



Dismissal: Shaping New Developments into Solution-Focused Answers for Employers

Catherine Taylor, Partner
CMS

Today's Agenda

- Inappropriate behaviour
- Frequent absence
- SOSR
- Capability
- Gross misconduct
- Disciplinary hearings
- Investigations

The rise and rise of ESG

Green is the new black – beware the dangers of colour washing

- Recognition of importance of public commitment to ESG standards but overpromising and underdelivering is risky
- Whistleblowing claims of “greenwashing”, “bluwashing” and “whitewashing” in relation to ESG standards. See, for example:
 - *Grainger v Nicholson* – EAT held that a belief in climate change, coupled with a belief that we are under a moral duty to address it, was potentially protected under the Equality Act 2010
 - *Carr v Bloomberg* – carbon market journalist alleged he was dismissed over whistleblowing about Bloomberg’s coverage of climate change and the Paris Agreement
- Increased regulatory scrutiny and external disclosures to regulators. See, for example:
 - **BNY Mellon** fined USD1.5M by SEC for material misstatements about ESG quality reviews
 - **DWS** investigated by BaFin & SEC regarding allegations made by a whistleblower about greenwashing

The rise and rise of ESG

Positive Action, Negative Consequences?

- Increasing expectations around IDE (inclusion, diversity and equity) (part of the “S” in ESG)
- Implementation of positive action initiatives (e.g. targeted job advertising, setting targets for increasing participation in underrepresented groups) that aim to improve IDE
- But employers must stay on the right side of the line, and guard against the unintended consequences of such initiatives which carry legal risk. See, for example:
 - *Bayfield v Wunderman Thompson* – an advertising agency expressed its intention in diversity training to obliterate its reputation of being staffed by privileged, white men and lost a discrimination claim brought by two white men who had subsequently been dismissed by reason of redundancy
 - RAF’s public response to a Group Captain’s resignation over what she believed to be an “unlawful” order to allocate slots on training courses to female and ethnic minority recruits over white men
- Impact of recession?



Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice. It was prepared in co-operation with local attorneys.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices; details can be found under "legal information" in the footer of cms.law.

CMS Locations

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Cúcuta, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Strasbourg, Stuttgart, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

cms.law