



Matt Gingell™

Making sense of employment law

Leaving a bad employer and exit strategies: A guide for employees

RAISING A GRIEVANCE

Depending on the circumstances, you could raise a complaint and try and resolve things that way. You ought to check the company's grievance procedure, which should set out the process that needs to be followed. Sometimes, it may be appropriate to make an informal complaint before lodging a formal grievance.

Raising matters internally is important because your employer will usually have an obligation to investigate and respond. Also, if you later decide to pursue a claim against your employer, compensation could be reduced if you didn't raise a grievance at the outset.

REACHING A DEAL

There may be an opportunity to have an off-the-record chat and reach a deal. Your employer might agree to pay you off on condition that you leave quietly and don't bring any claims. The parties would then normally enter into a settlement agreement.

It's a requirement that you obtain legal advice before entering into such an agreement. This allows you to assess your options and obtain information. For example, you need to be aware that the first £30,000 of a termination payment can sometimes be paid tax-free.

REFERENCES AND RESTRICTIONS

If you're worried that your employer might give you a bad reference, one could be agreed and annexed to the settlement agreement. Your employer would then

be obliged to provide that specific reference (known as an agreed reference) to prospective employers.

You may have a restriction in your employment contract preventing you from working for a competitor for a period of time when you leave. As part of the negotiation, this restriction could be waived.

BRINGING A CLAIM

If your employer has treated you badly, you could bring a constructive unfair dismissal claim.

To bring a claim, you must have resigned quickly because of a fundamental breach of contract by your employer. This could be a breach of trust, or another major breach.

Such claims are not easy to prove, so you would be wise to obtain legal advice before resigning. Advice should be taken at the earliest opportunity. You would normally need to have had at least two years' service. You would also be required to follow the Advisory Conciliation and Arbitration Service's (Acas) early conciliation process prior to lodging the claim. And any claim must be filed with the requisite fee at the employment tribunal within three months (less a day) from when the employment ends – and that's subject to the rules for extending time for early conciliation. The maximum compensation award is the lower of 52 weeks' pay or £80,541.

There may be other claims to consider too.

This guide is intended for guidance only and should not be relied upon for specific advice.
The law is also subject to frequent change. © Matt Gingell 2017

For Employment Law Advice Contact