Manage conflict in industrial relations

Overview

Unchecked conflicts and grievances can result increased levels of absenteeism, low worker moral, reduced levels of productivity and a higher staff turnover. To manage conflict effectively, the management team first requires the skills to identify potential grievances or conflicts.

Processes to resolve these issues must be in place and effective and it is important to have an identified person or persons within the organisation to take responsibility for managing these issues. A formal procedure must also be in place so employees know how and when to air their grievances.

Key terms

Conciliation
A process of suggesting options for a solution or paths to a solution to solving a dispute.

Grievance procedure
A formal procedure that enables employees to know when and how to air their grievances.

Mediation
A process of negotiating a mutually agreed solution between parties involved in a dispute, where the mediator is neutral and makes no proposals and provides no advice.

Procedural fairness
The process is fair.

Substantive fairness
The final decision is fair.
Workplace culture
The shared values and beliefs of the employees within a particular workplace.

Grievance procedures

Documented grievance procedures
Both Certified and Australian Workplace Agreements must contain a grievance procedure.

When preparing a grievance procedure, you must ensure that it is both procedurally and substantively fair, in order to meet the legal requirements of both the state and federal Industrial Relations Commissions.

Complaints provide a valuable opportunity to resolve potentially damaging conflicts and maintain a productive workforce. Grievances should be handled sympathetically, seriously and sensitively. A person doesn’t get a fair hearing when their complaint is dismissed as trivial, time wasting or ridiculous.

Legal responsibilities
To be effective and to meet employers’ legal responsibilities a grievance procedure must:

• be written down, easily understood and communicated to staff, taking into account any special requirements (eg put on audio cassette, video or placed on the company’s website)
• be user-friendly and trusted by all parties
• state the time limit that grievances will be handled within
• state that all grievances will be handled fairly, confidentially and free of unfair repercussions
• provide a range of entry points so that everyone feels comfortable coming forward
• identify the steps to be taken, who will take them, and to solve the grievance at the lowest level possible.

Grievance resolution strategies
For a grievance to be resolved, it is essential that those responsible for resolving it have the power and skills to do so. Following are some strategies to achieve this:

1. Allow all parties to the grievance access to support (eg legal representation, counseling, interpreters, union representation).
2. Set out the types of solutions which should be reached, and ensure that grievance solutions are consistent.

3. Consider only the relevant information, especially where the grievance could result in disciplinary action.

4. Specify where the records will be kept and who will have access to these.

5. Provide an internal appeal system, and provide information on external sources of advice, should the person be dissatisfied with the internal grievance procedure or resolution.

Grievance outcomes

An effective grievance procedure should allow the following outcomes:

- a peaceful method of conflict resolution to reduce industrial action and provide greater stability
- quick and effective results
- improved communications and working relationships
- employee participation and consultation in the workplace
- increased productivity and efficiency of the organisation
- resolution of problems with workplace change programs
- better emotional wellbeing, performance and morale of employees
- avoidance of the costs and delays of going to the tribunal
- natural justice for employees.

Key points

Formal grievance policies must be supported by both employers and employees to be effective and must resolve grievances within a specified time period. All grievances must be taken seriously. Supervisors who are trained in this area must deal with matters in strict confidentiality.

Conflict management

It is an inevitable part of any manager’s job that you will, at some time, need to resolve a conflict situation in your workplace. You may face conflict with:

- differences between employees
- laying off key employees
- challenging customers
- motivating unproductive staff
- helping employees perform at a higher level.
There are a number of different ways that conflict is expressed within the workplace – it may be through the use of strikes, an increased level of absenteeism, and increased levels in staff turnover.

It becomes an important management skill to identify the potential conflict, and provide methods for the early resolution of conflict, for example, through a grievance procedure. More importantly, you need to possess the skills to manage these forms of conflict.

**Conflict management skills**

Conflict management skills include

- negotiating skills
- conciliation and mediation skills
- an awareness of controlling difficult situations using legal remedies
- knowledge of your own responsibilities
- who you need to notify
- the ability to work within specified time frames.

