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Guide to Disciplinary and Grievance

A guide by Burton & Dyson



Introduction

Procedures for dealing with workplace disciplinary and grievance issues went through a significant change in 2009.

From 6 April 2009, the Acas (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures replaced statutory dismissal and grievance procedures, although it does not apply to redundancies or non-renewal of fixed-term contracts.

The code is designed to encourage employers and employees to resolve problems at an early stage, with a focus on direct communication, to reduce the likelihood of costly and time-consuming employment tribunals.

Employers need to be aware of the code and its contents and this guide is designed to provide an overview of the key points.

For more detailed information, or for guidance on specific disciplinary and grievance issues, please contact us.

The Code

The Acas Code of Practice does not require employers and employees to follow compulsory steps in dealing with disciplinary and grievance issues. What it does do is set out the principles of what the employer and employee should do to achieve a reasonable standard of behaviour.

Should the issue reach an employment tribunal, the tribunal will consider the procedures that have been followed and whether a failure to follow the code was unreasonable.

Taking into account factors such as the size of the business and its resources, tribunals will have the discretion to adjust awards up or down between 0-25 per cent, in relation to either party.

Resolving disputes

The Acas code is based on the principle that the simplest way to resolve the difficulty is to sit down and talk it through, in a relaxed and informal way, and as soon as it becomes clear that there may be a problem.

The code encourages employers and managers to step in informally at an early stage to defuse tension between employees or between employees and more senior staff that could lead to a grievance. In this way, the problem can be resolved before more formal disciplinary procedures have to be used or a grievance is lodged.

Your business should have its own disciplinary and grievance procedures to help you resolve issues in-house. We can advise you on these procedures, to ensure that they are up to date and legally compliant, or help you draft new procedures if you need them.

If, however, you cannot resolve a dispute using informal measures or your formal in-house procedures, there are other options to consider.



Mediation

A mediator is a person trained in mediation, who may come from inside your business (in which case they should not mediate in an issue in which they are directly involved) or from an external mediation service.

Mediation can be used at any stage in a dispute and it may be worth writing mediation into your own procedures. It is a voluntary process where a neutral, independent third party works with those involved in a dispute with the aim of reaching an agreement.

Pre-claim conciliation

When disputes that employers and employees have not been able to resolve in other ways, and the problem is otherwise likely to lead to an employment tribunal, Acas offers a free pre-claim conciliation service.

Employers who anticipate that they will face a claim, despite having made every effort to resolve the problem, can contact the Acas helpline on 08457 47 47 47 for further help and advice.

Dealing with disputes during 2009

Employers need to be aware of how to deal with employment disputes that straddle 6 April 2009.

The date of a trigger event is the deciding factor. If the trigger date is on or after 6 April 2009, the new system applies; if the trigger date took place on or before 5 April, the old regime applies.

For **disciplinary and dismissal** issues, the trigger date is the date when the employer started action against an employee, which may be the date the employee received a letter to notify them that disciplinary action was being considered or of a meeting when the issue was raised. If these steps do not take place, the date of the disciplinary action (including non-redundancy dismissals) is the trigger.

For **grievance** issues, the trigger is the date of the action about which the employee complains.

Where the action about which the employee has complained began on or before 5 April 2009, and continues after that date, the pre-6 April 2009 regime continues until the following final cut-off dates:

- the employee has made a claim to an employment tribunal or has lodged a grievance with the employer on, or before, 4 July 2009, in cases that are normally subject to a three-month time limit for making a tribunal claim (such as discrimination cases).
- the employee has made a claim to an employment tribunal or has lodged a grievance with the employer on, or before, 4 October 2009, in cases that are normally subject to a six-month time limit for making a tribunal claim (such as a claim relating to equal pay).



The old regime

Although the old regime will be used more and more infrequently after 6 April, here are the key points.

The old statutory discipline and dismissal and grievance procedures involve a three-step process.

- **Step one:** the employer must give a written statement to the employee setting out why they have decided to take disciplinary action.
- **Step two:** the employer must meet the employee, who has the right to be accompanied by a colleague or union representative. The employer states their case, the employee responds and after the meeting, the employer gives their decision, against which the employee can appeal.
- **Step three:** the employee appeals. They can choose to be accompanied at the appeal, which should ideally be heard by another or more senior manager. After the appeal meeting, the employee must be informed of the decision.

The three-step procedure is appropriate when the employer is considering serious disciplinary action, such as dismissal, suspension without full pay or demotion, i.e. after an employee's conduct or performance has failed to improve following a series of warnings, for example for frequent lateness, or if the employee has allegedly committed an act of gross misconduct.

Conclusion

Employers need to be aware of their responsibilities under the new Acas code and to have in place internal disciplinary and grievance procedures that reflect the code.

Disciplinary and grievance issues can have potentially serious consequences for a business so it is always wise to seek legal advice when these occur.

To find out more about how we can help you, please contact us:

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