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# Employees

# YOUR TEAM



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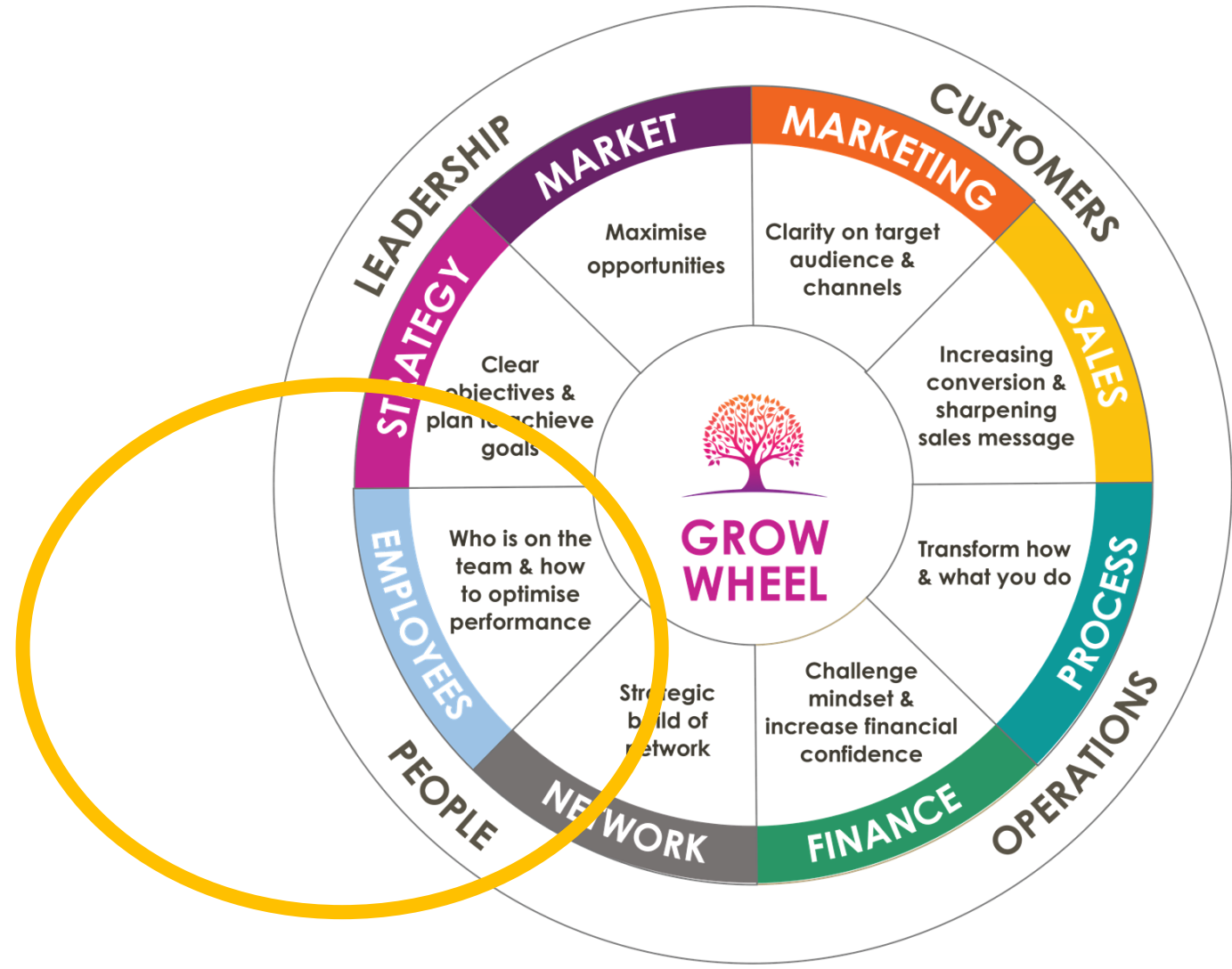
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**We are passionate about helping people flourish**

# MANAGEMENT DEVELOPMENT PROGRAMME





**WOODVIEW HRM**  
PRACTICAL SOLUTIONS FOR PEOPLE PROBLEMS



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PRACTICAL SOLUTIONS FOR PEOPLE PROBLEMS

