



## RAWORTHS EMPLOYMENT NEWSLETTER December 2004

### Statutory Disciplinary and Grievance Procedures

From 1<sup>st</sup> October 2004, the law now requires you to follow statutory 'dispute resolution' procedures.

If you do not provide written documentation to your employees in this respect, they can go to an Employment Tribunal who can award an employee up to four weeks' pay as compensation.

The statutory disciplinary procedure applies only where you are *contemplating* dismissing the employee. This includes situations where you are making an employee redundant or terminating a fixed-term contract. The procedure does not apply to verbal or written warnings and you should follow your own company procedures in this respect. The statutory procedure is in three stages:-

- Written statement – where you give the employee details of the allegations against them.
- Meeting – to discuss the allegations and give the employee the opportunity to respond.
- Appeal – they have the right of appeal against any decision you may make. This must involve a further meeting to hear their appeal. If at all possible, this should be heard by a different manager/partner.

The statutory grievance procedure follows the same format. There are also modified procedures which can be used in special circumstances.

**Remember** – if you don't follow the procedures and your employee makes a successful application to the Employment Tribunal, the Employment Tribunal can increase any award it makes against you by up to 50%!

### Disability Discrimination Act 1995

The Act now applies to **ALL** employers whether you have only one employee or are only even contemplating having an employee.

From 1<sup>st</sup> October 2004, there is also the introduction of a new provision of direct discrimination which is where an employer discriminates against a disabled person on the *grounds* of their disability. There is no defence for this type of discrimination.

From 1<sup>st</sup> October 2004, there is also a new statutory definition of harassment. **Remember** that you are vicariously liable for the acts of your employees – unless you can show that you have done all that you can to prevent the acts taking place. The best way to minimise risks of litigation in this respect is to have effective policies and procedures in place which inform your employees of their rights and obligations under all discrimination law and that they are regularly trained on these policies.

## Terms and Conditions of Employment

Every employee is entitled to written terms and conditions within **two** months of starting employment. If you do not provide them with these an employee can go to an Employment Tribunal who can award the employee two to four weeks' pay. The Employment Tribunal will also determine what those terms and conditions should be!

## Redundancy – Fair or Foul ?

We tend to get a number of queries at this time of year regarding redundancies. There are statutory provisions which come into effect if you are making 20 or more employees redundant but what if it is less than that and how do you ensure a fair selection process? There are several key factors to take into account when making redundancies:-

- **Communication** – explain to all employees what is happening and why. Leaving them in the dark will only encourage rumours.
- **Consultation** – consult with the individuals affected regarding how to avoid potential redundancies and what alternatives are available. **TOP TIP** – two to three weeks is a reasonable consultation period.
- **Selection** – if it is the individual job that has disappeared, selection is fairly straight forward but if you just need to reduce your head count, it can be more tricky. Make sure your selection criteria is fair and that you can justify both the criteria and the selection of the particular employee. **TOP TIP** – if you have a good appraisal system, use the criteria and commentary contained in that.
- **Payments** – calculate individual redundancy entitlements, any pay in lieu of notice and holiday pay. **TOP TIP** – the notice period can run concurrently with the consultation period.
- **Appeals** – don't forget to give every employee selected the right of appeal against the decision – and a fair hearing.

**Be fair and follow a proper process and you won't fall foul of the law!**

## National Minimum Wage

- Workers who are aged 22 and over have an increase from £4.50 to £4.85 per hour
- Workers who are aged 18 to 21 inclusive have an increase from £3.80 to £4.10 per hour.
- **New** – the introduction from 1<sup>st</sup> October of a minimum wage of £3.00 per hour for 16 to 17 year olds who are above compulsory school age.

If you have any specific questions relating to your business, please contact:

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