

# Fair enough

The last thing any engineering manager needs is people problems – but they happen.

Brian Tiham finds out how to stop an industrial tribunal making matters worse

## Pointers

- Record-keeping is imperative in order to prove action, if situations escalate to a tribunal
- The same is true for company policies regarding, for example, equal opportunities: you need proof of training
- Fairness, objectiveness and observance of 'due process' are essential
- 'Wrongful' actions include those where an employee is effectively demoted without consultation – even if they retain their title
- Contact Emma Mann at SOE headquarters for the schedule of Bond Solon employment law courses

Line managers in engineering companies worry that the law of the land seems to be tilted in favour of their employees, and increasingly fear they need to tread carefully. But what does 'carefully' mean? How much of what we hear is just bar room chatter? What do we have to do to avoid falling foul of the law?

To answer such common questions, and also to dispel the myths and provide practical guidance, the SOE has teamed up with legal training firm Bond Solon to run a series of two-day courses on employment law for plant engineers.

Penny Harper, solicitor and director at Bond Solon, explains that it's all about helping engineers to manage the real and often quite difficult world of people in situations involving, for example, misconduct, accidents, even capability to do the job. "In a nutshell, the course is designed to illustrate that failure to treat employees fairly and objectively, with due process, could lead to successful claims against them or, more likely, the company," she says. "So we'll be covering wrongful dismissal, unfair dismissal, discrimination claims and the relevant requirements of employment law."

### Wrongful or unfair

We need some definitions here. What, for example, constitutes 'wrongful'? "Something may be deemed 'wrongful', if the way in which a person's contract is terminated or managed breaches that contract – meaning it becomes a claim in contract law," answers Harper. "So an example might be someone whose job description says they're head of health and safety, but they come in one day and the role has changed, and now they're effectively a level below that."

What about 'unfair'? "We focus a lot on that, because there are many situations where unfair treatment can be an issue – such as in misconduct, capability to do the job, even redundancy," she says. "And essentially, what an employer has to demonstrate is

that, as well as having a fair reason for dismissing someone, they also acted fairly and objectively in the way they dealt with the matter."


In fact, the tests for fairness are enshrined in case law and, when cases go to tribunal, they need to pass what's called the Burchell test. Looking at misconduct, for example, Harper explains that – whether the issue is timekeeping, absenteeism, overuse of the Internet or failure to carry out reasonable instructions – the first requirement of the Burchell test is a full and fair investigation.

However, that's not all: "If someone is late from time to time, following an investigation an employer is entitled to say, no matter what the reason, you have to be here on time. But the fairness test also requires you to treat each employee in the same way as any other employee in the same situation.

"So, for example, I came across a case recently where a line manager didn't like one of his staff, and, when he was late, put him on a PIP [personal improvement plan] aimed at monitoring his timekeeping. When he was late on several other occasions, it went to an internal disciplinary hearing. However, this individual said, 'I'm not the only person that's late. The department is fairly free and easy and, as long as we make up time during lunch or stay late, that's regarded as fine – apart from me, because my line manager doesn't like me'.

"Now, if the company had gone ahead and dismissed him, when it came to tribunal, it would have successfully passed the first hurdle, because of its investigation and monitoring PIP. However, it would have been deemed unfair, because the procedure hadn't been applied in the same way to others doing the same thing."

And she provides another example, involving an employee at a large, national organisation that took 105 days off supposedly sick in one year, yet won a case for unfair dismissal. Why?

Because the company couldn't show that it had fully investigated each of the absences; it simply relied on the grand total to carry the day. "That case illustrates that you have to be extremely careful to keep records of what's going on. Often these problems start with small things, but then when it escalates they're under pressure to act, which is when the problems arise." 

Right: Penny Harper, solicitor and director at Bond Solon