# Employment Legislation

Louisa Meehan  
Woodview HRM

# Agenda

1. The Employment Relationship – what to include in an employment contract
2. Equality in the Workplace
  1. Overview of equality legislation
  2. Understating of diversity and inclusion in the workplace
3. Outline of key employee entitlement areas such as various form leave and brief overview of H&S and disciplinary and grievance processes





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# Contracts of Employment

The Basics



# Contracts of Employment

- Normally any Court / Hearing will ask these three key questions:
  1. What does the person's contract say?
  2. What does the law say?
  3. What is happening in reality?
- The critical question is the third one as this forms “**custom and practice**” which is a very powerful consideration in any dispute.



# Two Principle Forms of Contracts

**Contract of  
Employment/Service**



**Contract for  
Services**



# Two Principle Forms of Contracts

- Contract of Service/Employment
  - Under this form of contract a person is engaged directly as an employee of the organisation.
- Contract for Services
  - Under this contract the work is 'Contracted Out' to a service provider who takes on the responsibility of providing the service and making good any deficiencies. The provider is responsible for his/her own labour and other resources (e.g. Agency Workers, Cleaning Services, Sub-Contractors).



# Factors determining different forms of contract

**Nature of work project**

**Culture of the organisation**

**Resources available to firm**



**Availability of contractors**

**Organisation's Strategy**

**Cost Benefit Analysis**

# What is a contract of employment?

Suggested definition:

- A contract is an agreement between two parties which is legally enforceable
- A contract of employment is an agreement between an employer and employee, for the provision of skills and labour, in return for remuneration
- Offer + Acceptance = Binding Contract



# Does a contract of employment exist?

A contract and/or its terms may arise in one or more of the following forms:

- it may be in writing
- it may exist as a result of an oral agreement between employer & employee
- it may exist a result of the conduct or actions of the employer/employee



# Does an employer have to provide a written contract?

- Terms of Employment (Information) Acts 1994 to 2018
  - written statement of terms and conditions of employment
  - within **5 days** of starting a job you must get the core areas:
    - The full names of the employer and employee
    - The address of the employer
    - The place of work, or where there is no fixed or main place of work, a statement stating that there are various places or you are free to set your own place of work or to work at various places
    - The date the employment started
    - The job title, grade or nature of the work (such as a brief job description)
    - The expected duration of the contract (if the contract is temporary or fixed-term)
    - The rate or method of calculating your pay, and the 'pay reference period' (for example, whether you are paid weekly, fortnightly or monthly)
    - What the employer reasonably expects the normal length of your working day and week to be (for example, 8 hours a day, 5 days a week)
    - The duration and conditions relating to the probation period (if there is one)
  - Any terms or conditions relating to hours of work, including overtime
    - Statement with all other terms – **1 month**



# Terms of Employment (Information) Acts 1994 to 2022

- Where no statement of terms & conditions issued – an award of 4 weeks pay can be made to the employee concerned
- Written statement must be signed and dated by or on behalf of the employer
- The Act specifies the basic elements which the ‘statement of terms & conditions’ must contain





# Terms of Employment (Information) Act

## The Basic Requirements

- Name of Employer/Employee
- Address of Employer
- Place of work
- Job description
- Commencement date
- Duration



# Terms of Employment (Information) Act

## The Basic Requirements

- Rate, calculation & frequency of remuneration
- Hours of work including overtime
- Paid leave
- Sick pay & pensions – if applicable
- Notice
- Reference to a collective agreement – if applicable



# Notice of Termination of Employment

- Notice by Employer – linked to service of Employee (as set down in Minimum Notice Acts)
- Notice by Employee – one week
- Contracts may require longer notice by either party (especially for key/senior roles)



# Minimum Notice Acts 1973 to 2005

## Periods of Notice

### To Employee

- 13 weeks to 2 years - 1 weeks notice
- 2 to 5 years - 2 weeks notice
- 5 to 10 years - 4 weeks notice
- 10 to 15 years - 6 weeks notice
- 15+ years - 8 weeks notice

### To Employer

- As per contract  
or
- one week's notice



# 'Best Practice' – 'Should have' Terms

- Probation
- Retirement Age
- Flexibility/Inter-changeability
- Lay-off & Short time Working
- Grievance
- Discipline
- Time & Attendance
- Confidentiality
- Restraint of Trade



