MONACO SOLICITORS

monacosolicitors.co.uk

0800 533 5134 or 020 7717 5259

Dear Sir or Madam

**Free Legal Letters and Documents: Templates and Examples**

Many thanks for visiting Monaco Solicitors’ website. We attach copy of the document that you asked for and hope you will find it useful.

If we can be of any further help, please do get in touch by ‘phone or via our website.

Yours faithfully

Monaco Solicitors

**MONACO SOLICITORS - Without prejudice letter:**

**Sham redundancy – bullying and stress**

[HR manager name]

[Employer]

[Address]

[Date]

Without prejudice save as to costs and subject to contract

Re: [Name]

Dear [Name],

We have been instructed by [Name] to write on a “without prejudice” basis concerning the consultation underway about his redundancy.  I gather that discussions are currently taking place with a view to resolving the matter by means of a Settlement Agreement and we are instructed to conduct communications on behalf of [Name].

We have considered your draft Settlement Agreement dated [Date].  The proposed Termination Payment consists of the following sums (Clause 2.1):

* £4,583.84 as damages for breaching Clause 4 of the Employee’s contract of employment; and
* £1,919.71 pay as compensation for loss of office, which includes statutory and company enhanced redundancy payments.

In our view the Termination Payment offered to our client is totally inadequate.  We do not accept that there is a genuine redundancy situation.  We contend that the redundancy procedure has been conducted in an unfair manner and that any termination of [Name]’s employment in the present circumstances will be an unfair dismissal.

[Name]’s employment commenced on [Date].  He is currently a Team Manager based at your Richmond site.  On 12 September [Date], he was suspended following a “whistleblowing report” by [Name], in relation to invoices for your client [Company name].  Lengthy investigations were conducted lasting some three months, during which [Name] was fully cooperative.  At the conclusion of those investigations you identified no fault on [Name]’s part; rather than failures of the logging-in system and duplications of time-sheets had led to clients being invoiced for extra hours.

­[Name] was notified accordingly in a meeting on 16 December [Date], at about 3 pm.  Present at the meeting were yourself, [Name], and [Name of 3rd person].  You delivered the outcome verbally but you have yet to provide written confirmation of the same. I am given to understand that you are not issuing any letters regarding the outcome of the investigations due to going down the settlement agreement route.

Please be on notice that we will require such outcome letters if the matter is not settled to our satisfaction.  If the information is not provided we will advise [Name] to obtain this by way of a Subject Access Request, and it is our intention to make an application to the Employment Tribunal for pre-action disclosure.

At the same time, [Name] was informed that the client no longer wanted him working on its account and his role was therefore redundant.  We wish to make it clear that we do not accept that the client required this, and may ask for evidence to be provided in due course.  If this is not forthcoming we intend to obtain it by way of a Subject Access Request or application for pre-action disclosure.

Nor do we accept that his role is redundant.  Up to the date of his suspension, [Name] performed a range of duties whilst in your employment.  He was responsible for the Float Team which, we accept, has been disbanded since the “whistleblowing” allegation.  However, this only accounted for a small proportion of his workload, less than 1 ½ days a week.  The majority of his time was spent managing the Customer Service Team – overlooking team members and delivering team briefings, organising training, dealing with enquires, assessing targets, delivering quality feedback, coaching, 1-to-1’s etc.  There are no other managers on this team who can match [Name]’s training and experience in these functions.

To complete his duties [Name] regularly comes into work earlier and leaves later than his contracted hours.  He takes shortened lunch breaks and regularly deals with work related-enquiries out-of-hours.  He is not paid overtime for any of this extra work.

The time [Name] spent on the Float Team can, and properly should be devoted to better managing the Customer Service Team, or on other projects.  For example, he has sponsored a person, [Name of person sponsored], on the Team Manager Development Program who he should mentor.  There is no one else on that team with the requisite experience to train [Name of person sponsored], who may have to move to different departments to seek mentoring on some of the modules within the Development Program.

