

Discipline and Grievance – a new beginning

The statutory dismissal, disciplinary and grievance procedures were only introduced in October 2004 but will be repealed from April 2009. Contrary to their purpose, the statutory procedures added unnecessary layers of complexity and confusion and therefore no-one will mourn the departure of them, with the possible exception of lawyers who have been busy picking up the pieces in Tribunals and in the Appeal Courts.

The statutory procedures are to be replaced by a lighter touch, in the form of an ACAS Code of Practice. It contains broad brush guidance on how to deal with discipline and grievance issues in the work place. The Code will come into effect on 6 April 2009 and can be found at the ACAS website (www.acas.org.uk).

ACAS Code of Practice

A failure to follow the Code will not make a dismissal automatically unfair, but the Employment Tribunal will have the power to adjust any award by up to 25%, due to an employer's or an employee's unreasonable failure to comply with the Code.

The Code sets out some overarching key elements, namely that:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

The Code establishes 'Keys to handling disciplinary issues in the workplace', which are a guide to the steps in a disciplinary process:

- Establish the facts of the case.
- Inform the employee of the problem.
- Hold a meeting with the employee to discuss the problem.
- Allow the employee to be accompanied at the meeting.
- Decide on appropriate action.
- Provide the employee with an opportunity to appeal.

The Code also gives 'Keys to handling grievances in the workplace':

- Let the employer know the nature of the grievance.
- Hold a meeting with the employee to discuss the grievance.
- Allow the employee to be accompanied at the meeting.
- Decide on appropriate action.
- Allow the employee to take the grievance further if not resolved.

Moving forward

All employers should consider whether their internal policies will need to be reviewed and amended to comply with the Code. If an employer's internal policies are not in harmony with the ACAS Code, there is a greater risk of claims against the employer being successful and a 25% uplift on any compensation.

ACAS encourages employers to have a policy for dealing with issues involving bullying, harassment or whistle blowing. The Code gives no guidance for dealing with collective grievances but suggest a process should be put in place. It would therefore be advisable to consider whether your business needs a formal process or processes to deal with these issues.

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