# 'Best Practice' – 'Should have' Terms

- Bullying & harassment procedure
- Internet, e-mail & social media procedure
- Protected disclosure procedure
- Express reference to Company 'rules/norms'
  - e.g. right of search (retail companies)
  - e.g. protective clothing (manufacturing & construction companies)



# Express and Implied Terms

- Two categories of terms:
  - terms which are **implied** into a contract
  - terms which are **expressly stated** within the contract



# Implied Terms

- Common Law
  - fair procedures/natural justice during disciplinary process
  - safe place of work and duty of care of employer
  - ‘trust and confidence’
  - provide wages
- Statutory
  - protective leaves
  - redundancy entitlement
  - notice entitlements upon termination





# Can an employer change the terms of a contract ?

- Changes cannot, in general, be imposed unilaterally
- Changes must be reasonable
- Usually supported by consideration
- Consensual waiver - by agreement or acquiescence of employee
- Have a variation clause in contract



# Variation of terms

- Employer Must Advise Employee of Changes
- Notification in writing
- Details of the nature & date of change
- No later than one month after the change
- Does not apply to statutory changes which are effective directly



# Helpful Tips

- Have contracts signed by the employee
- Retain a copy of the contract of employment
- Retain records which show that policies have been issued or any changes that have been made to contract
- ‘Customise your Contracts’ - Make sure your contracts of employment contain clauses which reflect ‘normal practice’ in your business





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# Protection of Employees Part-Time

(Part-time Work) Act 2001

# Definitions

Part-time employee:

- An employee whose normal hours of work are less than the number of hours worked by a comparable employee
- Normal hours of work:
  - The average number of hours worked by an employee each day during a specific reference period



# Comparable Employee

Works for same employer or associated employer and satisfies one of the following three conditions:

1. Performs work under same or similar conditions or are interchangeable
2. Work is of a similar nature with minimal differences between work or conditions
3. Work performed by part-time employee is of equal or greater value due to skill, physical or mental requirements, responsibility or working conditions



# Equal Treatment

- Part-time employees should not be treated in less favorable manner than comparable full-time employees
- This applies to statutory and contractual/voluntary “company” benefits



# Equal Treatment

- Discrimination only on objective grounds
- Pro-rata application of entitlements (pensions exemption – 20% rule)
- Prohibition of penalisation (NB redundancy selection)
- Disputes







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# Protection of Employees Temporary

(Fixed-term Work) Act 2003

# Scope

Covers fixed-term employees where the end of the contract is determined by:

- arrival of a specific date;
- completion of a specific task;
- occurrence of a specific event.



# Terms

- Fixed Term Contract
  - A fixed-term contract **ends on an agreed date**. A fixed-term contract can be for a number of months up to a year or more.
- Specific Purpose Contract
  - The employment contract finishes at an agreed time when a particular task is completed.
    - Examples
      - Working on a particular project
      - Covering for a period of leave
- Contract of Indefinite Duration
  - No specific end date up to retirement (Permanent Contract)



# Principle of Non-Discrimination

- Fixed-term employees cannot in respect of their conditions of employment be treated in a less favourable manner than a comparable permanent employee solely because they have a fixed-term contract
- Conditions of employment include pay & pensions



# Principle of Non-Discrimination

- Less favourable treatment may be justified on objective grounds

or

- Where the terms of the FTC taken as a whole are at least as favourable as those contained within a permanent contract



# Obligations on Employers

- Employers should inform fixed-term employees about vacancies in order to ensure they have same opportunity to secure permanent positions as other employees
- Employers should, as far as possible, facilitate access by fixed-term employees to appropriate training opportunities



# Prevention of Abuse

- When the employee has been employed by their employer on 2 or more continuous fixed-term contracts the aggregate duration of these contracts **may not exceed 4 years.**
- When this limit is reached, the next contract must be of indefinite duration



# Recommended Approach

- Issue **1 fixed term** contract only at commencement of employment
- Any **subsequent contract** issued to be
  - a specific purpose contract with the purpose included in the contract
  - or
  - Contract of Indefinite Duration
- No successive rolling contracts beyond 2 years / 104 weeks (redundancy and pension rights in place post 2 years employment).







