

BRIEF UPDATE

FROM THE EMPLOYMENT DIVISION



DISCIPLINE & GRIEVANCE- ABOLITION OF THE STATUTORY PROCEDURES

“Rarely can legislation have been so counter-productive. Provisions designed to reduce tribunal disputes have spawned satellite litigation in which arcane and complex points of law have been argued, frequently so remote from reality that they would surprise even the most desiccated Chancery Lawyer conjured up by the imagination of Charles Dickens”.

Former President of the Employment Appeal Tribunal, the Honourable Mr Justice Elias.

The above quote puts concisely into words surely every employer and employment lawyer’s feelings in relation to the Statutory Dispute Resolution Procedures which will be repealed as of 6 April 2009.

Failure to follow the statutory dispute resolution procedures resulted in an automatically unfair dismissal with the potential for compensation to be increased by 50%. Following the procedures only made a dismissal *potentially fair* depending on the substance of the misconduct and the way in which employers responded to that.

The procedures are to be replaced from 6 April 2009 by a new ACAS Code of Practice. The Code of Practice sets out the basic requirements of a fair procedure including thorough investigation, written notification of any allegations and possible consequences, disclosure of evidence, a written request to attend a hearing, the hearing itself, at which the employee has the right to be accompanied, and then a right of appeal. For a dismissal to be fair an employer is required to demonstrate that there was an acceptable reason for dismissal and that their response to the conduct/performance was reasonable. The overall test is “fairness in the circumstances” and so failure to follow a *particular* step will not necessarily mean that the dismissal is unfair.

One notable change is that employees will no longer have to raise a formal grievance as a prerequisite to lodging a claim at an Employment Tribunal.

Although dismissals will no longer be automatically unfair for failure to follow particular steps, the Employment Tribunal is empowered to reduce or increase financial awards by up to 25% if there is an “*unreasonable failure*” to follow the new Code of Practice. It remains to be seen how Employment Judges will exercise their discretion in this regard.

There will also be a transitional period where the ‘old’ disciplinary and grievance procedures will still apply, for instance where a disciplinary process has been commenced in advance of 6 April.

To help clients prepare themselves for the changes in April, the Employment Law Team are hosting a ‘lunch and learn’ seminar on a non-charging basis at Union Plaza on 23 and 24 March at 12.30 addressing the new regime and celebrating the abolition of the old one! If you wish to attend please reply to our Marketing Department on trainingsolutions@paul-williamsons.co.uk stating which day you would prefer to attend.

For any further information in relation to this issue or matters arising, please do not hesitate to contact a member of the Employment Law Team whose details are undernoted:

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