

WRONGFUL DISMISSAL

Wrongful dismissal relates to a dismissal of an employee in a way which is in breach of the employee's contract of employment. The most common instances where this is likely to arise is where the employer dismisses the employee summarily or where the employee resigns in relation to a repudiatory breach by the employer (constructive dismissal).

Hints and Tips:

1. It is highly advisable to have a 'PILON clause' (payment in lieu of notice clause) in your employees' contracts as this will allow you to maintain maximum flexibility;
2. If your existing contracts do not have PILON clauses, you may still be able to make a PILON but you must be aware of the fact that this constitutes a fundamental breach of contract. You must therefore pay employees the full amount that you would have paid them had they worked (including extra financial benefits they would have enjoyed);
3. It can be useful to put employees on garden leave if there is a risk that they might make use of your confidential information;
4. Be aware that any breach of the contract by you means that any post-termination restrictions are void;
5. Generally, if you have a PILON clause in a contract the payment in lieu of notice will be taxable. If you do not have a payment in lieu of notice clause then as a general rule, the payment will be free of income tax- up to £30,000 and are not currently subject to national insurance. However, there are exceptions;
6. An employee can only claim constructive dismissal where they can show that you committed a 'fundamental breach' of their employment contract. Therefore, make sure you know what is in your employment contracts;
7. Constructive dismissals are normally based on an allegation that you have undermined the "trust and confidence" in the working relationship. The way to reduce the likelihood of this is to make sure you are proactive in dealing with employees' concerns and operate a policy that monitors this;

It is important to treat any statement that could be construed as a grievance, as a grievance. A letter of resignation from an employee, that expresses misgivings about your conduct towards them, will usually suffice it does not have to be labelled "grievance";

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please email hina@partnerslaw.co.uk or call 07809 694400



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