

## The appraisal system

### What are your rights of challenge?

By Philip Landau

**The appraisal system is commonplace for many employees. It is a yearly and sometimes bi-yearly opportunity for your employer to provide a formal and meaningful report on whether you have met expected standards, and what areas require improvement.**

#### Appraisals are therefore a good thing – right?

Well not always. How does an employer provide a genuine appraisal where, for example, your line manager has a fundamental personality clash with you? It happens. Also, there are many instances where the line manager does not pull all the relevant information from other departments in respect of the employees work for that year, and marks the employee down accordingly. The employee would justifiably argue in such circumstances that the appraisal was not balanced and therefore unfair. The employee can often feel victimised and singled out.

#### But what can you do to challenge the appraisal, and why is it important to do so?

Firstly, it is good practice that you be given the right of appeal in relation to your appraisal, although this is not a statutory right. You can also lodge an internal grievance where your employer has a period of 28 days to investigate (usually by someone higher up the hierarchy than your own line manager). Unlike appealing the appraisal, the grievance process is a statutory right.

The reason why you should always challenge the grievance is that if you are constantly marked down in your appraisal, this could be a prelude to being put on a performance improvement plan (“PIP”), which in turn could lead to dismissal for reasons of capability - a fair reason under the employment legislation. I have seen many distraught employees on a PIP and it is not long before the trust and confidence the employee has in his or her employer then dissipates completely.

Another reason why it is important to challenge the unfair appraisal is that in these turbulent times where there are large scale redundancies, one of the main selection criteria for choosing one person to be made redundant over the other is “performance”. This is when the appraisal system comes into its own. Left unchallenged, an employee will find it difficult to cry foul play when his appraisals are used to select him for redundancy over his peers.

Employers do need to be careful however. An obvious unfair appraisal with detrimental comments against the employee could entitle the employee to claim constructive dismissal – in other words, that he was forced out. This can often be supported by the fact that previous years appraisals have been good, and there was no justification for a sudden departure from previous high standards. Where there has been a change in line manager, this can often lead to a low appraisal where the employee previously scored highly (the new line manager having none of the rapport or admiration towards the employee compared with the outgoing manager). This should strengthen the employees claim, but as always, it is best to obtain professional advice before taking the draconian step of resigning your well paid job- at the very least to try and negotiate an exit package. Employers can be receptive to such a request where there is an obvious impasse.

**For further information or a free consultation on this or any other aspect of employment law please contact:**

**Philip Landau** [pl@lzwlaw.co.uk](mailto:pl@lzwlaw.co.uk)  
or call **020 7357 9494**