

STATUTORY DISPUTE RESOLUTION PROCEDURES

Since their introduction October 2004 the Statutory Dispute Resolution Procedures have been a controversial addition to HR practice. Unwieldy and unmanageable for smaller businesses, they have in themselves significantly increased tribunal claims as employers fall foul of adhering to the strict procedures.

Fortunately someone somewhere saw sense. A review was completed and the procedures are being repealed. However, don't shout too loudly from the roof tops... they are being replaced by another code of practice!

It will still be expected that in cases of disciplinary the employer should write to the employee setting out the allegations, invite them to a meeting, and offer the right to appeal. The good news is that failing to follow these procedures will not automatically render a dismissal as unfair. Tribunal decisions will take a step back from being procedurally led and will be based on whether, in essence, the employer has acted fairly. Tribunals will also retain the right to uplift compensation awards if they feel the employer has acted unreasonably (and decrease awards if they feel the employee has acted unreasonably); but these awards will be capped at 25% either way, rather than the current 50%.

The procedure for acting on grievances will also change. Employers will no longer be forced to go through formal grievance procedures for minor complaints – giving back the flexibility to deal with minor issues on an informal basis. However, similar to the disciplinary procedures, a Tribunal will be looking for the employer to have acted fairly and reasonably which inevitably involve scrutiny of the procedure used. In addition, employees need not raise or see through a grievance before submitting a claim to the Tribunal, although this may be seen as unreasonably denying the employer of the opportunity to resolve issues in-house and before they escalate to this stage. In this case, a reduction of up to 25% may be applied to a compensation award.

This all sounds very good, but there is always a sting in the tail – especially for small businesses. There is a new ACAS Code of Practice, expected to be released soon, which will be accompanied by around 70 pages of 'guidance'. Employers / managers are expected to familiarize themselves with its content.

It is expected Tribunals will be looking for alternative measures to resolve disputes, such as mediation; costs borne by the employer. In addition an independent person, whether another manager within the business or someone from outside the business, should investigate grievances/misconduct. The findings of the investigation are to be presented to the person/manager conducting the meeting or hearing.

Conducting investigations via a 3rd party will undoubtedly impact on small businesses who at times struggle to find someone different to hear the appeal. Also, managers will certainly need training in the skills required to

- conduct meaningful investigations
- present the findings in a clear format for another manager to use

So, it's out with the old and in with the new from 6th April 2009 and it will be interesting to see what impact this makes to Tribunal hearing outcomes. I'll keep you posted....

Grievance & Misconduct Investigations

HR Response has a proven track record in successfully conducting grievance and misconduct investigations for its clients.

Our approach is to gain as much information as possible relevant to the allegation before writing an in-depth report that considers each element being questioned.

We interview each individual involved in the investigation and produce discussion notes from each meeting.

Our final report also contains recommendations for further action(s) which may also include ideas/tools for improving HR practice and/or procedures as necessary.

For further information about our investigation service or regarding the training of managers in investigation skills please contact:

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