasonable adjustments
- Circumstances in which an employer or others can be liable for discrimination
  - S39/ 40 – employees and applicants
  - S41 – contract workers
  - S108 – relationships that have ended
  - S109 – vicarious liability and reasonable steps defence
  - S110 – individual liability
- Remedies and settling claims
  - Compensation
  - Recommendations
  - Using confidentiality clauses appropriately
- Useful resources
  - ACAS and EHRC codes of practice/ technical guidance (especially on sexual harassment)

**There will be a 10-minute comfort break at around 3.45pm (no tea and coffee will be served).**

**4:30pm      Close of course**