



DISCIPLINARY AND GRIEVANCE PROCEDURES – THE NEW RULES

With effect from 6 April 2009, the statutory dispute resolution procedures were repealed and replaced by the Acas Code of Practice ('the Code') (www.acas.org.uk). The Code is not legally binding and a failure to follow its provisions will not automatically result in a penalty of any kind as was the case when the statutory resolution procedures were in force. Nevertheless, Tribunals will take the Code into account when assessing cases. Tribunals may award compensation of up to 25% if they believe that an Employer unreasonably failed to follow the guidance set out in the Code or decrease it by 25% if they feel that the Employee unreasonably failed to follow its provisions.

The key provisions of the Code in relation to disciplinary and grievance procedures are as follows:

1. Disciplinary procedures

Investigations

- Employers should carry out necessary investigations without unreasonable delay.
- Different people should carry out the investigation and disciplinary meeting.
- Suspensions with pay should be as brief as possible.

Before the Meeting

- The Employee should be notified of the alleged misconduct or poor performance in writing and its possible consequences. It would be appropriate to provide the Employee with copies of any written evidence such as witness statements.
- A meeting should be held as soon as possible to discuss the problem. Employers and employees should make every effort to attend the meeting.

At the meeting

- The employer should explain the complaint against the Employee and go through the evidence that has been gathered. The Employee should be allowed to set out their case and answer any allegations.
- The Employee has a legal right to be accompanied by a companion where the disciplinary meeting could result in a formal warning being issued or the taking of some other disciplinary action or the confirmation of a warning or some other disciplinary action.

Decisions

- The Employer should send its decision to the Employee in writing.
- Where misconduct is confirmed or performance is unsatisfactory, it is usual to give the Employee a written warning or if this continues, a final written warning. Dismissal should only follow where first and final warnings have been issued.

- In cases of gross misconduct, a dismissal without notice may be appropriate but a fair disciplinary process should always be followed.

Appeal

- Employees should be given the opportunity to appeal where they feel that the disciplinary action taken against them is wrong or unjust.
- The Appeal should be dealt with impartially and, if possible, by a manager who has not previously been involved with the case.
- Employees have a right to be accompanied at appeal hearings.

2. Grievance Procedures

Informal grievance

- If it is not possible to resolve a grievance informally, Employees should raise the matter formally in writing and without unreasonable delay with a manager who is not the subject of the grievance.

Meeting

- Employers should arrange for a formal meeting to be held without unreasonable delay and Employees should explain their grievance and how they think it should be resolved.
- Employers and Employee should make every effort to attend the meeting.
- Employees have a right to be accompanied at a grievance meeting.

After the meeting

- The Employer's decision should be communicated to the Employee in writing and the Employee should be informed that they can appeal the Employer's decision.

Appeals

- Appeals should be heard without unreasonable delay and should be dealt with impartially.
- Employees have a right to be accompanied at an appeal meeting.

NB: Where an Employee raises a grievance during the disciplinary process, the latter should be suspended in order to deal with the grievance and thereafter resumed if appropriate.

3. What do Employers need to do?

Employers will note that the requirements of the Code are similar to the old statutory disciplinary and grievance procedures pre 6 April 2009. Employers with already implemented rules and procedures will probably not need to make substantial changes but they can, for example, remove references to steps 1 and 2 in the procedures. Employers should, however, notify Employees of any changes to the rules and procedures and appropriate training should be made available.

4. Transitional arrangements

It is important to note that the 2004 statutory dismissal and disciplinary procedures will continue to apply from 6 April 2009 if, **on or before 5 April**, the procedures were applicable in the circumstances of the case and the employer has either dismissed the

employee, taken relevant disciplinary action against the employee or complied with Step 1 or 2 of the standard procedure, or Step 1 of the modified procedure.

The 2004 statutory grievance procedures will also continue to apply where the action that forms the basis of the employee's complaint occurs wholly before 6 April 2009. If the complaint begins **on or before 5 April 2009** and continues thereafter, the grievance procedures will also continue to apply as long as the employee has presented a complaint to a tribunal based on that grievance on or before 4 July 2009, or 4 October 2009 in cases of equal pay, redundancies or certain industrial action dismissal claims.

For further information and advice please contact:

Emmanuelle Ries

Partner

T +44 (0)20 7553 9938

E er@millerrosenfalck.com

I millerrosenfalck.com

The material contained in this [article/guide] is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.