Protecting your practice
John Grant considers the implications of employment law for dental practices

The figures show a 50 per cent rise over the last year in the number of tribunal claims received by ACAS for conciliation, from 105,177 to 151,249. With some employment tribunal claims including multiple complaints, the total number of complaints rose from 180,420 last year to 227,487 this year – an increase of some 26 per cent.

In 2007, the average compensation amounts awarded by employment tribunals were:
• For unfair dismissal, £7,974
• Racial discrimination, £14,049
• Sex discrimination, £10,952
• Disability discrimination, £15,059.

Being aware
The fact that many dental practices have failed to put in place the relevant documentation, policies or disciplinary procedures to protect their staff from potential exploitation makes them especially vulnerable to a successful complaint by a disgruntled prospective, present or even past employee. All principals need to be aware that:
• Since 1978, there has been a statutory requirement for all employees to be given a written statement of their main terms and conditions of employment.
• Since 2004, there has been a statutory requirement for the existence of written disciplinary and grievance procedures.
• Since 2004, the failure to follow statutory disciplinary and grievance procedures renders any subsequent dismissal automatically unfair – no matter what the circumstances leading to the dismissal.
• Since April of this year employers may be liable to pay compensation if a patient harasses a member of their staff on the basis of their race, sex, age, disability, or for any other discriminatory reason.

Ensuring that employment contracts and policies are in place and fully understood will in itself substantially reduce the risk of a dispute or a claim, but the existence of even the best documentation is still no guarantee of protection from an adverse tribunal outcome. The protection afforded by written employment and Equal Opportunities Policies is forfeited if they are not followed or staff are ignorant of their content.

However, there are two sides to the issue of documentation: for example, if an employee is contractually obliged to give four weeks notice before taking annual leave, and fails to do so, he or she cannot justifiably claim if permission is refused. This provision thus makes it possible for disciplinary structure means employers are less likely to address the problem of under-performing staff, with damaging consequences not only for the business but also for overall staff morale.

A typical scenario, familiar to many employers, is poor time keeping by an individual employee who is habitually arriving late for work or returning from breaks periods. Without a pre-determined, written disciplinary procedure in place, the employer may be at a loss to know how to approach the problem without alienating the entire workforce or being accused of victimisation.

Taking disciplinary action is never pleasant, and without the confidence afforded by a recognised, established structure the temptation is to do nothing. However, the consequences of a “wait and see” approach can be disastrous. The offending employee exploits the situation further, and more conscientious staff quickly resent their additional, unpaid workload. Morale, discipline and business efficiency are all undermined by what is essentially a minor problem.

Documentation will describe the rights and responsibilities of both parties in such a situation. The employee must be notified in writing that he or she is transgressing and subject to disciplinary procedures, and also informed of their statutory rights. Most dental practice principals are clinical professionals with only a limited knowledge of employment law, and may not be aware that the offending employee must also be informed, in writing, of their entitlement to be accompanied by another member of staff or a union representative or interview, or by a union representative whether or not they themseleves are a union member. The right of appeal is also a statutory entitlement.

However, in a busy, high-output environment, any breach of their statutory rights during disciplinary procedures exposes the employer to a charge before a tribunal of unfair treatment or unfair dismissal, with the employer’s defence against the charge undermined from the outset by established precedent.

Subject to change
Employment legislation is subject to change, with a growing emphasis on employee protection. While matters such as working hours and minimum wage tend to make headlines, technical changes attract less attention. In order to safeguard themselves from potentially damaging claims, employers need to ensure that their documentation and procedures remain compatible with the latest developments in the law.

A successful claim for compensation against any business can have far reaching consequences, from a compromised public reputation to long-term dissatisfaction among the remaining workforce. Be sure that your practice has up-to-date, documented procedures in place and avoids the risk of becoming an expensive statistic in next year’s ACAS report.

About the author
John Grant qualified as a solicitor in 1986 and joined ASPD member Howard Cohen & Co in 1987. He has been a partner at Howard Cohen & Co since 1990. He has slowly built up an excellent national reputation for advising dentists on all legal aspects of dentistry. For more information on the ASPD please call 0800 458 6773 or visit www.aspd.co.uk.