The Employment Act 2008 – Disciplinary & Grievance Procedures

The Employment Act 2008 came into force in April 2009, removing the minimum statutory Disciplinary & Grievance Procedures. These were replaced with the new ACAS code of practice on Disciplinary & Grievance Procedures (the ‘ACAS Code’).

Unlike the statutory procedures, the Code is not legally binding. However, the principles of the Code are essentially the same and will be considered by a Tribunal when deciding the fairness of a dismissal and the levels of compensation to be awarded.

The procedures in this code are more flexible in that it encourages employers and employees to resolve disputes in a less formal way.

Should the dispute not be resolved informally and the matter reach tribunal stage, the tribunal has the power to adjust the compensation by up to 25% accordingly, if they find that the code was not followed correctly by either the employer or the employee.

The new code for dealing with disciplinary problems and grievances is devised to make the process less confrontational.

Disciplinary policy and practice

The main areas where a disciplinary process may be used, is when dealing with issues of capability/performance and conduct.

At some stage employers will encounter difficulties with the performance of their employees. Many employers will already have a capability procedure in place to deal with such matters. It is good practice and more efficient that such issues are addressed informally, as and when they arise, rather than let them escalate. However, should informal options have been exhausted and there is no alternative solution, employers will then need to enter a more formal disciplinary or capability procedure.

Best Practice – Key Points

- When entering a disciplinary process it is essential that a full and proper investigation of the facts is carried out prior to any meeting being held.
- The employee must be given sufficient notice of any meeting to be held, and that they are provided with any relevant documentation beforehand.
- A further member of the management team or HR should be present at the meeting to take detailed notes.
- The outcome of the meeting should not be predetermined.
- An employee is entitled to be accompanied at a formal disciplinary and grievance meeting. They can be accompanied by either a work colleague or trade union official. It would also be good practice to offer this at any investigatory meeting.

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