

Failing to declare convictions

Some weeks after your new employee starts work, you discover that he has convictions which he didn't mention in his application form. Can you dismiss him?

- Was the offer of employment subject to a satisfactory criminal convictions check, or does the employment agreement provide for dismissal if false or misleading information was provided in the application process?
- Have you carried out a proper investigation, including telling him exactly why you are considering dismissal, asking for his explanation, and considering that explanation?

If you have answered both questions Yes, then you are in a position to dismiss.

This was the situation in the recent case of *Rawle v Scott & Ricketts Limited trading as Mitre 10 Mega*. Mr Rawle disclosed one conviction on his job application form. He said he had no intention to deceive, it was an oversight not to mention two other convictions on the form. He also claimed that he had disclosed these other convictions at his interview but the Authority rejected this.

The company's offer of employment was subject to a criminal convictions check. After discovering his convictions the company conducted "a fair investigation in which Mr Rawle was accorded ample opportunity to participate and be heard". The dismissal was justified.

In contrast is the case of *Richardson v Fonterra Cooperative Group Limited*. Mr Richardson did not disclose any convictions, believing honestly but wrongly that he did not have to because of the "clean slate" scheme.

Mr Richardson's offer of employment was not subject to a criminal convictions check. The application form that he signed told him that he could be dismissed if he provided misleading or false information, but this was superseded by the employment agreement which did not repeat that. The answer to the first question above was No.

Fonterra also made a significant mistake in dismissing Mr Richardson for misrepresentation when that specific allegation had not been put to Mr Richardson for his response. The answer to the second question above was also No, because a proper process was not followed.

Mr Richardson's remedies were reduced by 25% because of his own blameworthy contribution to the situation, but even so Fonterra was ordered to pay him remedies totalling more than \$18,000. It's worth getting it right, both the offer of employment and the investigation process.

Should you require any advice about employment contracts or any other employment law issues, please do not hesitate to speak to one of our specialist employment lawyers.