



## Is it time for a parting of the ways?

nplaw's Andrew Brett comments on recent developments in the law relating to the termination of employment.

### **'Without prejudice' discussions**

Every employer wishing to dismiss an employee would be well advised to try to negotiate a settlement. A recent ruling by the Employment Appeal Tribunal clarifies the protection available to employers who conduct such negotiations. The Employment Rights Act 1996 provides that discussions which took place between the parties before the employment was terminated may not be admitted as evidence in unfair dismissal proceedings: the discussions are said to be 'without prejudice'. However, 'improper behaviour' on the part of an employer will result in the loss of protection. The Employment Appeal Tribunal has ruled that:

- not just the content of the discussions, but even the fact that they took place, may not be disclosed;
- the protection extends to internal discussions between the employer's managers and/or advisers;
- the protection can't be waived: the discussions will be inadmissible even if the parties agree to them being disclosed; and
- what constitutes improper behaviour is a question of fact that should be given a wide interpretation.

Employers should note that the rules differ for other types of claim, such as discrimination claims.

### **Tax treatment of termination payments**

Current tax rules allow the first £30,000 of a payment for the termination of employment to be paid free of income tax and national insurance, but the rules are complicated, particularly in their application to payments in lieu of notice ("PILONs") and compensation for personal injury. The rules will be simplified if draft legislation, which the government plans to introduce in the 2017 Finance Bill, comes into force. The main proposals are that:

- All PILONs will be subject to income tax and national insurance regardless of the provisions contained in the employment contract;
- Compensation for injury to feelings (resulting from harassment or discrimination, for example) will not be tax exempt;
- Employers' national insurance contributions will be payable on noncontractual termination payments above £30,000.

The changes are expected to come into force in April 2018, but even with these simplifications, the rules will remain complex.



The law relating to the termination of employment is a complex area. The rules keep changing and it is vital to "get it right". If you are interested in obtaining specialist legal advice at competitive rates, please contact Andrew Brett at [andrew.brett@norfolk.gov.uk](mailto:andrew.brett@norfolk.gov.uk) or on 01603 223101.

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