

BRIEFING NOTE

Disciplinary and grievance procedures from 1st October 2004

You may be aware that Part 3 of the Employment Act 2002 and corresponding Regulations come into force on 1st October 2004. The major effect was to introduce mandatory discipline and grievance procedures that may have significant implications for the way in which you conduct such procedures. This briefing note will give you a flavour of the changes that have taken place.

The Act introduces a minimum three-step disciplinary procedure that must be followed in almost all situations prior to a termination of employment or certain disciplinary action taking place, whether or not the issue concerns misconduct or capability. The procedure will apply to all employees, including those on probationary periods and those who have been employed for less than 12 months. The procedure must also be used in a range of circumstances where previously one would not have used a "disciplinary procedure", such as where an employee is retiring, where an employee is being made redundant and where a decision is being made whether or not to renew a fixed term contract.

In brief, the three mandatory steps are:

1. Advise the employee in writing of the grounds for action and invite them to a meeting;
2. Meet with the employee and following the meeting advise them of the outcome and right of appeal;
3. Should the employee so elect, hear the appeal.

The Act provides further guidance as to what should occur at each stage of the disciplinary process. The statutory grievance procedure effectively mirrors that of the three-step disciplinary procedure.

All employers, regardless of size, must mention their disciplinary rules and the new minimum procedures in the written statement of employment particulars. The penalty for failing to comply with the minimum procedure is that (subject to the normal 12 month qualifying period) the employee will have a case of automatic unfair dismissal and any damages award against the employer will be increased by the Employment Tribunal by up to 50%. In addition, please note that if an employer fails to provide written particulars of employment to an employee then the Employment Tribunal will normally award either two or four times a week's pay. A claim for failure to provide written particulars of employment is not a stand alone claim and can only be made in the course of other proceedings before a Tribunal, such as unfair dismissal.

However, it is not all bad news for employers, as an employee will have their award reduced by a like amount if they fail to comply with disciplinary procedures. For example, by failing to attend a disciplinary meeting.

Further, if an employee does not utilise the statutory grievance procedures they will be barred from bringing a claim in the Employment Tribunal based on a grievance until such steps have been taken. The onus is very much on employees to exhaust all internal measures before seeking external redress.

In light of the penalties for non-compliance, we strongly recommend that you review your current disciplinary and grievance procedures to ensure compliance and that you educate your managers on the new statutory requirements. In addition, it may be an opportune time to conduct a general review of your employment contracts and policies. We would be happy to assist you with the above or provide you with further information on the new disciplinary and grievance procedures.

ACAS guidance

The link below will take you to the guidance notes ACAS have produced for businesses setting out how in flowcharts how the new disciplinary and grievance procedures will work.

http://www.acas.org.uk/publications/pdf/acas_disciplinary_folder.pdf

They have also produced much more detailed guidance on the workings of the new procedures

<http://www.acas.org.uk/publications/pdf/CP01.pdf>

Time Limits

The normal time limit of three months for submitting a Tribunal claim cannot be relied on after 1st October 2004. The Act and Regulations extend the normal time limit, by up to three months, in circumstances where the employee reasonably believed, at the time the normal time limit expired, that a disciplinary procedure was being followed in respect of matters that comprise the substance of the complaint or where the employee initiates the grievance procedure during the normal time limit. In practice, the time limit may be as much as six months from the date of termination of employment. Unfortunately, it is not possible to produce a simple generic formula as to how the time limits will operate in practice. Indeed, this is likely to be a hotly disputed issue in the next 12 months and you will need to consider each case individually.

We look forward to being of assistance to you.

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