

# The Employment Act 2008: Repeal of the Statutory Disciplinary and Grievance Procedures and the New ACAS Code of Practice

**March 2009**

## **BACKGROUND**

Following an independent review and a full public consultation, the Government decided to repeal the existing legislation covering dispute resolution in the workplace as it was found to be formalising disputes unnecessarily.

## **SIGNIFICANT CHANGES BROUGHT ABOUT BY THE ACT**

- The current disciplinary and grievance procedures will be repealed.
- Tribunals will no longer have the power to extend time limits for bringing claims which relate to breaches of the statutory procedures.
- Employees will no longer have to raise a grievance before bringing a claim against their employer for certain matters.
- Tribunals will now have the power to increase or decrease awards by up to 25% where the relevant Code of Practice, which will be discussed in more detail below, has not been followed.
- Dismissals will no longer be automatically unfair where the employer is found to be in breach of the new Code. The position will be that even although a dismissal can be unfair on procedural grounds alone, a Tribunal could be persuaded to reduce any compensation to reflect the likelihood that the dismissal would have taken place regardless of whether the correct procedure had been followed.
- Both the modified disciplinary and grievance procedures will be repealed.
- The new procedures will not apply to redundancy situations or the non-renewal of fixed term contracts.

- Tribunals will now be able, in certain circumstances, to determine proceedings without a hearing.
- ACAS will now have a duty to conciliate until a judgement is delivered as opposed to the current system where fixed conciliation periods can be assigned to claims.

## **THE ACAS CODE OF PRACTICE**

The most significant change for employers will be the introduction of a new ACAS Code of Practice which sets out the steps employers and employees should follow for disciplinary and grievance issues. The Code itself has no statutory force and failure to follow it will not, as detailed above, lead to an automatically unfair dismissal.

### **Disciplinary Process**

Overall the Code does not differ materially from the current three step process. The employer must still fully investigate the issue, make the employee aware that disciplinary action is being considered, invite the employee to a meeting, inform the employee of their right to be accompanied and ultimately allow the employee to appeal any decision made at a disciplinary hearing.

### **Grievances**

Again, the process here is very familiar. The employee must notify the employer of his/her grievance in writing, and the employer must then arrange a meeting, remembering to advise the employee of his/her right to be accompanied. The employee must be given an opportunity to appeal any decision made at a grievance hearing.

## TRANSITIONAL PROVISIONS

The Government has made provision for the crossover between the new and old procedures. In relation to disciplinary matters, the old procedures should be adopted where, prior to 6 April 2009, the employer has either (1) dismissed the employee; (2) taken the first step of disciplinary or dismissal action; (3) taken any other relevant disciplinary action against the employee.

For grievances, the old regime will continue to apply where the action that forms the basis of the grievance occurs wholly before 6 April 2009. The old procedures will also apply where the action forming the basis of the grievance begins before 6 April 2009 and continues beyond that date, but only if the employee presents a complaint to an Employment Tribunal or submits a valid grievance on or before 4 July 2009 for most types of claims, or 4 October 2009 for equal pay or redundancy claims.

## IMPLICATIONS FOR EMPLOYERS

The Government has tried to simplify and de-formalise the current legislative framework surrounding dispute resolution in the workplace. Although many significant procedural changes have been made in terms of claims and tribunal process, most well advised employers may find that their current disciplinary and grievance policies already comply with the new ACAS Code of Practice. However, employers cannot be too complacent and will have to review all their relevant policies in light of the changes that have been made to ensure that they do not fall foul of the new rules.

This briefing note sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact a member of our employment team:



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