

PRESS CUTTING

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Employers call for employment law change

Ronnie Fox, Principal at Fox Lawyers comments: "As a City employment lawyer I welcome the CIPD survey published today. The survey results certainly reflect widespread concerns about high costs for employers created by current employment law and the employment tribunal system."

The headline point is that almost 70 per cent of employers feel that there is no effective protection against employees who make wholly unjustifiable claims to employment tribunals. There is a limit to the jurisdiction of employment tribunals to award compensation in unfair dismissal claims (£68,400) but no limit applies to unlawful discrimination cases. So there is a temptation for an employee to tack on a discrimination claim even where the evidence of discrimination is less than compelling. The government is consulting on plans to require employees to deposit a significant sum when starting tribunal proceedings.

The survey shows an increasing tendency for employers to "pay off" employees in return for compromise agreements waiving claims, even if they know the employee's claims are without merit or substance. This is hardly surprising since, through a Compromise Agreement, an employer knows exactly what he/she is paying for (confidentiality obligations etc) whereas the tribunal system is comparatively risky. This is because it is much cheaper for claimants to bring claims in the employment tribunal than to sue in the High Court. Moreover tribunals very rarely order the losing party to pay the cost of the winning party whereas this is the usual principle in High Court cases.

The survey results show a pleasing increase in the use of mediation. Surprisingly employers have a misplaced fear of the costs of mediation. Some 42 percent of employers cite the cost of mediation as a reason they do not employ it more, yet the average costs of mediating for a respondent are significantly less than those of dealing with a disciplinary case. The survey says that even more important benefits of mediation are "to improve relationships between employees" and "to reduce the stress involved in more formal processes". That does not accord with my own experience.

In January Prime Minister David Cameron announced proposals to increase the qualifying period of continuous employment for employees to bring unfair dismissal claims from one year to two years. He said that this would give businesses greater confidence to hire new staff. That is contradicted by the survey results which say that only 5.7 per cent of respondents agreed that the possibility of unfair dismissal claims discouraged their organization from recruiting. This is said to be because there is no qualifying period for discrimination claims which are seen as a more serious threat.