

Employees who lie on their CVs

G asks what an employer can do when an employee has lied about their qualifications?

Employers who discover employees have lied on their CV, and wrongfully claimed to have necessary qualifications, have several options available to them. These may include:

- Cancelling the contract.
- Dismissing the employee under any 90-day clause.
- Dismissing the employee for serious misconduct.

The employer may be able to cancel the employment agreement under the Contractual Remedies Act.

If the job was advertised as requiring certain qualifications and the employee has lied about having those, it's likely the agreement can be cancelled.

An employer may also be able to cancel the agreement if the employment agreement contains a warranty that the employee has the necessary qualifications when in fact they don't.

If the agreement is validly cancelled, the agreement will no longer bind either side.

However, cancellation can be procedurally difficult to get right.

The employer must not have "affirmed" the contract after discovering the misrepresentation.

The employer must also prove the qualifications were "essential", or that the lack of qualifications "substantially" changes things.

If the employee has entered into a valid and binding 90-day trial clause, the employer will be able to dismiss the employer within the 90 days.

The employer would not need to offer the employee opportunities to come up to the required standard, and would not need to prove the representations were essential or substantial.

However, employees dismissed under the 90-day clause will still



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ALAN KNOWSLEY

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need to be paid for any relevant notice period (if one exists in their agreement).

If the employee is unable to perform the role required, and has lied about his or her qualifications, it is possible this would constitute serious misconduct.

An employer may be able to dismiss an employee for that, particularly as lies about qualifications directly undermine the employee's good faith employment obligations.

It would be important to investigate the allegation thoroughly, and to follow a clear and fair disciplinary procedure, including giving the employee an opportunity to respond to the allegation and to be accompanied by support person at meetings.

The best protection is prevention.

The risk is lessened if you conduct diligent pre-employment checks of references and qualifications.

Employment agreements should also be carefully drafted to protect the employer against risk.

There are options available to employers placed in this unfortunate situation.

However, it is important to seek advice about the situation to ensure your response is appropriate.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have a legal inquiry you would like discussed, email Alan on aknowsley@raineycollins.co.nz.