



SmartHR

Monthly People Management Feature

Gail Yeowell - Managing Director, Smart HR Solutions Limited

Discipline & Dismissal...

the costs of not managing them well

It is important that underperformance or disciplinary situations are handled fairly, reasonably, objectively and consistently within your organisation. Where possible, performance concerns should be dealt with informally. This can include providing additional training, coaching and feedback. Where informal action does not achieve the desired result, formal disciplinary procedures may be the next step.

Your organisation should have in place a disciplinary policy and procedure for you to follow that includes various stages and levels of disciplinary sanctions e.g. verbal warning, written warning, and dismissal. The main aim of the disciplinary procedure is to *improve underperformance* relating either to a person's *capability* or *conduct*. It should follow the principles of the *Code of Practice on Disciplinary and Grievance Procedures in Employment 2007 (IOM)* or *ACAS Code of Practice on Disciplinary and Grievance Procedures 2009 (UK)*.

Before reaching a decision to dismiss, to minimise the risk of a claim, any contractual disciplinary and grievance procedures must always be followed.

Where a dismissal occurs it should be for a *fair* reason i.e. capability, conduct, redundancy, statutory illegality, some other substantial reason, or retirement (UK is abolishing the default retirement age from October 2011).

If the dismissal of an employee has not been managed well, he or she could potentially claim:

- **Wrongful dismissal** – this concerns a breach of an express or implied term of the contract e.g. inadequate notice to terminate or inadequate payment in lieu of notice. Compensation is a damages payment for breach of contract. **A UK Employment Tribunal could award up to £25,000. IOM compensation is limited to the person's notice period.**

If an employer implements a summary dismissal for misconduct which is not *gross*, they could be liable for damages for **wrongful dismissal**.

- **Unfair dismissal** - an employer must follow a fair procedure to avoid claims from employees who qualify to pursue unfair dismissal claims even where gross misconduct occurs. Remedies can include **compensation** (*basic award* and *compensatory award*), **reinstatement** or **re-engagement**. **A basic award** could be made via an Employment Tribunal. **UK maximum basic award is £12,000; IOM is one week's pay for each year of service (there is no limit on the number of years, although the maximum weekly pay cap is £480)**. In addition, a **compensatory award** could be made. **Maximum UK limit is £68,400; IOM is £50,000.**

There are various **automatically unfair** reasons for dismissal that employees can claim without any qualifying period of service with their employer e.g. asserting a statutory right, making a protected disclosure.

Where there is **unlawful discrimination** e.g. sex, sexual orientation, marital status, race, religion or belief, age (UK), and disability (UK) – **compensation is unlimited in the UK; IOM maximum compensation is £50,000**. A Tribunal may also issue an award for injury to feelings – **up to £5,000 in the IOM**.

There could be a situation where an employee resigns, asserts that the employer has committed a

serious breach of contract, and claims **constructive dismissal**, seeking compensation.

Aside from the above financial costs, other costs include: management time in dealing with discipline and grievance procedures, potential Tribunal claims, plus any associated representation costs. Your Company's reputation, which may have taken years to build up, can be damaged in just one poorly managed situation. You could lose clients; morale and productivity of existing staff can be affected, and you may find it hard to attract and retain employees in the future.

What next? Review your equal opportunities, discipline and grievance policies, procedures and practices to ensure they are appropriate, as well as your performance management process. Assess your managers' skills in handling performance issues, disciplinary and grievance situations, and their awareness of discrimination legislation. Include 'up skilling' or 'refresher' training into your Company's Development Plan for the year ahead. **The costs of doing this could be far less than the potential costs of not taking action.** It will also show your Company's commitment to their ongoing CPD.

Good people management practices will help you to deal with concerns as and when they arise, either informally or formally, and have highly skilled and effective managers that operate fairly and consistently.

SmartHR provides a range of professional, practical and cost effective HR and training outsourcing solutions for businesses.

BOOK NOW to attend our '**Managing Discipline & Grievances**' workshop on 7 April at The Empress Hotel – only £225pp

Visit the Events page of our website for other forthcoming workshops and further details

T: 619619 **E:** gail@SmartHR.co.im **W:** www.SmartHR.co.im

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