



ActifHR

Where people matter...

April 2019 Update

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

In this Edition we report on:

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

Most grievances contain at least some part of the truth. Though often it may be blown up out of all proportion. Employees will generally base a grievance around something that happened that they weren't happy with.

We have come up with six types of people who bring a complex grievance – you'll have experienced them in various degrees.

The Exaggerator

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

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The Misconstrued Incident

Sometimes it's just about perception. Say a manager gives instructions in a firm way and says he never shouts. The employee feels she is being shouted at and harassed. The manager is ex-military, so perhaps to some his 'firm' speaking could be intimidating, but that's not the same as shouting.

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

This employee knows something's wrong – maybe their job isn't as fulfilling as hoped – there must be a reason for that.

They can't put their finger on it, so they add in everything that's happened – sinister or not.

The Obsessive Grievance

Someone who might once have had a legitimate grievance, but now see everything through their view that everything is unjust.

If their manager doesn't say 'good morning' in a friendly enough tone, that's another thing to add to their grievance (have you had anyone like that?)

The Vexatious Grievance

This employee just won't let things go. You 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 other complaints.

The Conspiracy Theorist

Some employees, if they don't get their way may blame their perceived troubles on a conspiracy. Perhaps they don't get the performance rating they think they deserve.

They then begin to believe there is a conspiracy against them.

They become an irritant that the manager can't put up with the behaviour any longer.

In all these instances, 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.

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Should an Employer change passwords on an Employee's work mobile?

Where a company provides a lap-top or mobile phone, does an employer have the right to change passwords on an employee personal internet account set up by the employee on such devices without agreement?

In a recent case of *Richmond v Selecta Systems Ltd [2018]* the Court gave some guidance. Here the sales director, 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 settlement package, Mr Richmond agreed that the MD could have his work mobile phone plus his passwords so he could check for company information. Unintentionally the MD reset the passwords which locked Mr Richmond out of his personal accounts and iTunes music.

Later it transpired that Mr Richmond had intended to set up a new business, in breach of the agreement they had been negotiating. Mr Richmond was dismissed without notice and brought various claims against the company.

The High Court found that Selecta had interfered with Mr Richmond's personal internet accounts. As employees were able to use company equipment for personal purposes. Just because Mr Richmond gave his employers his passwords did not mean he authorised 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 should not be misleading in their content. They do not have to be very detailed or comprehensive. You do not need to 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 should not 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 be clear 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 which the employee is unaware of; 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 then better 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.



Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

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