



April 2019 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this month's edition, we report on:

- Complex Grievances – our 6 types of aggrieved Employees.
- Should an Employer change passwords on an Employee's work mobile?
- References – some more top tips.

Complex Grievances – our 6 types of aggrieved Employees

Most grievances contain at least an element of truth. Still often it may be blown up out of all proportion. An individual will generally base a grievance around something that happened that they genuinely weren't happy with.

We think there are six types of people who bring a complex grievance – you'll have experienced them all in various degrees.

The Exaggerator

The complainant enjoys moaning to their colleagues. They'll exaggerate and gossip becomes gospel. The exaggerated incidents become folklore and the complainant doesn't want to back down from them when pursuing the grievance.

The Misconstrued Incident

Sometimes it's just about perception.

For example, a manager may just give instructions in a firm way and says he never raises his voice. The employee feels she is being shouted at and harassed. The manager is ex-military, so it's not difficult to see his 'firm' speaking could be intimidating, but that's not the same as screaming.

Even if you believe him - it doesn't mean the complainant didn't believe what she was saying. She just misconstrued it.

The Inarticulate Complainer

The complainant knows something's wrong – maybe their job isn't as fulfilling as they hoped – and there must be a reason for that.

They can't put their finger on it, so they just include everything that's happened – sinister or not. So, they think you'll be able to sort out the mess for them.

The Obsessive Grievance

Someone who might once have had a legitimate grievance, but they now see everything through the prism of their sense of injustice.

If their manager doesn't say 'good morning' in a friendly enough tone, that's another ground for the grievance (have you ever had anyone like that?)

The Vexatious Grievance

Where the employee just won't let things go. The company may have dealt with their complaint in a reasonable way, but the employee is never satisfied and keeps raising the same, or related, matters in a consecutive series of complaints.

The Conspiracy Theorist

Some employees, particularly after being in the organisation a while, who don't tend to get their way will blame their woes on a conspiracy.

They don't get the performance rating they think they deserve. They don't get the bonus. They begin to believe there is a conspiracy against them.

They become such an irritant to managers that the managers decide they can't put up with the behaviour any longer.

Make sure you conduct a fair investigation, following up on any points and lines of enquiry raised by the employee.

Employers: when you write the outcome letter, state what you believe on balance happened with reference to documents and evidence

Contact us: if you need guidance on dealing with grievances.

Should an Employer change a password on an Employee's work mobile?

Where a company provides a lap-top or mobile phone, does an employer have the right to unilaterally change passwords on an employee personal internet account set up by the employee on such devices?

In a recent case of *Richmond v Selecta Systems Ltd [2018]* the Court gave some guidance. Here the sales director of Selecta, Mr Richard, was supplied with a work mobile phone.

Mr Richard also used the work mobile phone to access his personal AOL and Apple/iCloud accounts.

As part of the termination package, Mr Richmond agreed for the MD to have his work mobile phone plus his passwords so that he could check for company information.

Unintentionally the MD reset the passwords which locked Mr Richmond out of his personal accounts and iTunes music library.

Later it seemed that Mr Richmond had intentions to set up a new business, in breach of the agreement that they had been in the process of negotiating.

Mr Richmond was dismissed without notice and brought various claims against Selecta.

The High Court found that Selecta had interfered with Mr Richmond's personal internet accounts. Employees were not stopped from using company equipment for personal purposes and the fact that Mr Richmond gave his employers his passwords did not authorise the change.

However, the High Court did find that Selecta were entitled to protect their business by accessing the work mobile phone and Mr Richmond's internet accounts to delete any company information held there.

But the MD was not entitled to change security details on Mr Richmond's internet personal accounts.

Employers: this decision is helpful to employers that can access employees' personal accounts held on a company phone or laptop. Although be open and clear about this beforehand.

Contact us: we can assist with Email, Internet and Computer Policies.

Giving References – some more top tips?

We are often asked about giving references for ex-employees especially when they leave in difficult circumstances.

References must be fair and accurate. They must not be misleading in what they contain or don't contain. It does not have to be very detailed or comprehensive.

There is nothing to say that you must answer the 28 detailed questions posed by the new employer. Sometimes picking up the phone is worth doing so there is nothing in writing.

Here are a few extra tips:

- An employer shouldn't refer to an employee's misconduct unless it has reasonable grounds (after a reasonable investigation) for believing that the misconduct has taken place.
- If you decide to mention investigated allegations made against the employee, you must spell out the fact that these allegations haven't been looked into. Failing to make the position clear could be a breach of your duty of care.
- It would be unwise to refer to things of which the employer is unaware; for example, a customer complaint. Ask yourself if the employee would be taken by surprise (in a bad way) by anything you've written in the reference. If they would best not to include it or at least qualify what you say.

Employers: step back and ask whether or not the reference paints a reasonable picture; one that doesn't make the employee out to be better, or worse, than they are.

Contact us: we can assist with checking reference requests.

For more information or assistance Email: enquiries@employmentlawsupport.co.uk



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