



EMPLOYMENT LAW STRATEGY SESSIONS NOTES

Resolving Work Relationship Issues

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Resolving Work Relationship Issues

- 1 Decide whether to have a policy or to deal with each matter pragmatically on its own merits.
- 2 The advantages of having a policy include an approach which is -
 - clear
 - consistent
- 3 Decide whether the issues will be dealt with according to those involved, eg -
 - issues between a manager and the Company
 - issues between managers
 - issues between managers and employees
 - issues between an employee and the Company
 - issues between employees
- 4 Consider whether the issues need to be -
 - clarified
 - investigated
- 5 Consider whether they should be addressed formally or informally
- 6 Issues involving alleged discrimination or harassment may need to be addressed formally
- 7 Consider matters stated “without prejudice” or in confidence.
- 8 Consider the possible or probable causes. These could include -
 - poor or inadequate communication
 - poor or inadequate understanding
 - poor or inadequate appreciation
 - personality clashes
 - incapability
 - incapacity
 - poor work performance
 - conduct at work
 - conduct outside work
 - trust & confidence issues
- 9 Are the issues personal as well as work-related? If so, determine a possible percentage between the two
- 10 Determine the impact on the business of the working relationship Issue(s)

- 11 Decide whether the business interests are to manage a repair of the relationship or to manage one or both those involved out
- 12 If several employees have issues with the same manager, consider all the -
 - issues
 - ramifications
- 13 If several employees allege the same issue, consider whether there the evidence -
 - serves to collaborate all the respective accounts
 - suggests an element of conspiracy or collusion
- 14 Consider the options for addressing the issues -
 - informally through discussion
 - formally through discussion
 - formally through the Grievance Procedure
 - formally through the Disciplinary Procedure
 - internal mediation
 - external mediation
- 15 The Grievance Procedure will involve -
 - a formal process
 - a judgment
 - an appeal
- 16 Mediation will involve -
 - a consensual process
 - “without prejudice” discussions to the point of agreement
 - actual or virtual meetings, but not necessarily at the same time
 - an agreed resolution
 - no appeal
- 17 The mediator must have had no part in the issues, and has no interest in the outcome
- 18 All concerned should be required to cooperate in whichever process is adopted
- 19 A failure to cooperate may be perceived as misconduct
- 20 If those involved are prepared to give an outcome a reasonable chance, it should be -
 - confirmed in writing
 - monitored for a specified period
- 21 Irrespective of the route adopted, apologies or expressions of regret might make a difference, and a refusal to give these when appropriate might be considered to be misconduct.

- 22 Where a breakdown of working relationships, and/or the relationship of trust and confidence, have a substantial impact upon the business, a dismissal on that ground may be fair provided that the process is fair.
- 23 This is subject to the person being considered for dismissal being entirely or significantly responsible for the situation.
- 25 The Disciplinary and statutory dismissal procedures should be applied.
- 26 A written trail of all stages should be kept.
- 27 Appeals may be by way of -
- reviewing the dismissal decision
 - rehearing
- 28 An appeal by way of rehearing is likely to be safer in the case of dismissals for a breakdown of working relationships and/or the relationship of trust and confidence.

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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