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# Equality in the Workplace

The Basics

# Government Policy & Legislation

- Employment Equality Acts 1998 and 2004
  - Direct and Indirect (non-essential reqs) discrimination.
- Freedom of Information Acts 1997 – 2003
- Data Protection Act 2003



# Employment Equality Act 1998, 2004

- Equality legislation prohibits discrimination on
- nine distinct grounds:
  - gender
  - marital status
  - family status
  - sexual orientation
  - religion
  - age
  - disability
  - race (including colour/nationality/ethnic or national origin)
  - membership of the Traveller community



# Employment Equality Act

- Discrimination is prohibited in employment
  - access to employment,
  - conditions of employment,
  - training or experience for or in relation to employment,
  - promotion or re-grading or re-classification of posts.
  
- Equality legislation applies to
  - all employees,
  - candidates
  - potential candidates for employment.



# Employment Equality Act

- Advertisements
  - It is prohibited to publish, display or cause to be published or displayed an advertisement which relates to employment which indicates an intention to discriminate or might be reasonably understood to indicate such an intention.



# Discrimination

Discrimination can be both direct and indirect:

- **Direct discrimination** is treating someone less favourably than another on one of the nine grounds.
- **Indirect discrimination** occurs when an apparently neutral provision puts persons of a particular group at a particular disadvantage in respect of any matter other than remuneration compared with other employees of their employer unless the provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary



# Social Groups - Differences

- Social Group: people who share similar characteristics e.g. women or disability
  - Looking at a single differentiating factor is overly simplistic
- *Multiple Discrimination* – based on having 2 or more factors
  - e.g. Muslim man with a disability
- *Intersectionality* – ‘the disadvantages caused by two or more characteristics are not simple additive, but they produce a totally different experience for the person’
  - E.g. a Muslim man with a disability is not treated the same as Muslim men or people with disabilities
- Differences within social groups – e.g. the wide range of disabilities



# Should Managers be Concerned?

## 1: The Social Justice Case – a moral obligation

- Equality of Opportunity
  - ‘level the playing field’
- Equality of Outcome
  - The process – is it fair and truly looking at skill / ability
- Fairness and Human Rights
  - Is it the right / ethical thing to do

*But is morality the role of organisations?*





# Should Managers be Concerned?

## 2: The Business Case

- 1) It is a better use of human resources
- 2) It provides more opportunity for innovation
- 3) It leads to a wider customer base
- 4) It creates a wider pool of labour for recruitment
- 5) It leads to a positive company image

*But it costs money, is difficult to measure and is a long term game*



# CIPD Strategies to support equal opportunities

- Training interviewers in equal opportunities / diversity
- Operating policies that go beyond the legislation
- Operating selection tests that are culture free and tested on diverse groups
- Ensuring the recruitment team reflect diversity criteria
- Advertise vacancies beyond traditional means to target minority groups
- Using specific terms to attract under represented groups.



# Positive Action

- Taking one or more specific initiatives designed to compensate for present or past disadvantages caused by unfair discrimination
  - E.g. Launching a recruitment campaign in specific locations which have a high density of ethnic minorities
  - Inviting all partners (including same sex) to company events
  - Adapting the uniform / dress code to accommodate religious beliefs
  - Flexible working options
- *Positive Discrimination*: selection based on specific grounds e.g. gender / ethnicity - unlawful



# Discussion

- Have you directly experienced or observed treatment that could be considered unfair
  - If so, what did you do about it?
  - What other options did you have?





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# Key Employee Entitlement Areas

The Basics

# Summary of Leave for Parents

Leave	Who gets it?	How long?	Is it paid?
Maternity leave	Female employees	26 weeks and up to 16 unpaid weeks	Yes, Maternity Benefit is paid for 26 weeks
Adoptive leave	One parent of the adoptive couple, or a parent adopting alone	24 weeks and up to 16 unpaid weeks	Yes, Adoptive Benefit is paid for 24 weeks
Paternity leave	New parents of children under 6 months of age (usually the father or the partner of the mother, or in the case of adoption, the parent who is not taking adoptive leave)	2 weeks	Yes, Paternity Benefit is paid for 2 weeks
Parental leave	Parents and guardians of children under 12	26 weeks	No, it's unpaid
Parent's leave	Parents of children under 2 years of age Parents of adopted children in the first 2 years of the placement of the child	7 weeks	Yes, Parent's Benefit is paid for 7 weeks

