

Newsletter

The UK Employment Law scene has seen fewer changes recently, unlike previous years, as most of the Governments focus has been on Brexit. There has however been one significant development recently, which has been brought about by the actions of the Unison Trade Union pursuing the issue of Employment Tribunal fees via the Courts. It has therefore been decided to devote this brief edition mainly to this recent but significant development. Also included are some useful tips on managing conduct and performance via the informal and formal routes.

Employment Tribunal fees Abolished?

The recent Supreme Court decision on Employment Tribunal fees, being found to be unlawful, will undoubtedly lead to more claims being submitted to Employment Tribunals. Since fees were first introduced in 2013 there has been a 70% reduction in cases submitted to the Tribunals.

Although some of the decline can be attributed to the introduction of early conciliation via ACAS, Davies Associate believes that the fee system has had the biggest impact in the reduction in claims.

What can Employers do to ensure that they are not exposed to unnecessary claims for unfair dismissal? The answer is not always straightforward but a good start is to ensure that companies have a robust disciplinary policy and procedure in place and they follow the procedure when dealing with issues of poor performance or misconduct.

How the Government will respond to this ruling is yet to be revealed but it is possible that they could act by introducing a new fees regime to replace the existing tribunal fee structure. Whatever the outcome is we will keep our readers updated on any further developments on this matter.

If companies are unsure of whether they are taking the correct course of action in dealing with difficult employees, they are strongly advised to seek advice prior to taking action, as the effect of getting it wrong could prove to be costly as well as time consuming!

Some basic advice on handling disciplinary issues via the formal route.

In summary employers are expected to:

- 1) Ensure that evidence is gathered in advance of making any allegations relating to poor performance or acts of misconduct.
- 2) Present the evidence to the employee prior to the disciplinary hearing inviting them to a hearing to discuss the issue(s) in question.
- 3) Conduct the disciplinary hearing and allow the employee to respond to such allegations.
- 4) Following the meeting, arrive at a decision and write to the employee to advise them of the outcome. If the decision is to issue a warning or dismiss the employee remember that they have the right to appeal the decision.
- 5) If an appeal is forthcoming invite the employee to attend an appeal hearing. Note that it is advisable that a different person hears the appeal to the one that made the original decision.
- 6) Notify the employee of the outcome of the appeal and that it is the final stage of the procedure.
And finally!
- 7) Ensure that you follow your disciplinary procedure throughout the process, which should be in line with the Acas Code of Practice in managing disciplinary matters.

Managing Conduct & Performance Informally – Minor acts of misconduct

Poor performance and misconduct can have a significant and sometimes serious effect on businesses. The most common results of which, if not addressed early enough, is reduced productivity, poor quality of work and potential impact on company performance and hence profitability. We witness so often that when concerns are not addressed early enough they can become more difficult to tackle at a later date.

The Acas Code of Conduct advocates the informal route when addressing minor concerns employers have with their staffs conduct or performance. The benefits of adopting the informal approach are:

- Less bureaucratic and time consuming.
- Such an approach often has the desired positive effect.
- No need for a representative (as a witness) at informal meeting.
- Should help to foster better employee relations in the workplace.

Where an individual's performance is starting to show signs of deteriorating or misconduct is relatively minor in nature, it may be appropriate to give clear feedback that such performance or behaviour is not acceptable and explain what improvement is required. Such conversations should be conducted privately and we would recommend making a short diary note of the conversation that took place.

Where the informal approach is having little or no effect or where there is a further deterioration in performance or behaviour, a more formal approach should be adopted. Most employers have formal procedures in place for managing discipline in the workplace. Where such procedures are not in existence, there is still an obligation on them to follow the Acas Code of Practice when issuing formal warnings and certainly when they are considering dismissal.

General Advice

Readers of this letter are advised to review their existing contractual arrangements with their staff to establish whether any contractual amendments or changes to Policies and Procedures or other action is necessary on their part resulting from the changes identified in the Newsletter. Client Companies will however be contacted directly, if they subscribe to a fully retained HR support service and require changes to either their Statement of Written Particulars or Employment Policies and Procedures. We hope that you have found the information contained within this Newsletter useful but if you require any additional information or clarification on any of the content, we will be pleased to assist you. We would also welcome any feedback from readers with suggestions on what you would like to see in future editions of the Newsletter.

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