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## Highlights

ACAS Code on discipline and grievance – Special edition.

## New ACAS Code on Discipline and Grievance to come into effect from 6<sup>th</sup> April 2009

The revised Code of Practice will come into effect from 6<sup>th</sup> April 2009 with the Employment Act 2009, when the current statutory disciplinary and grievance procedures are abolished. An unreasonable failure by an employee or employer to follow the Code will result in a Tribunal being able to increase an award by up to 25% (but less than the current 50% for failing to follow the statutory procedures).

### What are the main changes?

A dismissal will no longer be automatically unfair if the correct procedures are not followed. This is likely to result in fewer claims being

brought to Tribunal for a minor technical breach of the procedure.

The Code applies to all formal disciplinary action (including written or final warnings) and not just dismissals (as per the current statutory dismissal procedures).

The Code does NOT apply to redundancies or termination of fixed term contracts.

The new Code requires employees and employers to 'seek' to resolve issues in the workplace. It also promotes the use of mediators. This is not specified in the Code itself but the forward accompanying it suggests the use of 'third parties' to help resolve disputes.

## Transitional Arrangements

In the approach to the April changeover date to the new system, employers may be unclear how to deal with disputes that straddle the 6<sup>th</sup> April deadline.

In order to resolve any confusion the following rules will be applied:

1. The date of the 'trigger' event will be used to decide whether the new or old regulations will apply.

Therefore, if the trigger date is on or after 6<sup>th</sup> April the new regime will apply. If the trigger date is on or before the 5<sup>th</sup> April the old regime will continue to apply.

In the case of disciplinary or dismissal the 'trigger' event will be the date the employer has started action against the employee.

This would usually be the date the employee receives a letter explaining that disciplinary action is being considered or in the absence of a letter, the date the issue was raised at a meeting. If neither of these steps are taken, the trigger will be the date on which disciplinary action was taken.

For grievances, the trigger date will be the date of the action about which the employee complains, even if the action continues beyond this initial date.

**We would be pleased to provide advice or assistance on any of the matters raised in this Newsletter.**

*Whilst every care has been taken in compiling these notes, we cannot be held responsible for any errors or omissions; the notes are not intended to be a substitute for specific advice.*



## **New Code - Disciplinary Proceedings**

As previously stated, the new Code applies to all formal disciplinary proceedings and not just dismissals.

The main points of the Code are detailed below:

1. Establish the facts of the case by conducting an investigation without unreasonable delay. Where practicable, different people should carry out the investigation and disciplinary hearing.
  2. Inform the employee of any action in writing.
  3. Hold a meeting without unreasonable delay to discuss the problem, but allow the employee time to prepare.
  4. Allow the employee to be accompanied to the meeting.
  5. Decide on the appropriate action, informing the employee in writing.
- If a warning is given, the employee should be advised of the nature of misconduct, the time-scale to improve,

the consequences of failing to improve and how long the warning will remain on record.

If a decision is taken to dismiss, this should only be done by a manager with the authority to dismiss.

6. Give the employee an opportunity to appeal.

### **Other changes**

The new Code only requires employers to issue a first and final written warning prior to dismissal. Therefore abandoning the concept of a verbal warning as a stage in the process. This should theoretically make it easier to dismiss. However, the new code still recommends that employers attempt to resolve matters informally.

## **New Code – Grievance Proceedings**

The main points of the Code are listed below:

1. The employee is encouraged to resolve the matter informally
2. The employee must set out their grievance on writing including the nature of the complaint.
3. There should be a meeting held without reasonable delay to discuss the grievance.

4. Both parties should attend the meeting and it should be adjourned if there is a need to conduct an investigation.

5. The employee should be allowed to be accompanied.

6. After the meeting decide on the appropriate action, informing the employee in writing and the right of appeal.

## **How should employers respond to the new Code?**

Painter and Cole HR Consultants will update all retained Clients Disciplinary and Grievance Procedures to reflect the ACAS Code.

All non- retained Clients should review their policies to ensure compliance with the new Code by 6<sup>th</sup> April 2009.