

Statutory Dismissal/Disciplinary/Grievance Procedures

These statutory procedures came into force on 01 October 2004. They are repealed and replaced by a semi-voluntary Code of Practice drawn up by ACAS that is contained in the Employment Act 2008. This Act received Royal Assent on 13th November 2008 and the ACAS Code of Practice on Disciplinary and Grievance Procedures is in effect from 06th April 2009.

The purpose of the statutory disciplinary, dismissal and grievance procedures is to regulate the procedural part of employment relations just as the substantive part (for example, what constitutes a fair or unfair dismissal) has been regulated by specific statutory provisions since 1971. These procedures will continue to apply past the repeal date if, before the 06 April 2009, the employer has given notice to the employee about a disciplinary or dismissal matter or held a meeting with the employee about either matter. Similarly and more generally, the 2004 procedures will continue to apply if an employee has sent her or his employer a statutory written grievance before 06 April 2009. In certain circumstances, such as an extension of the time limit for claims and for redundancy claims, the 2004 statutory procedures will continue to apply until either the 04 July 2009 or the 04 October 2009.

Both employers and employees are required to follow the appropriate statutory procedure if a disciplinary, dismissal or grievance matter arises otherwise they face adverse consequences when making or defending employment tribunal claims.

For example, employers who need to discipline or dismiss employees but who, when doing so, fail to initiate or complete the statutory three-stage 'standard' procedure (or if appropriate the shorter two-stage modified procedure) by informing employees about the matter in writing and inviting them to meetings, during which employers and employees can state their respective cases, after which employers must inform employees of the right to appeal will, if employees make claims to employment tribunals, have findings of automatically unfair dismissals made against them and risk having to pay increased amounts of compensatory awards to claimants of between 10% to 50%.

Likewise, employees who need to raise grievances with their employers must use the statutory three-stage or modified two-stage procedure and wait at least 28 days before making claims to an employment tribunal. Employees who have failed to use a statutory procedure or have not waited 28 days, will have their claims rejected by employment tribunals. Employees who have failed to complete the relevant statutory procedure risk having their compensatory award reduced by between 10% and 50%.

A delay by the employer to comply with the general requirements of a statutory procedure does not by itself amount to a failure to complete the procedure unless the delay is unreasonable and, as a result, tribunal proceedings are issued before the employer complies, for example, by hearing the employee's appeal.

If it is the employee who is in default of the relevant statutory disciplinary or dismissal or grievance procedures, an employment tribunal shall reduce the compensatory award to the employee by between 10% and 50%. Further, an employment tribunal will not accept a claim

from an employee unless the employee has initiate and completed a relevant statutory grievance procedure and then waited at least 28 days before making a tribunal claim.

The repeal of the 2004 statutory procedures include the repeal of section 98A of the Employment Rights Act 1996 which provides that the failure by an employer to initiate or complete the statutory dismissal procedure constitutes an automatically unfair dismissal on procedures grounds. From 06 April 2009, whether or not a dismissal is procedurally unfair and therefore automatically unfair will be determined in accordance with the guidance laid down by the House of Lords in Polkey v A E Dayton Services Ltd (1988) ICR 142.

In the event that an employee has sent a statutory written grievance to her or his employer but, after the expiry of the three-month time limit for a claim to an employment tribunal has passed and the employee has not yet made a claim to an employment tribunal because he or she is still awaiting the outcome of a procedure that is still being continued by the employer, then, in these circumstances, the claim limit to make a claim is extended by a further three months.

To read the 'Dismissal, Disciplinary and Grievance Procedures' in full and gain access to the contents of this website, click...