When you undergo conflict management training, you need to examine issues such as:

- understanding how conflict impacts on yourself and others
- encouraging the development of effective problem solving skills
- communication skills required to address conflict
- skills to resolve a dispute in a productive way
- legal avenues available to you, should the conflict escalate (eg industrial disputes).

Along with a formal grievance policy, conflict management training can concentrate on providing employers with skills in conciliation and mediation. Both methods can be used to help resolve a conflict or dispute between two parties.

**Conciliation**

Conciliation is a skill that is used to resolve conflicts within an organisation. The role of a conciliator is to play an active part in trying to solve the dispute, often by suggesting options for solutions or paths to a solution.

The conciliation procedure is flexible and can be as formal or informal as the situation requires. An advantage of this style of conflict resolution is that if it is successful, it should enable all parties involved to learn how to manage their relationships and solve their own problems.
Mediation

Mediators are often used when there are two or more parties involved in a high level dispute which, for example, results in legal action. The mediator’s role is to help the parties to negotiate an agreed solution.

The mediator is neutral, makes no proposals and provides no advice. His or her role is to help the parties involved in the conflict talk their way through the problem and find a mutually agreed solution.

This may be helpful within an organisation where employees are having problems working together or where there are claims of discrimination or harassment. These problems can be very damaging to the individuals concerned, as well as to the company, and may be legally expensive to pursue. In these instances, successful mediation offers a structured negotiation, resulting in an agreed outcome by all of those involved.

Dispute resolution procedures and external bodies

There are occasions when the organisation’s dispute resolution procedure fails to resolve the grievance or conflict. In this situation, the next step is to refer the matter to the state or federal Industrial Relations Commission.

In this situation, the employee may refer, if they haven’t already done so, to specialist assistance in the form of either legal or union representation. Employers may also refer to outside specialists, including an external industrial relations expert, an employment advocate available either privately or through employer associations, or services such as conciliation available through the state and federal Industrial Relations Commission.

Employer options under the Act

In cases on industrial action, the Australian Workplace Relations Act 1996 provides employers the following range of options:

- orders to stop or prevent industrial action
- penalties
- damages and injunctions.

Orders to stop or prevent industrial action

Employers can apply to the AIRC for an order to stop or prevent industrial action. The AIRC may then make an order if there is actual or threatened industrial action in the following categories:

- an industrial dispute
• the negotiation or proposed negotiation of a Certified Agreement
• any work regulated by a federal award or Certified Agreement.

**Penalties**

The Australian Workplace Relations Act 1996 does not allow industrial action to occur during the life of an agreement. If an industrial dispute occurs during this time, employers are able to seek either a penalty (up to $10,000 for a body corporate or $2,000 in any other case) or an injunction to stop the action.

**Damages and injunctions**

Employers are able to take legal action in a state/territory Supreme Court for damages or an injunction for a breach of common law, for example, for unlawful interference with their trade or business.

Before taking action in the Supreme Court, employers are required to apply to the AIRC for a certificate. The Commission must then immediately try to stop the industrial action. However, if the industrial action is continuing 72 hours after the AIRC has been notified, they will then issue employers with a certificate, which is then used in court.

**Paying workers during industrial action**

The Australian Workplace Relations Act 1996 states that it is illegal to pay employees during periods of industrial action.

It is also illegal for employees to accept payment during periods of industrial action, make claims (either personally or through their union) for pay during this time, or threaten further industrial action to obtain their pay.

**Dismissing striking workers**

It is illegal for employers to dismiss or threaten to dismiss employees for undertaking protected industrial action. In this instance it means that industrial action is allowed under certain conditions, for example, during the negotiating period of an agreement.

Should an employer dismiss an employee(s) for undertaking unprotected industrial action, for example, during the life of an agreement, the normal requirements must be met: the dismissal must not be unfair, that is, harsh, unjust, unreasonable or unlawful (ie dismissal for not signing an AWA).
Think

In your own workplace or one with which you are familiar, how are grievances and conflicts managed? Is there a combination of formal procedures and properly trained personnel? What other methods, if any, are used to assist in this area?

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