# Force Majeure Leave

Leave with pay

- Qualifying criteria
  - urgent family reasons
  - owing to the illness/injury of a specified family member
  - employees' immediate presence indispensable at the place where the ill/injured party is



# Force Majeure Leave

- Family members covered:
  - child, ward
  - spouse, partner
  - parent, grandparent
  - brother, sister
  - relationship of domestic dependency, including same sex partners





# Force Majeure Leave

- Force majeure leave is subject to
  - 3 days in any 12 consecutive month period
- Or
- 5 days in any 36 consecutive month period
- Completion of prescribed form
- Part of a day taken as FM will constitute one day for the purposes of the Act



# Employment Protection

- Contractual & statutory rights protected (except remuneration)
- Continuity of service
- Probation/apprenticeship suspended for period of time on leave
- Employees will be protected from penalisation for exercising their rights under this legislation
- Right to return to same job or suitable alternative





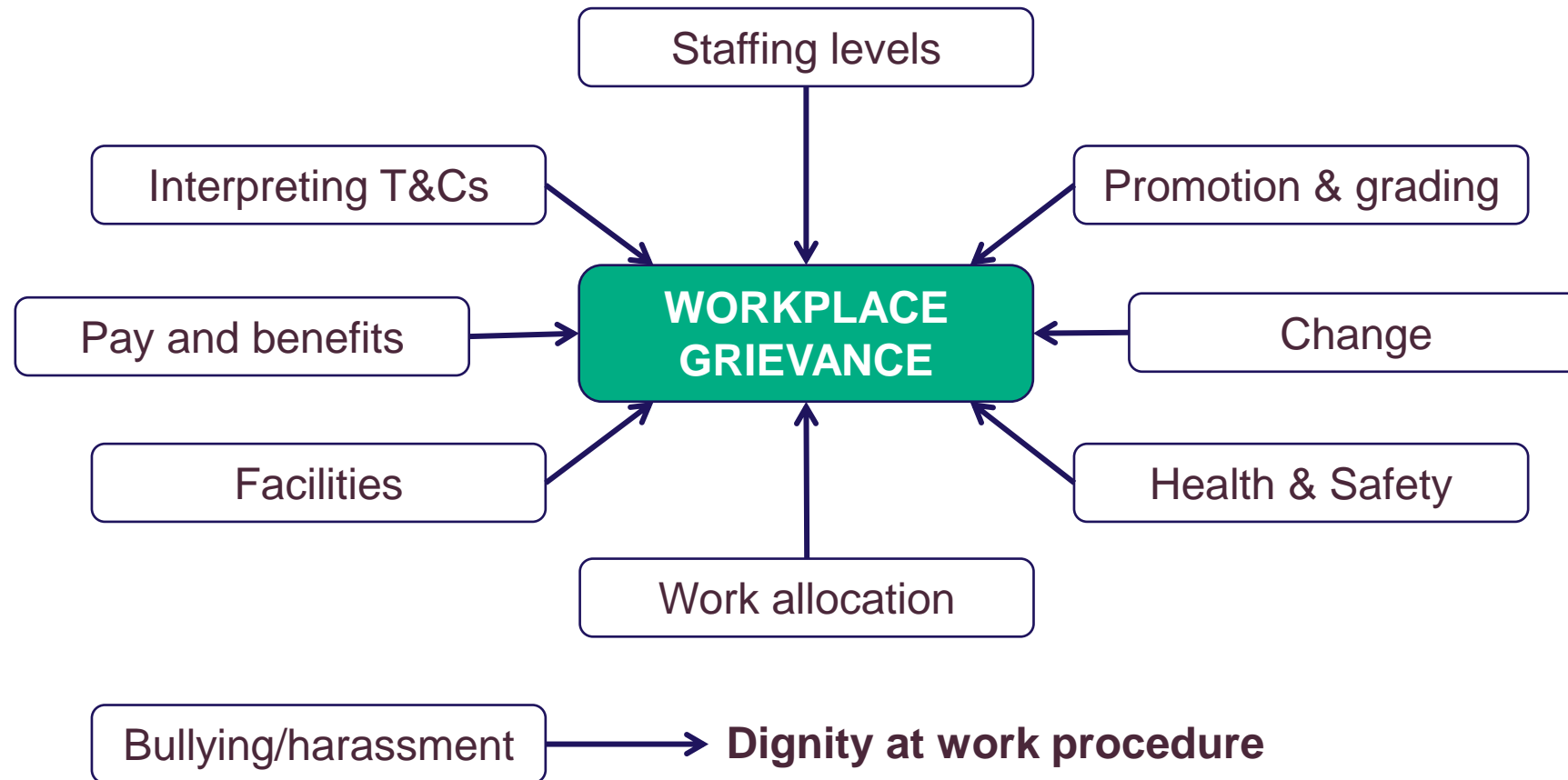
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# Handling grievances

