

employment alert



Written grievance doesn't need to be in writing

A startling case (Francis v Kennedy Scott Ltd) from the Employment Appeal Tribunal (EAT) has confirmed that an employee's grievance still counts as "written" if it is made orally to a manager, who writes it down.

The statutory regulations about grievances require a three-step process:

Step one	Employee sends a written grievance to employer
Step two	Employer holds a grievance meeting
Step three	Employer holds an appeal (if employee requests)

If the employer fails to follow the process properly, an employee who wins a claim will be awarded increased compensation. If the employee fails to follow step one by "sending a written grievance", he can't bring a claim at all.

Mr Francis complained to his manager in a grievance meeting but he hadn't put anything down on paper. His manager made a record of the complaint as the meeting progressed. When the employee brought his claim, the employer pointed out that the employee had not actually "sent a written grievance" so the claim out to be dismissed. The EAT said that tribunals shouldn't be "overly technical" in finding reasons to dismiss an employee's claim and the manager's record could count as the "written grievance".

This leaves managers in a bit of a quandary. We always advise managers to keep written records of complaints but in doing this, are employers shooting themselves in the foot by giving employees (who may not be thinking of bringing a claim at the time of the complaint) a ticket to the Employment Tribunal?

Conclusion

This case shouldn't have a large effect. Most employees don't seek to rely on orally-raised grievances. It is only when they put things in writing that they are thinking of a potential tribunal claim. We may see an increase in employment claims without a written grievance, based on the fact that the manager will have kept a written record. In this case the employee and manager had regarded the meeting as one which would result in a written note of the grievance being produced. The same result should not occur if managers either make a later note or else make it clear that any notes they take during a meeting are to help only the employer.

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