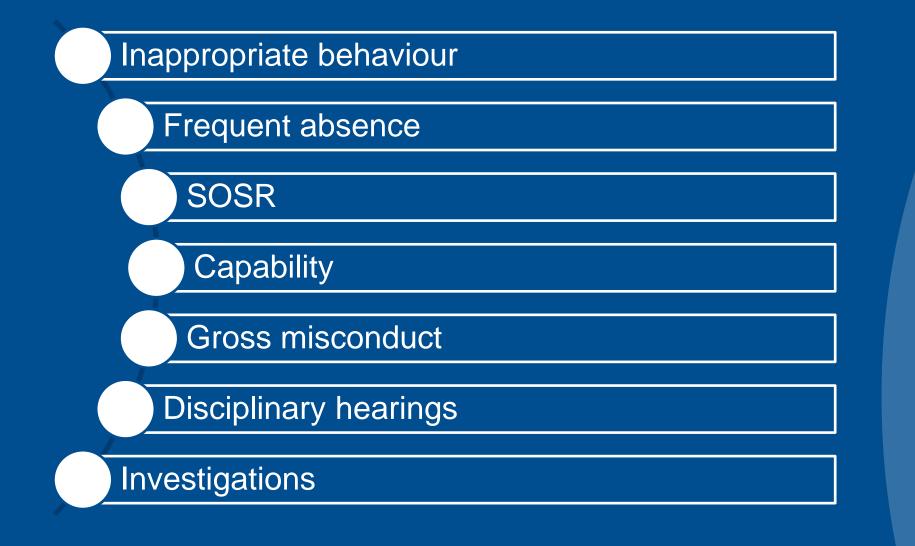
Dismissal: Shaping New Developments into Solution-Focused Answers for Employers

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Today's Agenda



The rise and rise of ESG

Green is the new black – beware the dangers of colour washing

- Recognition of importance of public commitment to ESG standards but overpromising and underdelivering is risky
- Whistleblowing claims of "greenwashing", "bluewashing" and "whitewashing" in relation to ESG standards. See, for example:
 - Grainger v Nicholson EAT held that a belief in climate change, coupled with a belief that we are under a moral duty to address it, was potentially protected under the Equality Act 2010
 - Carr v Bloomberg carbon market journalist alleged he was dismissed over whistleblowing about Bloomberg's coverage of climate change and the Paris Agreement
- Increased regulatory scrutiny and external disclosures to regulators. See, for example:
 - BNY Mellon fined USD1.5M by SEC for material misstatements about ESG quality reviews
 - DWS investigated by BaFin & SEC regarding allegations made by a whistleblower about greenwashing

The rise and rise of ESG

Positive Action, Negative Consequences?

- Increasing expectations around IDE (inclusion, diversity and equity) (part of the "S" in ESG)
- Implementation of positive action initiatives (e.g. targeted job advertising, setting targets for increasing participation in underrepresented groups) that aim to improve IDE
- But employers must stay on the right side of the line, and guard against the unintended consequences of such initiatives which carry legal risk. See, for example:
 - Bayfield v Wunderman Thompson an advertising agency expressed its intention in diversity training to obliterate its reputation of being staffed by privileged, white men and lost a discrimination claim brought by two white men who had subsequently been dismissed by reason of redundancy
 - RAF's public response to a Group Captain's resignation over what she believed to be an "unlawful" order to allocate slots on training courses to female and ethnic minority recruits over white men
- Impact of recession?

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