

# Changes to the Disciplinary and Grievance Procedures

## From 06 April 2009

By Philip Landau

**ACAS has introduced a new Code of Practice ("the Code") for disciplinary and grievance procedures which came into effect on 6 April 2009. The Code replaces the 3 step statutory procedures implemented in 2004.**

**Employers and employees alike would be expected to follow the new procedures before taking any case to an employment tribunal. Failure to do so by the employer is likely to result in a finding of unfair dismissal. This is not to say, of course, that you cannot obtain professional advice in the meantime.**

### 1. Key points of change

- The new Code is not legally binding and a failure to follow the Code will not result in an automatic penalty for the employer or employee. However employment tribunals will take the Code into account where appropriate and a failure by the employer to follow the code without justification is likely to amount to a finding of unfair dismissal.
- Unreasonable failure to comply with the Code will allow tribunals to adjust an award by up to 25%. If an employer breaches the Code the award may be adjusted upwards in favour of the employee. If an employee breaches the Code the award may be adjusted downwards.
- The Code does not apply to redundancy dismissals and the non renewal of fixed term contracts.

### 2. General Guidelines

Whenever a disciplinary or grievance process is being followed the Code makes clear that it is important to deal with issues fairly.

- 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.

Employees are entitled to be accompanied at disciplinary and grievance hearings, including appeals, by a fellow employee or a trade union official of their choice. There is now an obligation on the employer to inform the employee of this right.

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### 3. Disciplinary Procedure

The Code sets out procedures the employer should follow when handling a disciplinary.

#### Investigation

- Employers should carry out an investigation of potential disciplinary matters without unreasonable delay to establish the facts of the case. Different people should carry out the investigation and the disciplinary hearing. Any investigatory meeting should not by itself result in any disciplinary action.

#### Informing the employee

- If there is a disciplinary case to answer the employee should be notified in writing with sufficient information of the problem and be given details of the meeting time and venue. The disciplinary meeting should be held without unreasonable delay and allow the employee reasonable time to prepare their case.
- Employers should explain the complaint and evidence, and allow the employee to answer any allegations, ask questions, present evidence and call relevant witnesses. Advance notice should be given for an intention to call witnesses.

#### The decision

After the meeting the Employer should inform the employee in writing if disciplinary action is to be taken.

- For misconduct or poor performance reasons employers should give the employee a first written warning.
- If the misconduct or poor performance is sufficiently serious it may be appropriate to give the employee a final written warning.
- A decision to dismiss should only be taken by a manager who has the authority to do so.
- If gross misconduct is involved this may call for dismissal without notice for a first offence.

#### Appeals

- Employees can appeal against a disciplinary action in writing.
- Appeals should be heard without unreasonable delay.
- Appeals should be dealt with impartially by a manager who has not previously been involved in the case.
- Employees should be informed in writing of the appeal hearing result as soon as possible.

#### Overlapping grievance and disciplinary cases

- Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

### 4. Grievance Procedure

The Code sets out procedures the employee should follow when making a grievance.

- If the grievance cannot be solved informally, employees should raise a formal written grievance without unreasonable delay to a manager who is not the subject of the grievance.
- A failure to raise the grievance in writing does not prevent the employee from bringing a tribunal claim but it may reduce the amount awarded.

#### Employer's actions

- Employers should arrange a formal meeting without unreasonable delay.
- Employers and employees should make every effort to attend the meeting.

#### Decisions and appeals

- Employers should communicate their decision and action to be taken in writing to the employee without unreasonable delay. The employee should be informed they can appeal.
- If the grievance has not been satisfactorily resolved the employees should appeal without unreasonable delay setting out their grounds in writing.
- Appeals should be dealt with impartially by a manager who has not previously been involved in the case.
- Employees should be informed in writing of the results of the appeal hearing as soon as possible

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### 5. Transitional Arrangements for cases commenced on or before 5 April 2009\

#### Disciplinary procedures

- The previous statutory disciplinary dismissal procedures will apply for all cases where on or before 5 April 2009 the employer:
  - 1) dismissed the employee;
  - 2) took disciplinary action; or
  - 3) complied with step 1 and 2 of the standard procedure or step 1 of the modified procedure.

It can sometimes be useful to instruct a solicitor during the grievance or disciplinary stage for appropriate advice. This may include negotiating a severance payment whereby you leave your employer on agreed terms to save you going through the statutory process, especially if you do not wish to remain with the same employer whatever the outcome.

**For further information please contact us by telephone on 020 7357 9494 or email:**

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#### Grievance cases

- The previous statutory grievance procedures will apply for all cases where on or before 5 April 2009 the employee raised a grievance.
- Alternatively, if the action which forms the grievance begins on or before 5 April 2009 and continues after that, then the statutory procedure will only apply if the employee produces a grievance letter or begins tribunal proceedings on or before 4 July 2009. For equal pay cases, statutory redundancy payment claims and some industrial action dismissal claims, the last date is 4 October 2009.