



## Out with the old - the new Acas code of practice on disciplinary and grievance procedures

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The new Acas Code of Practice on disciplinary and grievance procedures (the "**Code**") comes into effect on 6 April 2009 replacing the well intended, but ultimately unsuccessful, statutory dispute resolution procedures.

It is essential that employers are familiar with the provisions of the new Code. Whilst the Code is not legally binding on employers or employees, an unreasonable failure to comply with the Code could lead to an increase or decrease in any compensatory award made by an employment tribunal of up to 25%.

### Why is change necessary?

The statutory dispute resolution regime, introduced in October 2004, was consistently criticised for increasing the number of workplace disputes. Following an independent review by Michael Gibbons in 2007, the Government decided to repeal the procedures and replace them with a new Code (with effect from April 2009).

### Impact of the Code

The Code signifies a shift towards a simplified and more informal approach to the resolution of issues between employer and employee with less emphasis on technical compliance issues. However, beware the wolf in sheep's clothing - whilst it is more flexible and user-friendly, the Code does have teeth.

The Code sets out recommended procedures for handling disciplinary and grievance matters and places obligations on both employers and employees. Whilst a failure to follow the Code will not, in itself, make a dismissal unfair, employment tribunals will have to take the Code into account when considering relevant cases. If an employer unreasonably fails to comply with the Code, the employment tribunal will have the power to increase any subsequent compensation award by up to 25%. Similarly, if an employee unreasonably fails to comply with the Code, any compensation they receive may be reduced by up to 25%.

### An overview of the Code

The Code comprises a Foreword and is then split into three sections: Introduction, Discipline and Grievance. Enshrined in the Code are many of the core principles of fairness with which employers are already familiar.

**The Foreword** explains the purpose of the Code, when it applies and the ability of an employment tribunal to adjust any awards made in relevant cases where there is an unreasonable failure by either party to comply with the Code. It also emphasises the need to resolve disciplinary and grievance matters in the workplace. A breach of the provisions in the Foreword will not attract an adjustment to compensation.

**The Introduction** outlines the areas covered by the Code. The key points are that redundancy dismissals and the non-renewal of fixed-term contracts are not covered. Collective grievances (i.e. where a grievance is raised by representatives on behalf of two or more employees) are also outside the scope of the Code.

**The Discipline and Grievance sections** largely mirror one another and offer guidance on key stages including:

- the need to investigate the facts of each case;
- suspending an employee (in disciplinary matters);
- the need for an employer to inform the employee of disciplinary concerns, and for an employee to inform the employer of a grievance;
- the holding of disciplinary or grievance meetings;
- the right to be accompanied at meetings;
- deciding on appropriate action;
- opportunities to appeal.

Guidance is also given on dealing with the ever tricky problems raised by overlapping grievance and disciplinary issues.

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## Disciplinary and grievances at work: The Acas Guide

The Code itself may only be ten pages long, but it is supported by a more lengthy guide providing good practice advice for dealing with disciplinary matters and grievances in the workplace.

The employment tribunals are not required to have regard to the guide as it does not form part of the Code. However, it seems unlikely that the tribunals will ignore the guide altogether and employers should also familiarise themselves with its contents.

### Transitional provisions

A rather complicated set of transitional provisions have been introduced to determine whether a disciplinary or grievance issue should be dealt with under the new Code or under the existing statutory provisions.

#### (a) Disciplinary issues (including disciplinary action and dismissals)

If the statutory discipline and dismissal procedures apply and you have, **before 6 April 2009**:

- sent a step 1 letter or held a step 2 meeting with the employee (or complied with the modified dismissal procedures by sending a statement to the employee); or
- taken "relevant disciplinary action"; or
- dismissed the employee;

the existing statutory dispute resolution procedures will continue to apply.

#### (b) Grievance procedures

If the standard grievance procedure or modified grievance procedure applies and the action about which the employee complains occurs wholly before 6 April 2009, the existing statutory grievance procedures will apply.

If the action which forms the basis of the grievance began before 6 April 2009 but continues after that date and the employee submits a valid grievance or presents a claim to the employment tribunal before 4 July 2009 (or before 4 October 2009 depending on the claim), the statutory grievance procedures will continue to apply.

### Action plan

- Familiarise yourself with the Code and guide and review your disciplinary and grievance procedures in light of them.
- Understand the transitional arrangements to ensure that the right procedure is followed in each case.
- Train your line managers on the new Code and on the transitional arrangements so that they understand that the business may be operating parallel procedures for a period of time (all the usual penalties will apply where the statutory procedures still have to be followed). Involve your managers and employees with regard to any changes needed to your existing procedures.

### Want to know more?

If you have further questions or need advice, please contact Chris Seaton on 0117 939 2213 or email: [chris.seaton@burges-salmon.com](mailto:chris.seaton@burges-salmon.com) or contact the Burges Salmon lawyer with whom you normally deal.

We also offer in-house, tailored training for your organisation on compliance with the new ACAS Code. For more information, please contact Kate Redshaw on 0117 902 6610 or email: [kate.redshaw@burges-salmon.com](mailto:kate.redshaw@burges-salmon.com).

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