# Definition of a grievance

- “Where an employee or group of employees **perceive** a problem and/or grounds for dissatisfaction with the employer, colleagues or the working environment”

# Some causes of grievances



# The Grievance Procedure

## Benefits of a procedure

- Resolves employee problems
- Shows employer to be acting fairly
- Consistency in decision making
- Prevents build-up of issues
- Allows subordinate to go above manager
- Reduces risk of dispute
- Promotes job satisfaction/relationships
- Gives ownership of solution

# Sample Grievance Procedure

**Informal** attempts to resolve grievance

```
graph TD; A[Informal attempts to resolve grievance] --> B[Stage 1: Initial formal discussion with line manager]; B --> C[Stage 2: Formal discussion with next level of management]; C --> D[Stage 3: Final formal discussion with senior management]; D --> E[External referral, if agreed, and/or implementation];
```

**Stage 1:** Initial formal discussion with line manager

**Stage 2:** Formal discussion with next level of management

**Stage 3:** Final formal discussion with senior management

**External** referral, if agreed, and/or **implementation**

# Aim of Grievance Handling

“To reach a resolution that is workable for both parties”



# The Workplace Relations Commission



Formed in 2015 under  
Workplace Relations Act 2015



Formerly known as LRC which  
was established in 1991 (under  
the IR Act 1990)



Additional new responsibilit



General responsibility for  
promoting good industrial  
relations



Picture © The Workplace Relations  
Commission



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# Health & Safety

# Health and Safety

## Legislation

- The Safety, Health and Welfare at Work Act 2005 sets out the main provisions for securing and improving the safety, health and welfare of people at work. The law applies to all places of work regardless of how many workers are employed and includes the self-employed.

## Employer Duties

- The core of the legislation is the risk assessment approach and the legal duty on employers to prepare a written health and safety document referred to as a **Safety Statement**. Employers (including self-employed persons) are also responsible for creating and maintaining a safe and healthy workplace.



# Health and Safety

Employer's duties include:

- Managing and conducting all work activities so as to ensure, as far as reasonably practicable, the safety, health and welfare of people at work
- Designing, providing and maintaining a safe place of work that has safe access and egress, and uses plant and equipment that is safe and without risk to health
- Providing information, instruction, training and supervision regarding safety and health to employees
- Providing and maintaining welfare facilities for employees at the workplace
- Preventing risks to other people at the place of work including, for example, visitors, customers, suppliers and sales representatives
- Have plans in place for emergencies



# Woodview HRM Top HR Tips

- 1) Know your Business Strategy / Plan
- 2) Policies, Procedures and HR Admin
- 3) Clear Roles and Responsibilities
- 4) Recruiting the 'Best' team
- 5) Onboarding and first 6 months
- 6) Performance Management
- 7) Identify your key talent
- 8) Employee Development
- 9) Focus on the 'joy'
- 10) Conflict Resolution



# Helpful Information Sources

- [Employment \(citizensinformation.ie\)](https://citizensinformation.ie)
- [Home - Workplace Relations Commission](#)
- [https://www.hsa.ie/eng/enterprise\\_and\\_employee\\_supports/](https://www.hsa.ie/eng/enterprise_and_employee_supports/)
- [Legal Island | Making the lives of HR professionals easier since 1998 \(legal-island.com\)](https://www.legal-island.com)





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*Thank you*

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# THANK YOU

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