

CHRISTMAS QUIZ

ANSWERS

1. **Santa has 10 elves (8 male and 2 females). Santa promoted one of the male Elves to Senior Elf over one of his female Elves even though she had more experience. Can he do this? Could she bring a claim? If so, what for?**

No, this would be discriminatory unless he could prove there is a Genuine Occupational Qualification for the job, or if Santa could justify his decision on other objective grounds i.e. qualifications, absence, disciplinary/performance record. She will be able to bring a claim for sex discrimination. Since there are facts which suggest there may be discrimination then the Burden of Proof is upon Santa to prove that his decision is not related to her sex.

2. **Santa has three Elves. Does he have to provide a Pension Scheme?**

No. He will only have to provide a stakeholder pension when he has five or more employees.

3. **What is the current rate of pay under the National Minimum Wage Act 1998 for a junior Elf under the age of 21?**

Workers aged 18-21 inclusive (youth rate) is £4.60 from 1 October 2007
Adults is £5.52 from 1 October 2007
Workers aged 16 and 17 is £3.40 from 1 October 2007

4. **Santa provides a smoking room for his Elves that smoke. Is this ok? If not, what sanctions could Santa expect to receive?**

A smoking room will be an enclosed or substantially enclosed space, so smoking within a smoking room is prohibited under the Smoke-free (Exemptions and Vehicles) Regulations 2007. Santa's factory will not come under one of the specific exemptions for designated smoking rooms e.g. in care homes, hospices and prisons for adults.

If Santa is found guilty of failing to prevent smoking in smoke-free premises (or vehicles, such as the sleigh), he will be liable to a fine of up to £2,500. If he fails to display no-smoking signs, he could be liable to a fixed penalty of up to £200, discounted to £150 if paid within 15 days, or a fine not exceeding £1000. If one of the Elves is found guilty of smoking in smoke-free premises (or a smoke-free vehicle) will be liable to a fixed penalty of £50 (discounted to £30 if paid within 15 days) or a fine of up to £200.

5. An Elf has a Company Sledge and she is due to go on Ordinary Maternity Leave. Can you ask for this back?

No. During Ordinary Maternity Leave the employees contractual rights (i.e. any special rights that apply to your particular workplace, such as a company car or pension) continue as if they were still at work, apart from normal pay.

6. In January Santa plans to make all his reindeer redundant but is not going to pay them statutory redundancy. How long will the reindeer have to bring a claim in the Employment Tribunal for their statutory redundancy pay?

The reindeers must bring a claim for Statutory Redundancy Pay within 6 months 'beginning when the act complained of was done'. Any claim for unfair dismissal must be brought within 3 months.

7. One of Santa's reindeers is currently 64 but says he wants to stay with Santa for another few years. However, Santa is thinking of dismissing him in March when the reindeer has his 65th birthday. Can Santa do this?

Santa should notify the reindeer in writing of his right to request to go on working beyond his retirement date. This should be done at least six months in advance (but no more than twelve months before the intended date).

As a matter of good practice, Santa should set out in the letter he proposes to manage the retirement process, remind the reindeer of Santa's obligation to give consideration to any request to work after normal retirement age and in order not to raise the expectation of the reindeer, explain that Santa is entitled to refuse the request. Santa is not required to give a reason for his decision as, provided the correct procedure has been followed, the reason for the employee's dismissal will always be retirement.

If Santa fails to notify the reindeer six months in advance of retirement, then he may be liable for compensation. Santa has an ongoing duty up until two weeks before the retirement dismissal to inform the reindeer of both the intended date and their right to request working longer. Failure to do this will make the dismissal automatically unfair.

If the employer fails to inform the employee of their intended retirement date and of their right to request to continue working, the employee will still be able to make a request not to retire at any stage until dismissal. If the employee does make a request the employment must continue until the day after the employer notifies the employee of their decision on the request.

If a request is made, then the employer must meet with the employee to discuss their request within a reasonable period of receiving their request (in writing), unless it is agreed that it is not practicable to hold a meeting. The employee must be informed of the employer's decision in writing as soon as is reasonably practicable. The employee's employment will continue until they have been informed of the employer's decision.

8. There is a job vacancy in Santa's workshop and a male Elf has applied for a job which is normally done by a woman. Can Santa exclude him?

No. This would be discriminatory. If, however, you can prove that being a woman is a Genuine Occupational Qualification for the job, the discrimination would be lawful. This would normally apply only where:-

- authenticity is involved — for example, where someone of a particular sex is required for an advertisement or television part;
- personal services are required — for example, a social worker serving a particular ethnic group; or
- decency or privacy is involved — for example, for a job in a residential establishment, or involving physical contact.

This defence is limited, and will be interpreted narrowly by an Employment Tribunal. You will not be able to use it to disguise an otherwise discriminatory reason for non-selection.

9. Santa has eight reindeer. Dancer and Prancer have injured their hooves. Does Santa have to make reasonable adjustments under the Disability Discrimination Act 1995?

Where a disabled employee is placed at a substantial disadvantage by a provision, criterion or practice or physical feature, the employer is under a duty to take reasonable steps to rectify that disadvantage. The DDA sets out a non-exhaustive list of steps which may be taken by the employer, e.g. making adjustments to premises, allocating some of the disabled employee's duties to another employee, altering the disabled employee's hours of work or training (which may include allowing a phased return to work).

10. Mrs Christmas has a three year old grandchild and wants to work part-time so that she can look after him. Does she have the right to reduce her hours?

As it's her grandchild she does not have the statutory right to request flexible working as this is limited to person with parental responsibility for children under the age of 6 (or 18 if disabled). However, a blanket refusal to allow flexible working could constitute sex discrimination so best practice would be to give any such request serious consideration and give detailed reasons for your decision.