



Protected conversations and the Without Prejudice Rule

by

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Outline

- The WP rule
- The Protected Conversations Regime
- What are the dangers if a conversation is not WP/protected?
- What are the dangers of not having the conversation at all?
- Having good protected conversations

What a Mezz(oterro)! The WP rule

- Foundation
 - Public policy
 - Contract
- Limitations
 - Must be a dispute in contemplation
 - Cannot cloak unambiguous impropriety
 - Must be a genuine attempt to settle a dispute

Protected conversations

We will be consulting on the introduction of Protected conversations so a boss and an employee feel able to sit down together and have a frank conversation - at either's request



Protected Conversations

- Limitations
 - ~~Must be a dispute in contemplation~~
 - Cannot cloak ~~unambiguously~~ improper behaviour
 - Must be a genuine attempt to settle a dispute
 - Only applies to ordinary unfair dismissal

Dangers of Protected conversations

- Employee sees it all as a foregone conclusion
- If ET finds out, it will find against you
- The employee may resign and claim constructive dismissal

Dangers of non protected conversation

**Better
chance
in ET**



**More hoop jumping
More wasted
absorption of
management time
Poor performer in the
business for longer
Less dignity to the
employee
More likely to go to ET
More cost, more
distraction, bad
publicity**

Good protected conversations

- Explain what WP means
- Get employee's agreement
- Frame it in a way that would not compromise you before an ET
- Avoid the suggestion of a foregone conclusion
- Treat the employee with dignity and respect



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