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KEY NOTES

How Mediation Avoids Mischief

Mediation of workplace disputes has many virtues. It is far more likely to preserve employment, it is less adversarial and speedier than a grievance procedure and the stress generated is less than in traditional disciplinary methods. A number of well-known employers have adopted workplace mediation for these excellent reasons but more should do so.

There is another even more compelling reason to use mediation that is rarely voiced by lawyers but is of great value: it can prevent mischief-making.

Generating an investigation by raising grievances can be very useful tactic for the aggrieved. The larger and more bureaucratic the employer the more potentially harmful the process. The individual accused is put under pressure and may be investigated by an independent person. Findings that can be embarrassing for an employer are committed to a record that can be made public in subsequent litigation. If a disciplinary route then follows more senior levels of management are involved giving rise to possible political and partisan influences to be introduced, particularly if higher levels of management are looking for a reason to criticise whoever is being investigated. Add the time and cost this all takes and the diversion from core business priorities and it is easy to see why the usual processes to be found in most staff handbooks can and often do act as a Trojan horse for disruption and trouble.

All of these defects apply in situations where no ulterior motive applies and the employee complaining is entirely genuine in making raising the grievance. It is also true that many advisers are well aware how exploitable these processes can be and are willing to use them to extract a higher offer than might otherwise be the case. In their defence those who have a duty to act in the best interests of a client may be criticised if they fail to use such tactics.

Encouraging the use of mediation can avoid some of these problems. It is often triggered at an earlier stage than a formal grievance; it can avoid the need for an extensive investigation; the process is always entirely confidential, off the public record and its availability may well act as deterrent to introducing lawyers into the mix. Any solution will have been accepted by all involved.

There is no need to suggest abandoning grievance and disciplinary codes. The point is that when considering adopting mediation and encouraging its use there is a reason to do so that is often ignored. It will not solve every problem but may well stop one in every three complaints from proceeding further. Finally if you do end up in a tribunal judges will like the fact that you have attempted to mediate.

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