

Disciplinary & Grievance Procedures



Hodge Halsall LLP

18 Houghton Street
Southport
PR9 0PA

Tel: 01704 531991
Fax: 01704 537475

markrobinson@hhlegal.co.uk
www.hodgehalsall.co.uk

Working With You



Disciplinary and Grievance Procedures

From 6th April 2009, the much criticized Statutory Disciplinary and Grievance Procedures (“3-step procedure”) which had been in place from October 2004 have been abolished. They are replaced by a new ACAS Code of Practice on Disciplinary and Grievance Procedures (the “new code”).

The “3-step” procedure is dispensed with and replaced by a “fair and reasonable” approach to handling workplace disputes. A dismissal will no longer be automatically unfair if correct procedures are not followed. However, Tribunals will be entitled to increase or decrease compensation awards by up to 25% if either an employer or employee has unreasonably failed to follow the new code.

The purpose of the new code is to provide greater flexibility for employers in handling disciplinary and grievance matters. In place of the “3-Step” procedure the new code lists a number of factors that both employer and employee should take into account when dealing with disciplinary/grievance problems.

Dealing with issues fairly

The new code emphasizes the importance of dealing with any disciplinary or grievance issue fairly and itemizes the following key elements in doing so :-

- 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 any 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.

Disciplinary procedures

The new code lists six key factors to be followed in handling disciplinary issues in the work place:-

1. Establish the facts of the case.
2. Inform the employee of the problem.
3. Hold a meeting with the employee to discuss the problem.
4. Allow the employee to be accompanied at the meeting by a fellow worker, trade union representative or an official employed by a trade union.
5. Following the meeting decide whether or not disciplinary or other action is justified and notify the employee.
6. Provide the employee with an opportunity to appeal any disciplinary action taken.

Grievance procedures

The new code lists five key factors to be followed in handling grievance issues in the work place:-

1. Notify the employer of the nature of the grievance.
2. The employer should hold a meeting with the employee to discuss the grievance.
3. The employee should be allowed to have a fellow worker, a trade union representative or an official employed by a trade union as a companion at the meeting.
4. Notify the employee of the decision in writing specifying what action the employer intends to take to resolve the grievance.
5. Allow the employee to appeal if it is felt that the grievance has not been satisfactorily resolved.

What if there is a failure to follow the new code?

Before 6th April 2009 if the statutory disciplinary procedure was not followed any dismissal of the employee was automatically unfair allowing employment tribunals to increase an award of compensation to the employee by between 10-50%. Under the new process if an employer fails “unreasonably” to follow the principles of the new code any compensation awarded to an employee can be increased to up to 25%.

There is no definition in the new code as to what “unreasonable” failure might be.

Under the statutory grievance procedure an employee had to raise a grievance in writing and wait twenty eight days after having done so before being able to present a claim to an employment tribunal. If the employee either failed to submit such a written grievance or did not wait the twenty eight day period after having done so the employment tribunal could not hear the claim to which the grievance related. The new procedure has no such restriction but if an employee “unreasonably” fails to comply with the principles of the new code any compensation awarded by an employment tribunal can be reduced by up to 25%.

Time limits

Under the new procedure employees must file their claims with an employment tribunal within three months of their date of dismissal or of the date of the act about which they complain e.g. an act of discrimination.

Other points to note

- the new code is stated to apply to disciplinary and grievance procedures and poor performance but does not apply to dismissals due to redundancy or the termination of fixed term contracts. It does not say, however, whether it applies to, for example, ill health or retirement dismissals which will therefore create their own uncertainties until the situation is clarified.
- the new code does not clarify whether it applies to ex-employees who were entitled to bring a grievance under the statutory procedure. It is uncertain, therefore, whether an ex-employee can pursue a grievance under the new procedure.
- the new code applies to disciplinary warnings as well as dismissals and employers should therefore provide an appeal process against a disciplinary warning which was not required under the previous procedure.
- in cases of misconduct the new code requires that investigation and disciplinary hearings should be carried out by different people.
- the new code deals with the not uncommon problem of an employee raising a grievance during a disciplinary process commenced by the employer. Options exist to either :-
 - temporarily suspend the disciplinary process to deal with the grievance; or
 - if the matters are connected, dealing with the grievance and disciplinary concurrently.
- if an employee is persistently unable or unwilling to attend a disciplinary hearing without good reason the employer can make a decision on the evidence available.
- employees should be allowed “a reasonable opportunity” to call witnesses to disciplinary hearings.
- employees should be notified in writing of the time and place for any disciplinary hearing and of their right to be accompanied and should be provided with copies of any written evidence upon which the employer intends to rely.
- an employee should be informed as soon as possible of any decision to dismiss, the reasons for dismissal, the date on which the dismissal will take effect, the period of notice applicable and of the right of appeal.
- appeals should be heard by a manager not previously involved in the disciplinary process.
- the use of third party mediators (internal or external) is encouraged to help resolve work place disputes.
- the code suggests that written records should be kept during both disciplinary and grievance procedures. This provision is, however, in the Foreword to the new code and therefore a failure to follow the suggestion should not be taken into account for the purposes of the potential 25% increase for an employer who fails to follow the code.
- the new code provides a right for employees to call witnesses to disciplinary and grievance hearings which may require employers to review their previous procedures.
- an employer may be able to make a decision on the evidence available to it if an employee persistently is unable or declines to attend a disciplinary meeting without good reason.
- the new code provides that grievances may be resolved informally without having to enter the formal process.
- the new code provides that employees should be “involved in the development of rules and procedures” but no clarification is provided as to what this actually requires.

DISCLAIMER

This guide is for information purposes only and not intended to create a solicitor/client relationship. Readers should not act upon this information without seeking professional legal advice.

For further advice on the introduction of the new procedures please contact Mark Robinson or Judith Bond :-

Telephone : 01704 531991

Fax: 01705 539082

Email: markrobinson@hhlegal.co.uk judithbond@hhlegal.co.uk



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www.hodgehalsall.co.uk