

How to handle a disgruntled employee

This is purely a guide and does not constitute legal advice, you are advised to seek independent legal advice on your issue before taking any action.

1. Don't use the Capability or Performance process when the real reason is Personal.

If the reason for the breakdown is due to a personality clash or any other inter-personal reason – do not use performance or a capability process to deal with the issue. You may find this just delay's the dismissal and things become protracted and probably compounds matters further giving rise to potential claims. Better to address the issue itself as a breakdown - the law does allow employers to potentially dismiss employees for 'some other substantial reason' – this is an all catch ground, which can include a breakdown in trust and confidence between the parties.

2. Don't mix up Without Prejudice conversations with Protected Conversations

A Protected Conversation pursuant to section 111A in the Employment Rights Act 1996 – allows you to have confidential discussions regarding ending the employment relationship, even where there has been no previous dispute. Those discussions will be inadmissible as evidence in any subsequent employment tribunal proceedings for unfair dismissal (with the exception of automatically unfair dismissal claims or where there has been Improper Behaviour). However, Without Prejudice conversation can only be held where there is a dispute – so ensure there is a document confirming that the discussion is under section 111A of the ERA 1996 - if there is no existing dispute.

3. Don't let it Fester

Don't allow the employee's concerns fester, as they can quickly snowball, which may result in the employee taking time off work with stress and compound and fracture the relationship further. If the employee is signed off for 'work related stress', caution will need to be taken, this may require significant more time and patience when addressing the issue. Nip it in the bud right away.

4. Don't delay holding Protected Conversations or Without Prejudice discussions

Particularly where a decision has been made to end the relationship, you may have to pay out more, but it may be a commercial or business reason to do so. Do you really want to go through a lengthy protracted capability or disciplinary process and then hold such discussions?



5. Don't forget to document everything!

Today, claims sometimes happen for the most trivial of reasons. The best policy is to document everything that is taking place. Whatever the disgruntled employee has done that needed to be corrected should be documented, as should how you addressed it.

6. Don't empower them

If your disgruntled employee has the company stalled while everyone tries to deal with their drama, then they are being empowered. Do not give them that kind of power within your company. If there is a problem, have the most appropriate person address it, and keep everyone else on task. This way, the problematic individual also sees that the company is carrying on, independent of their disgruntled attitude.

7. Don't forget – you're probably being recorded!

Private discussions between management should not be held in the same meeting room as the employee, as there is a chance that the employee has stepped out but left their phone on record. Case law has confirmed private discussions can be used in a tribunal claim. So always remain professional when dealing with a disgruntled employee and assume you're being recorded on all your interactions with the disgruntled employee.