

# Employment Law Clinic

*Taking Care of the Legal Stuff*



## Employment Act 2008 aims to ease regulatory burden (March 2009)

Employment law is an important issue for all businesses, particularly so if you're looking at your staffing budgets, and considering how to manage this cost in the current economic climate.

While red tape & new legislation is not normally something welcomed by business, the latest employment legislation – the Employment Act 2008 – cleared parliament in November 2008, and has an objective of easing the burden for law-abiding employers. As well as changes to the procedures of some Employment Tribunal cases, and changes to enforcement of the national minimum wage, the most significant change is the repeal of the widely derided & controversial statutory dispute resolution procedures. These procedures, observed by one judge as attracting 'a sea of negative [judicial] comment of Pacific rather than Caspian proportions' were unpopular with just about anyone that had to work with them in the last five years.



The replacement to these procedures, an ACAS code of conduct, is intended to make dealing with disciplinary and grievance issues easier to manage than the outgoing legislation; providing practical guidance to employers & others, the code sets out principles to be followed for the handling of disciplinary and grievance situations. However, if an employment tribunal feels that an employer unreasonably fails to follow the guidance in the code, they can increase any awards by up to 25%.

## What does the ACAS code cover?

Unlike the current procedures, the code will apply to dismissals and minor disciplinary proceedings including oral and written warnings.

The code sets out requirements for dealing with grievances – referred to as “concerns, problems or complaints” that an employee may raise.

There are some areas still to be resolved: it is not yet clear if the code will cover post termination complaints, such as a constructive dismissal situation – where an employee resigns, and claims they had no other option due to actions or inactions of the employer.

## What are the principles for dealing with disciplinary & grievance procedures?

Obligations for employers dealing with disciplinary situations include:

- investigating disciplinary matters promptly;
- where practical, appointing different individuals to conduct an investigatory and disciplinary procedure;
- to avoid delays in confirming the outcome of disciplinary processes;
- to avoid delays in holding meetings regarding an appeal against disciplinary action;
- to inform employees of the outcome of their appeal as soon as possible.

For grievances, the code also sets out duties for an employer, including:

- investigating grievances promptly;
- where practical, appointing a different person to hear a grievance appeal;
- to inform employees of the outcome of their appeal as soon as possible;
- to convene appeal meetings without unreasonable delay.

## Automatically unfair dismissal

Under the current procedures, if an employer dismisses an employee without first following the statutory disciplinary procedure, the dismissal will be automatically unfair.

The new code will not always enforce this position: an employment tribunal will take into account an employer’s failure to follow the procedure, but it will not necessarily result in the employee’s dismissal being automatically unfair.

## Time limits

Under the current procedures, extensions of 3 months (to six months) are often available to the time limit for bringing appeals to employment tribunals. This extension will not be available under the new procedures, the time limit for claims reverting back to 3 months less one day.

Coupled with this change to the time limit, employees will no longer be required to lodge a grievance and wait 28 days before lodging a claim with an employment tribunal, although “unreasonable” failure to follow the principals of the code can lead to their compensation being reduced by up to 25%.

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