



EMPLOYMENT LAW

The Law relating to employment changed fundamentally in October 2004. Employers are now under a duty to advise their employees as to the nature of these changes; this can be done verbally at a meeting with staff.

There is now one fundamental message to both Employer and Employee which is that a formal written contract of employment is essential and it must set out all that is now required including the new disciplinary procedures. There are now formal requirements for dismissal, disciplinary and grievance procedures.

CURRENT MEANS OF TERMINATION OF AN EMPLOYMENT CONTRACT

DISMISSAL

Although the explanatory leaflet says that there are 3 main steps under the new procedures in order to fairly dismiss any employee there are actually 13 formal steps and missing anyone of these steps can result in the dismissal automatically becoming "unfair" and lead to penalties.

There are rights of appeal at each stage which will, no doubt, create difficulties for SMEs (Small or Medium Enterprises) simply because they require a higher right of appeal and there may be only one boss!

Failure by the Employer to follow the procedures exactly will as well as automatic "unfair dismissal" involve the compensation being increased by the Tribunal by between 10 and 50% in addition to the automatic four weeks "notice" payment. Failure to follow the procedure by the Employee will reduce their compensation by the same percentages.

The financial consequences of not following these procedures to the letter are therefore severe and these are in addition to the legal costs of a Tribunal Hearing which in our recent experience can vary from £1-2,000 for a one day to £5-6,000 for a three day hearing.

ALTERNATIVES

There are two, only one of which is a true alternative. However if the employee's performance has been well below acceptable limits for a long time it may well be that the business has found a way to do without them and the under-performing employee may have rendered their job dispensable. This must, however, amount to true redundancy. If that employee has to be replaced by someone in more or less the same position with more or less the same duties then that cannot be classified as redundancy. It leaves the only alternative:-

THE COMPROMISE AGREEMENT

To be a valid compromise agreement both parties, employer and employee, need to be independently advised by their own Solicitor. However the Compromise Agreement offers the certainty that, subject to independent advice, the costs of an Employment Tribunal will be avoided by both parties. This is a very real incentive to both to reach a compromise and even if the employee is paid more than the employer considers justified there is going to be a considerable saving in legal fees which a Tribunal Hearing would incur.

MORAL OF THIS STORY

1. Ensure that all your employees have new Contracts of Employment and call a staff meeting or circulate your staff to explain both the new regulations and the need for this new contract.
2. Follow the new Disciplinary Procedure to the letter and keep a full written record.
3. Agree a Compromise Agreement, if possible, to avoid unnecessary costs.

Malcolm McLean has assisted many Employers and Employees with Compromise Agreements and at Tribunals for many years and will help ensure that your Contracts of Employment are up to date and if relationships break down will advise on Disciplinary matters, Compromise Agreements or Redundancy.

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