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Exit discussions | HR guide

Description

Introduction

In this guide I cover **exit discussions**. An employer or an employee, or both, may wish to discuss the employee leaving the business. There may be a falling out between the employer and the employee. The employer may, for example, want to avoid going down a capability or redundancy process.

The without prejudice rule

In order to be properly **without prejudice** and inadmissible in subsequent litigation the negotiations have to be genuinely aimed at resolving an existing dispute between the parties. What amounts to an existing dispute is not always clear. The fact that the employee has raised a grievance may not always necessarily be enough. The test is whether litigation has been contemplated. One of the exceptions to the **without prejudice** rule, for example, is where there has been unambiguous impropriety such as blackmail or perjury.

Protected conversations

Even if there is no dispute with the employee, the employer may be able to have a **protected conversation** with the employee about the employment ending which would be inadmissible in any subsequent unfair dismissal proceedings.

However, employers do need to be careful. There are some exceptions for unfair dismissal including where a dismissal is connected with pregnancy where the employer does not get protection. Also these discussions are not protected for other types of claims such as for discrimination.

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There must not be any improper behaviour too. If, for instance, an employer threatened the employee that they would be dismissed if they did not accept a deal this would probably constitute improper behaviour.

Often the employer may give an employee a choice between an exit deal and the employer commencing a performance improvement plan or a redundancy process. This would be unlikely to constitute improper behaviour if the employer makes it clear that the outcome of the other route was yet to be determined.

Good practice

Any **protected conversation** should be handled sensitively, particularly given that an employee may not be expecting these discussions. The meeting should take place in private and away from other staff. Although there is no legal obligation on the employer, it is good practice for the employer to allow an employee to be accompanied by a fellow colleague or trade union representative to the meeting.

The employer should explain:

- the rationale for the proposal;
- the financial package on offer;
- timings; and
- whether the employee will be required to sign a settlement agreement and obtain legal advice.

Settlement agreement

Usually if an exit offer is made by the employer, the employer will make it conditional upon the parties entering into a **settlement agreement**. In entering into the agreement the employee waives their rights to bring certain employment claims. It is a legal requirement that the employee obtains independent legal advice on the terms of the agreement and the effect on the employeeâ??s inability to pursue employment claims.

If you need any advice on **exit discussions** or have other employment law queries please do not hesitate to contact me on 020 3797 1264.

This guide is intended for guidance only and should not be relied upon for specific advice.

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