



EMPLOYMENT LAW STRATEGY SESSIONS NOTES

Helping with Financial Hardship

Wednesday 18th February 2009

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Helping with Financial Hardship

- 1 Should there be a written policy on responding to employee requests for help in dealing with financial hardship?
- 2 Some say that this makes for fairness, consistency and certainty. Others say that it formalises a matter which should be considered only on an informal basis.
- 3 The matters for consideration include -
 - the employer's attitude towards advances of salary
 - loans from the Company to employees
 - loans between managers
 - loans between managers and employees
 - loans between employees
 - the reasons for making or refusing a request for an advance of salary
 - the reasons for making or refusing a request for a loan
 - when the loan has to be repaid
 - the likely scenarios in the event of non-repayment
 - whether non-repayment would be a disciplinary matter
 - whether the employee would be allowed to supplement their income from another job in addition to their current one
 - whether a disciplinary record, informal 'warnings' etc are relevant when deciding whether to provide financial assistance
 - whether a manager may help an employee deal with financial hardship solely in confidence, ie without mentioning the matter to any of their management colleagues
 - whether an employee may use the grievance procedure for complaining that a request for financial assistance was handled or decided unfairly
 - whether unauthorised disclosure of a request for financial assistance would be regarded as a disciplinary matter
- 4 It would be prudent to decide in advance how much detail will be requested when responding to a request for financial assistance?
- 5 Should the employer make a decision relating to affordability, and how might this impact upon the working relationship with the employee concerned?
- 6 Advances, loan and repayment arrangements should be set out in writing and signed.
- 7 If an employment contract has not already done this, the document regarding an advance or loan should give the employer the right to make deductions from salary or other remuneration, if appropriate.

- 8 Most employers should not give financial advice to its employees for reasons which include -
- legal and regulatory provisions
 - competence
 - risk of consequences
- 9 Employers who do find themselves counselling or advising in such matters must clearly set out (preferably in writing) the limits of their remit, expertise, etc. and make clear those areas in which they are not competent or able to advise.
- 10 Is it an employer's duty or obligation to refer employees to competent sources of help? There is a statutory duty to provide for their health, safety and welfare as far as is reasonably practicable. Put another way, neither the employer nor employee must destroy the relationship of trust and confidence between them.
- 11 Is it an employer's duty or obligation to discuss with an employee how his/her financial situation is affecting, or may affect, their work? Almost certainly, yes. This has to be managed, as must any decision relating to a request for financial assistance.
- 12 Beware of presumptions that because someone is in financial difficulty, they are -
- more likely to steal
 - less likely to be able to exercise sound judgment at work
- Removing them, for example, from cash handling duties for one or both of the above reasons may give them cause to claim unfair constructive dismissal.
- 13 Is offering paid overtime or more lucrative work within the business a satisfactory potential remedy?
- 14 Is a pay increase always an appropriate remedy?
- 15 Employees should be encouraged to communicate effectively with their creditors, particularly when the position is, or may be, serious.
- 16 If they feel that they cannot do so, then they could be referred to the CAB and other organisations which can handle such communications on their behalf. Some are voluntary; others charge for their services. Those who charge may have more time to address the employee's specific circumstances. Be cautious about offering recommendations unless these are believed to be competent and fair.
- 17 Is it appropriate for an employer, or one of its managers, to be involved in these communications any way – even on a support basis? Be cautious about guaranteeing future employment, income, etc.
- 18 It might be prudent to decide in advance what the employer's stance will be should the employee concerned -
- informally agree with all or some of his/her creditors to repay all the debts concerned over a period of time
 - informally agree with all or some of his/her creditors to repay a reduced sum over a period of time in settlement of all the debts concerned
 - enter into an individual voluntary arrangement (“IVA”)
 - become bankrupt

19 Many written contracts of employment give the employer a contractual right to terminate someone's employment in the event that they enter into an IVA or become bankrupt. However, most dismissals on these grounds are still subject to the statutory processes.

These notes are prepared in connection with one or more of our Employment Law Strategy Sessions. They are not intended to be a substitute for specific legal advice.

We would be delighted to help with further information on any of the above matters, and to help with how these might apply in your business according to your specific requirements. Please contact us to discuss further.

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