

How to avoid employment tribunal claims

In an already difficult economy, employers face substantial costs in trying to deal with employee conflict and actual and threatened claims.

Employment tribunal statistics for 2011-12 show that of the 186,300 claims brought last year, the vast majority were either settled or dismissed prior to the final hearing.

Given that HR professionals and employment lawyers deal with many more settlements than claims, it is safe to assume that the number of threatened or potential claims faced by employers is much higher than these statistics show.

A survey by the Chartered Institute of Personnel and Development ('Managing Conflict at Work, 2007') estimates that the average cost to businesses of defending employment tribunal claims is in the region of £20,000 per annum (OPP/CIPD "Fight, Flight or Face it?", 2008).

But for many larger employers, the cost will be substantially higher. Again, the figures provided do not include the cost of settling claims prior to proceedings being brought.

To try and tackle the issue, the coalition government plans to reduce the maximum award for unfair dismissal from its current limit of £72,300 to a maximum of one year's pay.

However, most compensation awards fall below the statutory maximum. The median award in tribunals for the period 2011-12 was £4,560 and the average award was £9,133.

Moreover, in our experience, most employers do not settle claims because of their potential exposure to compensation awards, but rather to avoid spending management time and irrecoverable legal costs in defending claims, often regardless of their merits.

So, what can employers do to avoid the costs of actual and threatened employment tribunal litigation? Here are 10 suggestions:

1. Send employees a message

Do not settle all threatened or actual claims. Some employees seem to expect that they will receive a financial settlement simply by threatening litigation, so identify those claims that are without merit and fight them. Taking a stand in this way sends people a powerful message.

2. Get management buy-in for change

Fighting unmeritorious claims in your business will prove to be an investment rather than simply a cost so get support from your key stakeholders to take this approach.

To help you do this, demonstrate the real costs of workplace conflict and litigation as they will likely be shocking to management teams. A CIPD survey (Conflict Management, 2011) suggests that disciplinary issues take on average 18 days of management time to resolve, tribunal incidents 15 days and grievances 14.4 days (CIPD, 2007).

This means that HR professionals are spending in the region of three to four weeks every year dealing with workplace disputes, which is a staggering amount of time to spend away from helping to grow the business.

3. Put the right workplace policies and procedures in place

The reason that the 'right workplace policies and procedures' mantra is repeated so often is that the absence of proper procedures materially increases the risk of claims.

Having the correct procedures in place not only reduces this risk, but also acts as a filter to ensure that meritorious claims will be dealt with before they escalate and non-meritorious ones will be fought.

4. Train your leaders to follow policies and procedures

Meritorious claims seldom appear to result from HR errors, but mostly from the acts and omissions of business managers. Therefore, training them in the application of core HR policies (for example, disciplinary, grievance and performance-related ones) is a vital part of reducing claims.

5. Take HR and legal advice early

HR needs to be in a position to filter out which claims are likely to be meritorious and unmeritorious early on and, where appropriate, settle the meritorious ones.

Just as importantly, however, it is vital to prevent procedural failings from turning an unmeritorious claim into a meritorious one. This means that HR professionals must be in a position to provide strategic and tactical advice as early as possible, and have access to guidance about employment law where necessary.

6. Ensure that misconduct is dealt with fairly but firmly

Once adequate policies are in place and managers are aware of how to apply them, ensure that management decisions, including the difficult ones, are applied consistently.

For example, it is important to deal with misconduct and poor performance fairly but firmly, even if an employee is known to be a trouble-maker. Managers should be assessed, in part, on their willingness to manage these difficult situations effectively.

Nothing is more damaging to dedicated and hard-working staff than the knowledge that their managers will not take difficult decisions or that they are not being treated fairly.

7. Try alternative approaches to identify and resolve workplace conflict

Workplace mediation can prove highly effective and efficient in resolving conflict early before it escalates into grievances, disciplinary action and threats of litigation.

It can also help to change the workplace culture. A 2008 survey suggests that workplace mediation can help resolve all issues involved in 49% of conflicts and all or part of the issues involved in a huge 82% of cases.

8. Identify external workplace mediators or train internal ones

Make alternative methods of conflict resolution as much a part of your internal processes as traditional grievance, disciplinary and performance ones.

Smaller businesses can use external workplace mediators but, if you are large enough, train up your own staff and managers to act on an internal basis. These trained personnel can also prove a valuable resource for training managers in some basic conflict management techniques (see below).

9. Train managers in basic conflict management and resolution skills

Basic conflict management and resolution training for managers does not need be any more complex than, for example, the equal opportunities/performance management training that they receive.

But the benefits to the business can be enormous, not only in resolving workplace disputes early and improving relationships, but also in refocusing employees' and managers' away from litigation as a first point of call.

10. Remember the carrot as well as the stick

Ultimately, employees are more likely to be happy, loyal and reasonable if they are treated fairly. If you provide staff with incentives to perform at their best, it is likely to go a substantial way to avoiding complaints and claims, particularly if you combine this approach with robust but firm treatment of those who are under-performing and misbehaving.

© Daniel Peyton

If you want advice or guidance on any topic in this article or other HR issue, please contact the dedicated HR team at RiverView Portfolio Ltd.