

HR and Legal Update - March 2021

Refusal To Wear A Facemask

An Employment Tribunal (ET) has held that an organisation fairly dismissed their employee who refused to wear a facemask on a client's site.

In March 2020, the UK entered its first lockdown as a result of the coronavirus pandemic. By May, although some restrictions were starting to be lifted, conversations were already being had by scientists regarding whether the wearing of facemasks in public spaces could be an effective way of reducing transmission of the virus. Wearing facemasks in certain settings did become a lawful requirement in July 2020.

The claimant in this case was employed by the respondent, an organisation which transports food products from supplier to customer, as a Class 1 Driver. In May 2020, the claimant was required to visit a client's site and on the morning of his visit, the respondent received an email from the client notifying them that the claimant had refused to wear a facemask and was therefore banned from their site for noncompliance with their health and safety rules.

The issue was investigated by the respondent, a disciplinary hearing followed and in June 2020, the claimant was dismissed, later bringing a claim of unfair dismissal to the ET.

The ET held that the dismissal had been fair, citing the organisation's employee handbook which set out rules on their employee's expected behaviour and the respondent's genuine belief that the claimant had been guilty of misconduct after a thorough investigation into the issue. The client's unwillingness to cooperate with the requirement to wear a mask, despite attempts from the respondent to rebuild the relationship between the client and the claimant, also worked in the organisation's favour.

The ET further affirmed their decision by noting that it was clear that keeping a good relationship with their clients is of priority to the success of the respondent's business and the claimant's unwillingness to accept fault casted doubt on his future conduct. In all, the ET noted that although a different organisation in the same situation may have chosen to issue the claimant with a warning, the respondent's decision to issue a dismissal was still a reasonable response.

Key Points: Fair Dismissal

To be a 'fair' dismissal, a UK employer must show that it was due to one of five specific reasons. The employer must also have acted fairly and reasonably in carrying out the dismissal. More positive approaches, such as coaching and counselling, may help in some cases relating to conduct or performance, and should be considered before resorting to dismissal.

To be 'fair', a dismissal must be for one of five reasons:

- Capability or qualifications
- Conduct
- Illegality of contravention of a statutory duty
- Some other substantial reason
- Redundancy

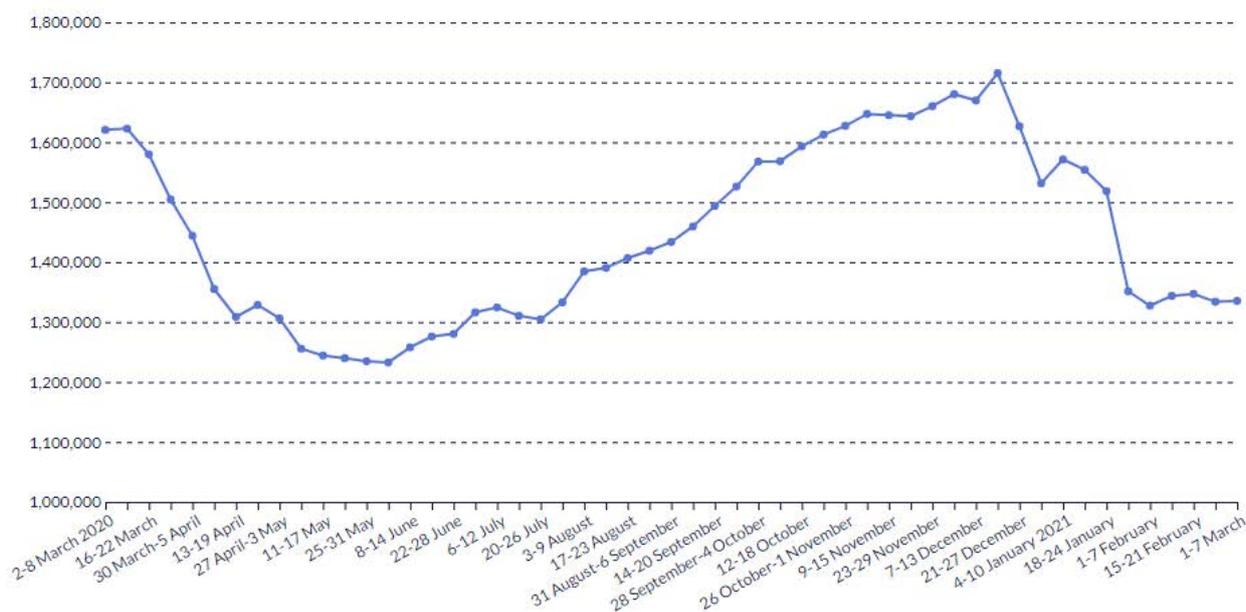
** For more information on disciplinary matters, contact us for the Two Rivers Factsheet.

Job Postings Trend

The latest available data from the Recruitment Employers Confederation reveals that there were 137,000 new job adverts posted in the first week of March 2021, giving a total of 1.33 million active job adverts in the UK. The number of new job adverts posted each week has remained broadly stable throughout this most recent lockdown, and at a significantly higher level than during the first wave of the pandemic. There were 52% more new job adverts posted in early March 2021 than in the first week of April 2020, and 31% more than the first week of July 2020.

Weekly job postings trend

This chart shows how the number of active job adverts in the UK has changed since the pandemic hit the UK.



Top Tips for Job Advertising

The procedure to advertise recruitment can be complicated for employers to approach. However, getting this process right is essential if a recruitment exercise is to be cost-effective and attract the right quality of applicants.

- Prepare a job description and person specification to provide the basis for designing your advert
- Remember that job adverts are covered by the Equality Act 2010
- Ensure that your job adverts contain enough information about the job and organisation to ensure optimum response

** For more information on Job Adverts contact us for a Two Rivers Factsheet.

Our mission is to make a difference.

We want to make a difference to our clients, candidates and the communities in which we operate.

Together We Can Make A Difference – Jobs Transform Lives

Two Rivers specialise in recruitment for Aerospace, Defence, Engineering, Commercial & Office Services.

Disclaimer

The information contained in the Two Rivers Legal Bulletin is generic advice provided for guidance only. We recommend that readers seek detailed legal advice on any of the areas covered.

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