

WORKPLACE DISPUTE RESOLUTION

Grievances and disciplinary matters are a fact of life for all employers. It is true that better employers have fewer employee complaints and issues to deal with but, however well you treat your employees, they will not be happy all of the time. Employees may have complaints about matters within your control, or outside of your control, such as a complaint about a fellow employee. Every employer will also deal with cases of misconduct from time to time, ranging from more simple matters such as lateness to more serious acts of gross misconduct such as dishonesty.

Employers will generally deal with matters of discipline and grievances by appointing a manager or director to deal with it. Dealing with such issues internally will often be the most appropriate way. However, there are times when employers should consider bringing in an external third party to try and help resolve the situation.

Using an External Mediator?

Employers might be reluctant to put internal matters into the hands of a person from outside the organisation but this is now an option recommended by Acas.

The ACAS Code of Practice published in 2009 recognises some of the difficulties involved in resolving employee relations matters internally. To address this, ACAS suggest that employers **“should consider using an independent third party to help resolve the problem”**.

The ACAS Code of Practice is supplemented by a Guide aimed at assisting employers through the potential pitfalls involved in matters of discipline and grievance. The Guide suggests that mediation may be appropriate in the workplace in the following situations:-

- For conflict involving colleagues of a similar job or grade, or between a line manager and his or her team member;
- When the formal stages of any procedure are put in abeyance;
- Where an existing formal procedure already allows for mediation;
- To address issues such as relationship breakdown, personality clashes, communication problems, bullying and harassment; and
- To rebuild relationships after a formal dispute has been resolved.

This last bullet point is important but we would stress the importance of keeping relationships alive both during and after the dispute. Whilst a person remains employed, it is vital that the relationship is not strained so far that the employee will inevitably leave. We often pick up cases where the parties can never work together again due to what has happened and the positions they have taken. However, there will often have been a chance earlier in the dispute to have resolved it and to have preserved a relationship that may have built up over many years.

Compliance with the Code

The ACAS Code of Practice will be taken into account by an Employment Tribunal in relevant cases. Where an employer has unreasonably failed to comply with the Code, an Employment Tribunal can adjust an award made to an employee by up to 25%.

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In certain cases, an employee (or more likely his or her legal representative) will argue that an employer should have tried workplace mediation and that a failure to do this should lead to any award being increased by 25%. Given how new the Code is, we have yet to see this argument put forward but it will no doubt happen soon. A Tribunal, being bound to consider the Code, may well agree in certain cases. It is important, therefore, for employers not to discount third party mediation without giving it proper consideration.

How can we help?

We have a number of trained and accredited mediators who can mediate in employment situations. We can host mediations at our premises or we can attend the employer's premises, or neutral premises such as a hotel if this is preferred.

We can offer fixed fees for a mediation which could ultimately save the time and costs involved in recruiting a replacement employee and/or dealing with a Tribunal claim brought by an employee or ex- employee.

For further information, please contact David Roath on 023 8048 2238 (david.roath@parissmith.co.uk) or Kathryn Casey Evans on 023 8048 2361 (kathryn.casey-evans@parissmith.co.uk).

NEED SOME GUIDANCE? PLEASE CONTACT US ...

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