



Recent changes to Employment Law Summer 2009

Each April sees a whole raft of changes to UK employment law. This April saw the repeal of the statutory procedures for dealing with disciplinary and grievance matters. How does someone running a small or medium-sized business manage to keep up to date without having their own in-house HR department?

Most employers value their staff and recognise their workforce as one of their most important assets. However, as with all human relationships, there are times when problems happen. The best approach for employers and employees is to deal with the issue as quickly and as effectively as possible. The disruption that can be caused to a business when relatively uncomplicated issues escalate into full-blown disputes in the employment tribunal can have a profound and damaging effect. Equally, employees in such situations may feel they have no alternative but to go to a tribunal because their complaint has not been dealt with, and are unprepared for either the financial or emotional costs of doing so.

For both employers and employees, the effects can be far reaching long after the case has ended; the cost of tribunal proceedings can seem disproportionately high and are generally not recoverable, staff morale can be severely damaged, and proceedings will inevitably distract everyone from the true objective of running the business.

The main reason for repealing the statutory procedures was because they had failed to achieve their primary objective: to resolve disputes at an early stage, and had instead resulted in cases coming to the tribunal where the majority of the time was spent arguing about the correct adoption of the statutory procedures on the basis that failure to do so resulted in considerable uplift to awards.

Many employers may have breathed a sigh of relief at the news that the statutory procedures were to be repealed, but it would be foolish to think that this means they were off the hook. A new code of practice has been introduced which, whilst not binding, should be adopted from the outset because it must be taken into account by a tribunal. A tribunal is obliged to consider whether the code has been adopted and, where it has not, can impose an uplift of 25% on any awards made.

The Code places a great emphasis on the need to adopt proper procedures for dealing with anything that could amount to either a grievance by an employee or a disciplinary matter against an employee, and ignorance of these procedures is no excuse. Indeed, a grievance can be any problem or concern raised by an employee, and disciplinary matters can include anything from poor performance to misconduct.

The main thrust of the new code of practice is to foster a culture of fairness, transparency and promptness in dealing with disciplinary or grievance issues. In particular, there is a new requirement for the employer to notify the employee that he or she is entitled to be accompanied to any disciplinary or grievance meeting. Of greater concern is the entitlement of an employee to call "witnesses" to disciplinary meetings. Although the latter can be helpful, equally it could lead to delays and a clouding of the issues, and should be managed carefully. Employers should be wary of practising their own advocacy skills by cross-examining such witnesses because, of course, the cross examination could be picked apart by lawyers at any subsequent tribunal proceedings.

In the end, having adopted and then exhausted a fully-compliant procedure, it may just be that it is simply not possible to resolve the problem. If that is the case, then it is inevitable that the relationship between the employer and employee should end. In these situations, the best approach is to negotiate a swift and satisfactory exit strategy before tribunal proceedings become unavoidable.

In order to avoid these pitfalls, many employers have approached us to assist them when dealing with disciplinary or even grievance matters or to help negotiate an exit strategy. As well as ensuring that the code is fully adopted, having a third party involved in these functions can avoid damaging staff relations as far as possible. We can also provide the bigger picture and help avoid the traps that lay in wait for the unwary.

Equally, an employee who is faced with such a situation would be best advised to instruct a lawyer to advise them so they can tread carefully through this minefield and, hopefully, achieve the best possible result without the costs of going to a tribunal. Very often a wise employer will contribute to some, if not all, the costs of doing so.

This article only raises a number of points concerning the code. Further information can be obtained from the Department for Business Enterprise & Regulatory Reform (BERR): www.berr.gov.uk/whatwedo/employment/Resolving_disputes/index.html



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This article first appeared in Child & Child's Summer 2009 Newsletter. To subscribe to the firm's Newsletter please visit the firm's website www.childandchild.co.uk

Note:

This article is for general guidance only and specific legal advice should be obtained in each case.