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Mediation - the new alternative to employment tribunals?

With further major changes in employment law and tribunal procedure just around the corner, will the Gibbons Report herald the take-off of employment law mediation in the UK? Or do we already have widespread mediation under another name?

Employers and employees alike are breathing a huge sigh of relief at the prospect of the statutory dispute resolution procedures being repealed within the next 12 months. With the publication of Michael Gibbons' review of UK employment dispute resolution, the government has accepted his central recommendation to abolish the statutory minimum disciplinary and grievance procedures.

The dispute resolution regulations were designed to reduce the number of employment tribunal claims by encouraging employers and employees to resolve their disputes between themselves prior to embarking on litigation.

In this ambition they spectacularly failed, with the number of employment tribunal claims continuing to rise. Further, much tribunal time ended up being used on determining preliminary issues as to whether one party or the other had complied with the statutory minimum procedures.

So what is Plan B? How will the government now look to reduce tribunal claims? A clue perhaps lies in the little-heralded recommendation of the Gibbons Report to increase the use of mediation in the employment sphere.

ACAS will no doubt argue that it has already been providing mediation of employment disputes for decades, as part of its statutory duty to offer conciliation in respect of most employment tribunal claims. However, with a significant reduction in its resources over recent years and the fact that ACAS tends only to become involved once a tribunal claim has been presented, it is doubtful whether existing resources can be stretched any further to give ACAS a greater role before proceedings are instigated.

Therefore, unless significant financial resources are put in place to fund a state-provided mediation service, available to parties at the point that a dispute arises, there is likely to be an opportunity for private mediation providers to enter the employment sphere to a much larger extent than at present.

Of course, the major problem for private mediation services in the employment sector is cost. Relatively speaking, the majority of employment disputes remain of low enough value that the cost of good, private mediation will be prohibitive for employers and employees alike.

Additionally, the substantial gap in resources between employers and employees poses a problem for the traditional model of mediation. If the cost of mediation is to be borne by the employer, then employers need to be persuaded that this is an effective use of their resources. Equally, employees would need to be reassured that a mediation service funded by employers is truly impartial.

However, if the private sector can be innovative enough to develop a cost-effective model for 'routine' workplace mediation, then there is a great deal to commend mediation as the future of employment dispute resolution.

There is no doubt that litigation often takes a heavy toll on management time, workplace morale and financial resources. Also, the burgeoning amount of new employment legislation in recent years has made tribunals far more legalistic and much less accessible to the layman than they were originally intended to be. A dispute resolution model which assists both sides in understanding each other's point of view and promotes better workplace relations would certainly be desirable to many stakeholders in the employment field, including employers.

Although the Gibbons Report also recommends that employment law should be simplified, this is easier said than done. Therefore, it is simply not possible to have complex laws in areas like discrimination, working time and business transfers without having a robust system for resolving the inevitable disputes that will arise in these areas.

Consultation into the future of workplace dispute resolution is currently being undertaken by the government. Fresh, bold thinking is required and traditional assumptions about how workplace disputes arise and get resolved need to be challenged. Why not contribute to the debate? Visit

<http://www.dti.gov.uk/consultations/page38508.html>

Consultation closes on 20 June 2007.