

If it's in writing - is it a grievance? Nicholas Phillips gives details of how to deal with written complaints from employees.



The cost of overlooking a grievance.

It could cost you dear if you do not appreciate correctly whether a complaint made in your employee's resignation letter or any letter before action written by him or on his behalf - for example by his solicitor - represents Step 1 in the grievance procedures introduced by the Employment Act 2002.

A written complaint can be a "grievance" for the purposes of the procedures without necessarily being formally labelled as such. Failure to observe the procedures when they apply will increase the compensatory element in an eventual Employment Tribunal award in favour of your employee by between 10 and of 50 percent.

A "grievance" under regulation 2(1) of the Employment Act 2002 (Dispute Resolution) Regulations 2004 is a "complaint by an employee about an action which his employer has taken or is contemplating taking in relation to him".

Under paragraph 6 in Part 2 of Schedule 2 of the Employment Act 2002, Step 1 of the grievance procedures occurs if your employee states a grievance in writing and sends the statement or a copy of it to you. But you must check the regulations as the procedures do not always apply. They do not, for example, apply if the grievance is that you have dismissed or are contemplating the dismissal of the employee.

If Step 1 is taken and the procedures apply you must normally initiate Step 2 and invite your employee to a meeting to discuss the grievance. You should do this without unreasonable delay, failing which your employee can start Employment Tribunal proceedings 28 days after raising the grievance. He can then expect an uplift of between 10 and 50 percent to any eventual compensatory award in his favour.

Unless you know that the grievance is not one to which the grievance procedures apply, your safest course must be to reply without delay to anything in writing (in whatever form, including for instance, a letter, fax or email) in which a complaint is made. The reply should invite your employee or former employee to attend a meeting to discuss his grievance and you should follow to the letter the standard grievance procedure or, if appropriate, the modified grievance procedure laid down in the Employment Act 2002.

Offices

Westminster

William Sturges & Co
Burwood House
14-16 Caxton Street
London SW1H 0QY
Tel: +44 (0)20 7873 1000
Fax: +44 (0)20 7873 1010

Ealing

William Sturges & Co
39 The Mall
London W5 3TP
Tel: +44 (0)20 8567 1481
Fax: +44 (0)20 8579 5352

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Contact

Company and commercial
Nicholas Phillips
nicholas.phillips@williamsturges.co.uk

www.williamsturges.co.uk