

Avoiding the Cost of Litigation

In an employment culture that is becoming increasingly litigious, companies and employers are bearing the costs of the backlash.

It is estimated by the Centre for Effective Dispute Resolution, that employers across the UK are now spending an average of £210 million a year on employment tribunals, with large companies spending up to £275,000 in order to resolve cases. What is a more worrying trend is that grounds for actions against employers are only set to increase with the introduction of new legislation. The new Employment Equality (Age) Regulations 2006 affords rights on employees over retirement age, which could have great significance on employers, given the aging demographic of the UK population. The introduction of new statutory disciplinary and dismissal procedures also saw the advent of a new "automatic unfair dismissal" ground, based on failure to adhere to the prescribed procedures. As a result, the onus is increasingly on the employers to challenge the "presumption of guilt" levelled against them, and demonstrate that they have not relied on discriminatory and unfair practices in dealing with their errant employees.

To do this in a Tribunal can be an expensive business. The legal costs of defending a claim, from when it is first alleged to the eventual Tribunal can cost £7,500 on average. This is before any additional costs such as preparation of medical reports are taken into consideration. Employers must also look beyond the financial detriment they suffer as a result of having to engage in employment tribunals. Employment tribunals can prove to be extremely protracted, and may take over two years. Employers need to consider the opportunity costs of having resources tied up in the preparations for tribunal for this length of time. The case management will require onerous and time consuming preparation of documents. Additionally, a number of witnesses will need

to be present for the duration of a Tribunal hearing, and therefore absent from their normal duties. It is not surprising that employment disputes are second only to customer complaints as having the most disruptive impact on businesses.

For some time, the Government has been encouraging employers to explore ways of resolving dismissal, disciplinary and grievance issues within the workplace, rather than either party feeling forced to resort to the already over-subscribed tribunal system. The strict requirement upon parties to have exhausted the statutory disciplinary and dismissal procedures before bringing a claim to the tribunal is evidence of this. Similarly, employers may be forced to pay an additional 50% of any amount awarded in a successful claim against them, if they failed to employ the requisite procedures.



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In the past, employment rights and the statutory obligations conferred upon employers have been dismissed by many as "HR speak". However, if one of these rights is breached, and that breach forms the basis of a successful tribunal, it could be a very costly lesson to the employer. Prevention is clearly in everyone's interest, and the prudent employer will work to ensure that any grievances or disciplinary issue arising can

be successfully dealt with internally, without necessitating an expensive trip to the tribunal.

The first step to doing this is to invest in drawing up a contract that is tailored to each individual job and is as extensive as possible. A detailed contract will inform your employees of the rights they are entitled to under law and also any other contractual rights the employers wish to provide for. More importantly, it will outline the expectations the employer has of the employee, and their obligations under the contract. A well drafted contract will cover the actions that will warrant disciplinary action, and what that action will be. If both employer and employee are well versed on the internal procedures in place, and there is little ambiguity about where each party stands, it may reduce the number of issues that arise. A detailed breakdown of what the procedures are in place for dealing with a grievance, disciplinary or dismissal issue will also clarify the position of the employer and prevent conflict.

Of course, there is little merit in having procedures contained within the contract if they are not efficiently put into practice. Employers should ensure that all managers are well trained in how to deal with grievance, disciplinary and dismissal procedures. It should always be impressed upon those implementing the procedures that these are the minimum legally required and failure to adhere to them correctly will expose the

employer to unnecessary risk. Employers should not approach these procedures as a "means to an end", in order to dismiss the employee, but as an opportunity to resolve any issues, enable any apologies due, and establish protocols for the future. By genuinely committing to using the required procedures correctly, employers can save costs, avoid the risk, uncertainty and stress of imposed decisions, maintain control, and try to allow for more flexible, creative and constructive solutions, rather than expending money just to "get rid" of a problem.

Of course there will be situations that are irresolvable within the workplace. Even in this event, employers should consider alternatives to litigation in the tribunal, such as mediation. The Labour Relations Agency can facilitate this process as a means of resolving employment grievances, which can prove to be a solution that is time and cost effective. There are instances when a less adversarial approach than litigation will have a more positive outcome.

In business when time and money counts the old adage that prevention is better than the cure is true when it comes to employment disputes. It is wiser to tackle the problems that may lead to litigation within the workplace, rather than wait and pay for the consequences.