

NEW DISMISSAL AND GRIEVANCE PROCEDURES

Key Points

- New procedures apply from **6 April 2009**;
- Current statutory dismissal and grievance procedures will be abolished;
- Transitional provisions apply if dismissal procedures or grievances commenced before 6 April 2009.

Background

The current statutory dismissal and grievance procedures were introduced in October 2004. The procedures apply to all employers regardless of size and to all dismissals and grievances. They require the following three steps:

- (1) Statement of potential dismissal or grievance;
- (2) Meeting to discuss it; and
- (3) Right of appeal.

An employer's failure to comply with the procedures means that a dismissal is automatically unfair and entitles the employee to an increase in compensation of between 10% - 50%. The compensation could also be reduced by 10% - 50% for the employee's failure to comply with the procedures.

The Government's aim in introducing the statutory procedures was to encourage employers and employees to resolve all employment disputes in the workplace rather than the Employment Tribunal. In practice, this has had the opposite effect and the procedures have impacted particularly unfairly on small employers.

The procedures will be abolished in the Employment Act 2008 which comes into force on 6 April 2009. New procedures will be introduced which, to some extent, take dismissals and grievances back to the pre-2004 position.

New Procedures – Employment Act 2008

The new procedures apply to all dismissals and grievances which take place after 6 April 2009, subject to transitional provisions (see below).

The Act provides that any dismissals for conduct or performance and grievances are expected to follow the ACAS Code of Conduct www.acas.org.uk. This is similar to most disciplinary procedures and the three step procedure set out above (statement, meeting and appeal). Failure to do so could result in an increase or decrease in compensation of 0% - 25%.

However:

- The ACAS Code of Conduct does not apply to dismissals for redundancy or non-renewal of fixed term contracts. This means that there will be no need to provide a right of appeal in redundancy dismissals although the ordinary principles of fairness will apply;

- Failure to follow the Code does not mean that the dismissal is automatically unfair (unlike the current procedures). The Employment Tribunal will have a discretion to adjust any award if they consider it just and equitable to do so having regard to all the circumstances of the case and the size and resources of the employer;
- The employee will have to win his unfair dismissal case before the Tribunal will consider an increase in compensation.
- There will no longer be a requirement for an employee to raise a written grievance and wait 28 days before commencing Tribunal proceedings;
- Employers will no longer be obliged to hear grievances from ex-employees.

General

- The time for bringing claims will be three months from the date of dismissal or action complained of in a grievance. There will no longer be an automatic extension of up to three months if the dismissal and grievance procedures are ongoing;
- Where dismissals and grievances overlap, the procedures are less complex.

Transitional Provisions

The Act applies to all dismissals and grievances which take place on or after 6 April 2009. However, the current procedures will apply if:

- (1) The employer has started dismissal proceedings by sending a letter (regarding a potential dismissal) or holding a meeting (to discuss it) before the 6 April 2009; or
- (2) The employee complains about an action which occurred wholly before 6 April 2009 and/or raised a grievance letter before 6 April 2009 and/or presents a Tribunal claim form before 4 July 2009.

Comment

The abolition of the current procedures is to be welcomed, although it remains to be seen how the new procedures will work in practice. However, the discretionary aspects of the new procedures should result in fairer outcomes.

Any employer that is contemplating dismissals, particularly for redundancy or non-renewal of a fixed term contract should delay in taking any steps until after 6 April 2009.

Contact Us

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Disclaimer

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