

New Discipline & Grievance Procedures Factsheet – March 2009

Key Changes and Actions to Take

Key Changes

On 6 April 2009 the Employment Bill 2008 repeals the Statutory Dispute Resolution Regulations 2004, abolishing the three step statutory grievance and discipline procedures. However, some form of procedure will have to be followed otherwise the tribunal can award compensation increased or decreased by 25%.

Failure to follow the statutory procedures will no longer result in automatic unfair dismissal.

An employee may lodge an ET1 without submitting a grievance to the employer first, but compensation may be affected if their case is successful at tribunal.

Mediation will be the key to resolving disputes early. Emphasis will need to be on resolving issues informally as much as possible.

The new rules are designed to be less prescriptive, simpler and more flexible. Timescales will be less rigid and the statutory modified procedures are abolished. The rules will not apply to redundancies or the ending of fixed term contracts, however.

Collective grievances will not be covered by the code and companies should follow their collective grievance procedure.

To support the legislation a new ACAS Code of Practice will be implemented and companies need to review their procedures in line with this as it will be closely consulted by tribunal panels when assessing cases and the actions taken.

ACAS to be much more involved, particularly early on in any disputes and there will be a statutory duty for conciliation. ACAS will offer more help especially in offering pre-claim conciliation whereby having been notified by either employer or employee of potential cases heading for the tribunal courts (but no ET1 having been submitted) will attempt to work with both parties to come to an amicable resolution.

This process has been in existence for some time although perhaps, to date, not particularly well publicised. However, current statistics show that 2/3 of cases reach settlement through pre-claim conciliation with 60% being settled within 14 days. The benefits of pre-claim conciliation are saving time and money, minimising stress, offering a quick solution and providing a win-win outcome without total breakdown of the relationship. The opening hours of ACAS will be extended (8am to 8pm Mon-Fri and 9am to 1pm Saturday).

There are transitional arrangements for the introduction of the new procedures, however, which need to be considered. In a disciplinary or dismissal case, if an employer commences disciplinary proceedings against an employee before 6 April 2009, the statutory dispute resolution regulations 2004 apply; this means having sent a disciplinary hearing invite letter or held a disciplinary hearing. However, if proceedings are held off until after 6 April, the new legislation applies.

In a grievance case, if an employee has sent a grievance letter waited 28 days and submitted an ET1 before 6 April 2009 the statutory grievance procedure will continue to apply. However, for acts which began before 6th April 2009 but continue after that date the following applies:

- for almost all types of claim, the old statutory grievance procedure applies if the employee sends a grievance letter, or presents an ET1, by 4th July 2009. If that date passes without a letter or ET1 being sent, then the new regime applies and the statutory grievance procedure will not engage.
- for equal pay, redundancy payments and some industrial action claims, the same applies *except* the changeover date is 4th October rather than 4th July.

Actions To Take

- Review employment contracts and employee handbooks in line with the ACAS Code of Practice
- Include an explanation of the mediation process in policies
- Provide clear guidance on submitting grievances
- Communicate policy changes to employees
- Provide training in the new procedures
- Consider providing soft skills training for managers
- Consider training internal mediators or identifying an external mediation company

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