



# PowerHour – Exiting Employees

# Agenda

- Legal Framework
- Protected Conversations Do's and Don'ts
  - **Mock Protected Conversation**
- Discussion – Breakout Rooms
- Feed back

# Negotiated Exits

- Targeted approach
- Additional cost?
- Commercially beneficial
- Avoid the risk of subsequent litigation
- Avoid possible negative publicity

# Protected conversations

- Risk of breach of contract, discrimination, victimisation or whistleblowing detriment claim
- Evidence of unfair dismissal
- Without prejudice
- Section 111A Employment Rights Act 1996 “pre-termination negotiations”
- Fact and content protected from admissibility in unfair dismissal proceedings unless
  - Improper behaviour
  - Automatically unfair dismissal
  - Discrimination, unlawful detriment & breach of contract

# Key Formalities

- Set out the proposal (i.e. make an offer)
- Give reasons for the proposal when the proposal is made
- Parties should be given a reasonable period of time to consider the proposed settlement – minimum 10 calendar days
- Allow employees to be accompanied at the meeting
  - No legal right
  - May help defend any suggestion of **undue pressure** or **improper behaviour**

# Code of Practice

- ACAS Code of Practice on Settlement Agreements
  - <https://www.acas.org.uk/code-of-practice-settlement-agreements/html>
- ACAS Guide on Settlement Agreements
  - [https://archive.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement\\_agreements\\_Dec\\_18.pdf](https://archive.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement_agreements_Dec_18.pdf)

# Mock Protected Conversation – Key Points

- Failure to set the scene – this was a protected conversation and what that meant. Go into the meetings with a script or a structure.
- Matters raised by Sue – Potential discrimination angles failure to test the waters. Unwise to assume there are pitfalls.
- Timescales – 10 days, but certainly must be reasonable
- Improper behaviour – dismissal threatened, and ultimatum issued
- Right to be accompanied – TU Rep/Colleague may be useful. Engage with TU in advance?
- Redundancy or Performance? Be clear with you reason for having the conversation.
- Be mindful of the situation, set the scene in the best terms, remember they're going to see an employment lawyer!
- Pursue the Manager personally for discrimination.
- Training mangers.



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