



Dispute Resolution Act 2008

Introduction

On 6th April 2009 the Employment Act 2008 came into force. It brought important changes in statutory dispute procedures and the role of these procedures in unfair dismissal proceedings.

The most important change resulting from the act is an end to the existing 3 step procedure for dealing with discipline and grievance issues, it is replaced by new procedures. The Act is accompanied by a new Code of Practice on dispute resolution produced by Acas.

The government's justification for making these changes is that it will encourage employers and employees to make better use of internal procedures, rather than resorting to employment tribunals. The Act applies only to England, Wales and Scotland and does not apply to Northern Ireland.

Following is an explanation of the changes contained in the Employment Act 2008 relating to dispute resolution.

The changes

Key Changes	Further Details
<p>Repeals existing dispute procedures and replaces them with a new code produced by Acas</p>	<p>All sections of the Employment Act 2002 concerning statutory dispute resolution procedures are repealed. This means the "three-step" process for disciplinary and dismissal procedures will no longer apply.</p> <p>The "three step" process is replaced by a revised Acas statutory code of practice on disciplinary and grievance procedures. This sets out the principles of what an employer and employee should do to achieve a reasonable standard of behaviour.</p> <p>If a dispute is considered by a tribunal, it will consider whether a failure to follow the Acas code was reasonable or unreasonable, taking into account factors such as the size of the business.</p>
<p>Dismissals no longer "automatically unfair" if procedure is not followed</p>	<p>A dismissal will no longer be considered "automatically unfair" if statutory procedures set out in the new Code are not followed.</p> <p>This returns the law on unfair dismissal to the position set out in <i>Polkey v AE Dayton Services Ltd</i> (formerly <i>Edmund Walker (Holdings) Ltd</i>) [1987] IRLR 503. This means that procedural failings will <u>normally</u> render a dismissal unfair even if they made no difference to the outcome. However, the "no difference" element should be reflected in the award of compensation made by the tribunal.</p>

Employment tribunals can vary compensation.	Employment tribunals will have the power to increase or reduce awards by 25% where the relevant Code of Practice has not been followed.
Acas duty to conciliate extended	The duty of ACAS to conciliate between disputing parties will no longer be limited to a fixed time period and will now cover the entire proceedings up to a judgement.
No tribunal hearing needed when all parties agree	When all parties in a dispute give consent in writing (or where the respondent has not replied to the claim) a tribunal can determine on a case without the need for a hearing.
Tribunals given the power to order compensation on bank charges and interest	In cases relating to redundancy or unlawful reduction of wages tribunals will have the power to order the <u>full</u> compensation of staff for all losses, including extras such as bank charges and interest. Previously, these extras were excluded.

Transitional arrangements

There will be a number of disputes which will have started by the 6th April 2009 but will not have been resolved. In these cases the Act puts in place transitional arrangements which clarify which legal regime will apply to the dispute.

In the case of disputes which have not yet come before a tribunal, the date when the employer has started disciplinary or dismissal action will be used to decide which legal regime applies. So if the disciplinary action (normally marked with a dated letter) begins before the 6th April 2009, then the old arrangements will apply. If it begins after the 6th April 2009 then the new regime applies.

In the same way, for grievance procedures the date of the action about which the employee complains will determine which regime applies.

The New Acas Code of Practice

The new Draft Acas Code of Practice on Discipline and Grievances at Work can be found here: <http://www.acas.org.uk/CHttpHandler.ashx?id=961&p=0>

The Code replaces the "three step" statutory dispute resolution procedures and came into force on 6 April 2009.

Acas have aimed to produce a "principle-based" code that provides easy to understand advice on dealing with disputes in the workplace. Although failure to follow the code will no longer automatically render any dismissal unfair, a tribunal will regard it as highly relevant.

The code is primarily concerned with the formal handling of disciplinary and grievance issues, it begins by recommending that disputes are resolved in an informal manner. Where this is not possible, it suggests that an independent third party should be brought in to help resolve the issue through mediation.

Acas also strongly recommend that procedures for dealing with disputes are set out in writing. This includes a recommendation that “where appropriate” the employees representatives should be involved in the development of these rules and procedures.

The general principles for handling disciplinary and grievance issues are:

- Issues should be dealt with promptly.
- Employers and employees should act consistently.
- Employers should carry out any necessary investigations to establish the facts.
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case before any decisions are made.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- Employers should allow employees to appeal against any formal decision made.

Acas has also produced Discipline and Grievances at Work: the Acas guide, which can be downloaded here: <http://www.acas.org.uk/CHttpHandler.ashx?id=981&p=0>. The guide provides supporting advice which complements the Code of Practice by providing practical examples of how to deal with discipline and grievance issues.

Further Information

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Discipline and grievances at work: The Acas Guide:
<http://www.acas.org.uk/CHttpHandler.ashx?id=981&p=0>

Department for Business, Enterprise and Regulatory Reform (BERR) dispute Resolution
Webpage: http://www.berr.gov.uk/whatwedo/employment/Resolving_disputes/index.html

Further details on transitional arrangement from BERR:
http://www.berr.gov.uk/whatwedo/employment/Resolving_disputes/disputes_after_6_april_2009/index.html