

Are your employees safe to drive?

The Glasgow bin lorry crash threw light on a number of legal issues based on the reported facts of the tragic event including: the driver had blacked out behind the wheel before; his employer had mislaid paperwork regarding his recruitment (in particular his references); and the driver appears to have misled on his health assessment application form when he applied for the job with the Council.

If you employ drivers, what employment issues should you be aware of and what steps should you be taking to minimise the risks?

Recruitment process

- o Can you ask questions about an applicant's health? Yes, but you must do so on a reasonable and justifiable basis or risk a discrimination claim. Employers ought to be aware of the general prohibitions against asking applicants specifically about their health during the recruitment process. However, there are qualifications to these restrictions eg, asking clear and specific questions about an applicant's health in relation to a genuine occupational requirement ie, the requirement to have a driving licence and being fit to drive in order to carry out the role.
- o In addition, failure to have a paper trail evidencing the questions asked increases the risk to an employer of encountering difficulties in the event of having to defend an Employment Tribunal claim. Creating a checklist for the recruitment process can help to minimise the risks to an employer.

Reference

- o For roles that have a driving requirement, you can include in any reference request a question relating to the known ability of the applicant's driving capability. It is good practice to always follow up on references and make offers of employment conditional on satisfactory references.

During employment

- o It is important for an employer to be aware of any changes to an employee's health that could affect their ability to safely drive. An employer should include a provision in the contract of employment putting the onus on the employee to notify the employer of any change in medical condition or ability to drive from that which they specified as part of the recruitment process.
- o It is also advisable for contracts of employment to include a right for the employer to request that the employee undergoes a medical examination at any stage of their employment.

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Misconduct/Gross misconduct

- o In the event of the applicant being offered the role, a failure to give an accurate answer in relation to any completed forms about their health could amount to misrepresentation and therefore potential misconduct allowing the employer to take disciplinary action and potentially dismiss.

Are there any other legal issues?

- o Appropriate rest breaks in line with the Working Time Regulations; Data protection issues around the disclosure of medical records; Health and safety issues; Negligence; Corporate manslaughter

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