

Raising a Grievance

The Employment Act 2002 (Dispute Resolution) Regulations 2004 (the "Regulations") which came into force in October 2004 brought about a sea of change in employment relations, putting the onus on employees and employers to try to resolve disputes amongst themselves before proceeding to the Employment Tribunal.

Pursuant to the Regulations, generally an employee must raise a grievance in writing about the matter or matters they wish to complain to the Employment Tribunal about and send this to their employer before issuing a claim in the Employment Tribunal. This is known as a 'Step 1 grievance letter'. Upon receipt of a Step 1 grievance letter an employer should invite the employee to a meeting to discuss their grievance and following that meeting, notify the employee in writing as to the outcome of their grievance. An employee can appeal the outcome of a grievance and if, following that appeal, an employee's grievance is still not resolved to their satisfaction they can then proceed to the Employment Tribunal. Failure by either party to follow the statutory grievance procedure can result in a 10% - 50% increase (if the employer failed to follow the procedure) or decrease (if the employee failed to follow the procedure) on any award made by the Employment Tribunal.

So what does or does not constitute a Step 1 grievance letter? Unfortunately for employers it is not as simple as watching out for letter which is clearly labelled '**GRIEVANCE LETTER**'. The following points have emerged from recent cases on this issue:

- There are no formalities required for a Step 1 grievance letter. This means that it doesn't have to be labelled a grievance or make it clear that the statutory grievance procedure is being invoked. The only requirement is that it must be in writing.
- It is irrelevant whether or not an employee intended to raise a grievance when writing to the employer – in other words, an employee can raise a grievance without even knowing it!
- An employee does not have to comply with their employer's internal grievance policy to have raised a valid statutory grievance.
- A letter of resignation could constitute a statutory grievance if it contains the reasons why an employee is resigning and those reasons could form the basis of a complaint to the Employment Tribunal.
- A solicitor's letter before action can amount to a Step 1 grievance letter.

The moral of the story for employers, is beware! Any written communication from an employee (or even an employee's solicitor) should be carefully analysed if an employer wants to avoid failing to comply with its statutory obligations under the Regulations as well as an increase in any award made by the Employment Tribunal to the employee as a result of that failure.

If you would like more information please contact Sacha Tatham in the employment department: sachatatham@boltburdon.co.uk or telephone 020 7288 4724.