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Facing The Future

Frimley Health



NHS Foundation Trust

PROTECTED CONVERSATIONS & SETTLEMENT AGREEMENTS



Janet King
Director of HR & Corporate Services

EXIT STRATEGIES

- Performance Management
- Negotiated Exit Package

PRIOR TO JULY 2013

- Without prejudice conversations.
- Cannot be used in evidence in a later tribunal.
- A dispute must exist.

JULY 2013 INTRODUCTION OF ‘PRE-TERMINATION NEGOTIATIONS’ – OR PROTECTED CONVERSATION

- No on-going litigation.
- Evidence of such discussions will be inadmissible in an unfair dismissal claim.
- Except where there is ‘improper behaviour’ (not defined).

IMPROPER BEHAVIOUR ON THE PART OF THE EMPLOYER

ACAS Guidance

- “unambiguous impropriety”, Fraud, perjury or blackmail perpetrated by employer.
- All forms of harassment, bullying, intimidation, physical assault (or threat of).
- Undue influence applied on the employee
 - Threats of dismissal
 - Rushing the employee

WHEN CAN'T YOU HAVE A PROTECTED CONVERSATION?

- Automatic unfair dismissals
- Discrimination – EA 2010
- Breach of Contract
- Wrongful dismissal

GETTING STARTED

- Be clear on the reasons for the protected conversation.
- Gather evidence.
- Consider the 'package' which might be available.
- Proposals can be oral or written, but face to face recommended.
- No legal right to be accompanied or represented, but recommend this option offered.

AT THE MEETING

- Be sure to make it clear that the discussions are confidential under section 111A ERA.
- Explain concerns about performance/behaviour.
- Explain options
 - A performance procedure
 - Whether an agreed exit could be available
- Outline proposal in neutral and factual way.
- Could ask senior HR colleagues to conduct the meeting.

WHAT CAN BE OFFERED IN RETURN FOR RESIGNATION?

- A dignified exit – no formal process.
- Agreed references.
- Agreed statement for reason for leaving
- Agreed date for exit
- A funded development package
- Notice and leave
- Money to go

APPROVALS

- All NHS organisations require agreement for special severance payments.
- DoH and HMT approval for novel or contentious payments.
- But not for paying within the contract of employment.

- Allow employee reasonable period of time to consider the terms and to seek independent legal advice.
- ACAS suggest 10 days – Employer can set the timeframe.
- Have clear timeframe for the settlement to be concluded.

SETTLEMENT AGREEMENT

- A carefully drafted legally binding contract which records the terms of the exit.
- Will include the waiver of any contractual and statutory employment law claims.
- Employee must have legal advice for a settlement for it to be binding.

- Employer retains right to refer to GMC.

QUESTIONS

