

Growing Demand for Tribunal Support & Representation

According to the ACAS annual report 2008-09, over the past year the conciliation service has received 55,000 unfair dismissal cases - an increase of almost 12,000 from the previous year equating to a 22% rise. Dismissals can arise from conduct, capability, redundancy, statutory restriction or some other substantial reason. This alarming statistic shows that many companies may not be following due process before reducing headcount. The economic downturn has, no doubt, contributed with companies making redundancies without following a fair and reasonable process. However, dismissed staff, faced with a possible lengthy period of unemployment, may also consider trying their chances at tribunal to secure compensation.

There is nothing to stop an ex-employee taking their ex-employer to court, however, there are steps a company can take to ensure that costly compensation is not the outcome.

Having robust policies and procedures in place which are well communicated and followed to the letter are key. Training for managers in operating the policies is essential particularly if they are operating without "hands on" HR support. The policies should, ideally cover, all areas of employment particularly grievance and discipline, absence, redundancy, capability, performance management and code of conduct. The policies should be sufficiently detailed to provide clear guidelines to managers and employees alike.

The grievance and discipline policies should follow the ACAS Code of Practice and accompanying guidelines introduced in April 2009 alongside the Employment Act 2008. The restrictive procedures dictated by the dispute resolution regulations, introduced with the Employment Act 2002 were abolished, however, companies need to follow a fair and reasonable procedure in order to successfully defend a tribunal case. A robust investigation into any issue that may lead to dismissal is essential, leaving no stone unturned to uncover the facts, before deciding to proceed to a fair hearing, if required, with adequate time spent allowing all the facts from all parties to be heard.

With redundancy following a few simple principles is essential whether making just one person redundant or one hundred. Consultation is paramount before proceeding to dismissal including trying to identify ways to avoid compulsory redundancy. Providing outplacement services to include CV writing and interview skills training can go a long way to appeasing unhappy staff who will lose their jobs.

For those companies that unfortunately end up receiving an ET1 from an ex-employee it is the start of an often stressful process that can last for months due to the increasing workload of the tribunal courts. There are several options for support.

The use of an in-house HR Manager with experience of tribunal defence is the most cost effective solution. However, HR Managers with this kind of experience are very thin on the ground. Many companies immediately hand the case over to an employment lawyer who may then instruct a barrister to take the case into court. This can be a hugely expensive option as there are often many hidden "run away" costs leading to an astronomical final bill which can run into thousands.

This can be compounded by the increasing amounts of compensation as tribunal panels take into account the anticipation of lengthy periods of unemployment. The Ministry of Justice has plans to examine and regulate the offering by lawyers many of whom offer a lack of clarity and clear explanation of fee arrangements to their clients. The provision of clear and transparent information on total costs will be the aim.

The use of an experienced HR consultant with a track record of successful tribunal defence with transparent costings can be another more cost-effective option.

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