

# Employment Law Do's & Don'ts

## Constructive Dismissal

### DO

- Do check an employee's contract carefully before making any changes to their terms to avoid inadvertently committing a fundamental breach of contract.
- Do hear alarm bells if an employee mentions a "loss of trust and/or confidence", an "intolerable" or "untenable" workplace or similar.
- Do remember that an employee can resign with or without notice and still claim constructive dismissal.
- Do bear in mind that a series of smaller breaches can all add up and with a "final straw" act (which could be minor) allow an employee to claim constructive dismissal.
- Do remember that it doesn't matter whether you intended to breach the contract or not, it's a matter of fact for the Employment Tribunal as to whether there has been a breach.

### DON'T

- Don't make the mistake of suggesting you're going to make some sort of fundamental change to the contract in the future, and assume that's ok because it hasn't actually happened yet. An employee is entitled to resign in response to an "anticipatory" breach of contract.
- **BUT:** Don't panic if you think you've committed an anticipatory breach of contract. Unlike a breach which has already occurred, an anticipatory breach can be fixed as long as the employee hasn't yet accepted it – so hurry up and take it back!
- **HOWEVER:** Don't assume that you can fix an actual fundamental breach once it's happened – you can't. Once it's happened it can't be cured and it's entirely up to the employee to either accept the breach (which, confusingly, means to resign and claim constructive dismissal), or affirm the contract (which means they carry on their employment and, most likely, lose the right to complain about the breach).
- Don't be caught out by an employee who alleges there has been a breach of contract and is continuing to remain employed, but "under protest" and/or "reserving their rights". This could still entitle them to resign and bring a constructive dismissal claim.
- Don't forget that if an employee unreasonably fails to follow the ACAS Code and raise a grievance the Tribunal can reduce any award by up to 25%.