



Chris Weaver
Solicitor, Employment

How to avoid your own Chelsea FC doctor situation

Oct. 12

Avoid your very own **Eva Carneiro**, Chelsea FC doctor, discrimination situation with these top tips from solicitor **Chris Weaver, Payne Hicks Beach**.



Jose Mourinho's actions could leave Chelsea FC open to a discrimination charge and legal action.

Recent events in the world of football show how precarious one's employment can be when working in a pressurised environment. But within any workplace issues relating to performance or conduct can arise. Personalities may clash. Relationships between a manager and the staff they manage can deteriorate. An employee may allege they have suffered discrimination or harassment by their manager or colleagues. While the media spotlight and high stakes of football may seem a world away from most ordinary businesses, the same principles for dealing with workplace disputes apply.

In order to reduce the risk of facing potential claims, an employer should approach such situations with caution. If an employer acts unreasonably in dismissing an employee, or fails to follow a fair procedure, it is likely the dismissal will be unfair.

The ACAS Code of Practice on Disciplinary and Grievance Procedures (the ACAS Code) and associated guidance sets out what is expected from employers when dealing with alleged misconduct or poor performance by an employee, or when addressing grievances raised by an employee. An unreasonable failure by an employer to follow the ACAS Code can result in compensation awarded to a successful employee in employment tribunal proceedings being increased by up to 25%.

Employers should develop disciplinary rules and procedures for dealing misconduct and poor performance. Clear disciplinary rules let employees know the standards of conduct expected from them. Expected standards of performance can be communicated to employees through agreeing

objectives and reviewing performance on a regular basis. Disciplinary and grievance procedures which reflect the requirements of the ACAS Code should

be put in place. This framework will help an employer to deal with employees fairly and consistently, thus reducing exposure to potential claims. Managers responsible for using and operating the rules and procedures should be trained for the task.

Before commencing disciplinary action an employer should carry out a reasonable investigation to establish the facts of the case. The nature and extent of the investigations will depend on the seriousness of the matter. The more serious the allegations, the more thorough the investigation should be.

In instances of serious misconduct, an employer may wish to suspend the employee who is being investigated. This may be appropriate, for example, where there is a potential threat to the business or other employees, or where it is not possible to properly investigate the allegation if an employee remains at work (for example because they may destroy evidence or attempt to influence witnesses). It may also be appropriate where relationships at work have broken down. However, in this latter case it may be difficult to apportion blame and suspending the employee may give the impression that the issue has been prejudged.

If suspension is considered necessary during the investigation, this should be as brief as possible and kept under review. The employer should make clear that this is not in itself a form of disciplinary action. Suspension should be on full pay unless there is a clear contractual right for the employer to do otherwise and it has sufficient grounds to justify such action. In suspending an employee, the employer must not act in a manner calculated or likely to undermine the implied term of mutual trust and confidence, as this will entitle the employee to resign claiming constructive dismissal.

If the employer concludes there is a case to answer, formal disciplinary proceedings can be commenced. The employee should be informed of this in writing and given a reasonable opportunity to prepare their case before the disciplinary hearing. Ideally the person chairing the disciplinary hearing should not have been involved in the investigation. The employee has the right to be accompanied at the disciplinary hearing by a colleague or trade union representative. At the hearing the employee should be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses.

After the disciplinary hearing, the employer should decide whether any disciplinary or other action is necessary and inform the employee accordingly in writing. Any disciplinary action taken should be proportionate and the employee should be offered the right of appeal.

Where an employee alleges they have suffered discrimination or harassment at the hands of colleagues then this should be addressed in order to reduce the risk of the employer facing claims of discrimination. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. The employee raising the grievance has the right to be accompanied at the meeting. The allegations should be investigated and the employer's decision communicated to the employee in writing. The employee should be offered the right of appeal in case they are dissatisfied with the outcome of the grievance.

By taking a measured and consistent approach to conduct and performance issues, and employee grievances, an employer can significantly reduce the risk of facing the cost, disruption and adverse publicity associated with defending an employment tribunal claim.