Further, before his suspension, discussions were underway between [Name] and his manager to move him towards a more senior position, with a target to work towards getting on the Operations Manager Development Program.  Indeed he had started taking responsibilities consistent with a more senior role and has performed equivalent tasks on the Float Team. Although that was a work in progress, he is in a strong position to be able to move into that team.  This can be evidenced in his Personal Development Plan (PDP).

As you are doubtless aware, a redundancy situation may arise where the requirements of a business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.  For all the reasons detailed above, this is simply not true with respect to the work done by [Name], the requirement for which does and will continue.

If [Name]’s role is genuinely redundant (which we deny) [Employer] has failed to follow a proper, fair and objective redundancy procedure.  You have not correctly identified a pool from which to select employees for redundancy.  More significantly there has been no consultation with [Name] and no attempt whatsoever to discuss or identify alternatives to redundancy.  We do not accept that there are no roles that you can redeploy him into at this time.  We query whether you have even considered his PDP at all.  Rather it appears that you have simply chosen to discard [Name] as an easy target upon his return from suspension.

In our view, you have carried out this so-called 'redundancy process' unfairly and unlawfully.  Any dismissal arising out of it will also be unfair and unlawful.  We cannot over-emphasize the high levels of stress, anxiety and humiliation experienced by [Name] in recent months which is being made worse by his impending dismissal.  His continued employment has become untenable not due to a genuine redundancy situation but because of your continuing breaches of the mutual duty of trust and confidence.

A further compounding breach of [Employer]’s duty to [Name] was your failure to deal with his grievance in July / August [Date]. [Name] raised a serious complaint of bullying and harassment by a fellow colleague [Name of fellow colleague], in a meeting with his operational manager [Name of operational manager] and [Name of 3rd person].  This was not fully investigated and no effective action was taken in relation to that grievance; it appears that no actioned outcome was determined or communicated to [Name].  His harasser subsequently went on to make the allegations which have cost [Name], through no fault of his, his good name and his employment.

As a result of these various breaches [Name] has suffered psychological injury namely work-related stress and depression.  Following the allegations and during the investigations he suffered from constant anxiety, mood swings, loss of appetite and insomnia.  He had difficulty getting out of bed, he did not want to leave the house, and the relationships with his family and friends have been damaged, perhaps irreparably.  In November [Date], he was diagnosed with clinical depression; he was medicated for this condition which has since been doubled in dose to help him cope.  The effect of the medication is that he becomes lethargic and cannot function in his day-to-day life as he should.  We have yet to obtain an expert medical report and prognosis, but this condition is expected to persist for some months.

As a result, there are various courses of action that we could follow which arise from your behaviour towards our client and we will pursue them as appropriate. However [Name] would prefer not to litigate and so has asked us to aim for a satisfactory settlement - at least at this stage in proceedings.

We contend that the starting point for any such settlement has to be 12 months’ salary as it is likely to take [Name] at least this amount of time to acquire an equivalent post.  His job prospects have been further damaged because [Employer]’s conduct – both in relation to this purported redundancy and the disciplinary investigation that preceded it – has resulted in his being diagnosed with work-related stress and depression.

In addition, the settlement payment should be increased to reflect the loss of benefits and statutory rights that [Name] will suffer as a result of losing his employment.  The settlement should also acknowledge the legal costs he has already incurred in instructing us to negotiate a proper settlement.  It is our view that such damages would be awarded by an Employment Tribunal, and would be uplifted by 25% for your failure to follow the Acas Code of Practice on Disciplinary & Grievance Procedures.  We would also seek to recover our legal costs and the costs of issuing proceedings.

We look forward to hearing from you with a suitably amended Settlement Agreement and trust that we can conclude this matter speedily and to the satisfaction of both parties.

Yours sincerely,

[Lawyer’s name]

Monaco Solicitors