

Number 27

Statutory Dismissal and Grievance Procedures: How they affect you

On 1 October new compulsory procedures regarding dismissing and disciplining employees came into effect. At the same time, new compulsory grievance procedures were introduced.

Statutory Disciplinary and Dismissal Procedures

When does the Statutory Disciplinary and Dismissal Procedure (“DDP”) apply?

The sensible working assumption is to assume that you should apply the DDP whenever contemplating disciplinary action or dismissal. The main potential pitfall is that you may not realise that the procedure applies when there is a dismissal even without a disciplinary process. For example, on redundancy and compulsory retirement, the procedure applies. It also applies if you are proposing not to renew a fixed term contract. Relatively few employers now include a right of appeal in their redundancy procedures and even fewer, perhaps none, adopt any form of procedure when it comes to retirement or not renewing a fixed term contract.

What does the DDP involve?

Employers have to initiate either the standard DDP three step procedure or the modified two step procedure.

The three step version involves:

1. Informing the employee of what the employer intends to do.
2. Meeting with the employee; and
3. Dealing with employee’s appeal.

The modified procedure involves:

1. Writing to the employee about their dismissal; and
2. Giving them the right to an appeal.

When will the modified DDP apply?

A modified DDP applies where the employment has terminated. It will only apply to very few gross misconduct cases. Our recommendation is that it should never be used and we recommend that the Standard DPP is followed before any dismissal occurs.

Statutory Grievance Procedure

The new grievance procedure is, in essence, simply to reverse the disciplinary procedure. In this case, it is the employee who has to serve notice on the employer that there is a grievance.

What does the Statutory Grievance Procedure (SGP) involve?

All employees will have to use either the standard three step SGP, or a modified two step procedure.

The three step procedure involves:

1. Writing to the employer about the grievance.
2. Meeting with the employer.
3. Appealing against employer’s decision.

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A modified SGP or two step procedure involves:

1. The employee writing to the employer about the grievance.
2. Offer the opportunity to an appeal.

When will the SGP apply?

The SGP applies when an employee has a grievance. Under the new regulations, a grievance is designed as “a complaint by an employee about an action which his employer has taken or is contemplating taking in relation to him”.

Employees have to initiate the SGP where the issue relates to constructive dismissal, warnings and suspension on full pay or any other action by the employer, which is discriminatory or unlawful.

When will the standard three Step SDP apply?

It will apply in most cases and even after the employment has ended. The net effect being that employees are forced to resolve their grievance with their employer before making an application to the Employment Tribunal.

When will the modified SGP apply?

The two step SGP will only apply after termination of employment, but is subject to very limited circumstances e.g. the parties have to agree in writing to the reduced procedure applying or where it was not reasonably practical for either party to comply with the standard procedure prior to the termination of employment.

Action to be Taken Now

If you have not already done so you need to ensure that the new disciplinary and dismissal procedure and the grievance procedures have been incorporated into your current Grievance and Disciplinary procedures. Furthermore, you should train managers and make them aware of the new procedures so that they know how to deal with issues arising under the new procedures.

Consequences

The Employment Rights Act 1996 has long required staff to be notified of disciplinary and grievance procedures, but there has never been a penalty if they had not done so. Small employers will be dismayed to learn that the exemption, which allowed employers with less than 20 staff to avoid having to notify staff on disciplinary procedures, were withdrawn on 1 October 2004. For the first time, there is now a penalty which takes the form of an award of between 2 – 4 weeks pay (a week’s pay is capped, currently at £280 per week), this award will only be applicable if the employee wins a claim in the Employment Tribunal.

If the employer fails to follow a procedure, then the award of compensation may be increased at the Tribunal’s discretion by between 10% - 50%. However if the employee fails to comply with the procedures, then an award of compensation may be reduced by between 10% - 50%.

If you have any questions regarding this article or would like your procedures reviewed then please contact Sejal Raja on 020 7227 7410.

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May 2005

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