

RESOLVING DISPUTES AT WORK:
New procedures for discipline and grievances

A GUIDE FOR EMPLOYEES

This guide tells you about new rights and procedures you must follow if you have a grievance in work are facing disciplinary action or dismissal. It is not a legal document and for further advice see contacts on page 1.

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INTRODUCTION - THE NEW DISPUTE RESOLUTION REGULATIONS

On 1 October 2004 the Employment Act 2002 (Dispute Resolution) Regulations 2004 (called 'the Regulations' in this guidance) come into force giving new rights and responsibilities to both the employer and employee.

All employers must now have minimum procedures for resolving grievances, disciplinary action and dismissal. Many employers may already have procedures in place that go further. In which case there would be no need to take action other than to confirm compliance with the new procedures.

When you start work with a new employer, he or she must give you, within two months of the starting date, a written statement of employment particulars, such as pay and hours, and this must include a note of the employer's disciplinary and grievance procedures. In particular, the note must set out any disciplinary rules which apply to employees and tell you to whom you should go if you have a grievance.

Under the new Regulations an employer and an employee must in certain circumstances, by law, follow these minimum procedures.

How does this affect you?

If you do not follow them it could be serious.

Unless you have first put your grievance in writing – and allowed at least 28 days to pass - you will no longer, as a general rule, be able to make a claim to an Employment Tribunal based on a grievance with your employer or former employer (unless your grievance is about dismissal).

If the grievance, disciplinary or dismissal procedures have not been followed before the case goes to a tribunal, the tribunal will decide whether that is the fault of the employer or you. If it is you, any money awarded will normally be decreased by at least 10% and possibly up to 50%. If it is the employer's fault, any money awarded will normally be increased in the same way.

These new minimum procedures apply only to employees but not to other workers who supply services to employers, for instance freelancers or subcontractors. This is an important and complex point. If you need help, or advice on whether or not the procedures apply to you, you can contact your trade union representative or local Citizens Advice Bureau www.adviceguide.org.uk. You can also get advice from Acas: at

www.acas.org.uk or on their helpline 08457 47 47 47; or the TUC's website at www.worksmart.org.uk.

Key points

- Your employer is bound by law to have disciplinary, dismissal and grievance procedures and to tell you what they are.
- Before using these procedures you and your employer should attempt to sort problems out informally where possible.

GRIEVANCE PROCEDURE

- You are now required to send your employer a written statement of your grievance. Your employer must then arrange a meeting to discuss it, and then tell you the decision. You have a right to appeal against that decision at a further meeting and you must appeal to complete the procedure in the Regulations. If you disagree with what your employer decides to do after the appeal meeting, you will need to make a claim to an employment tribunal if you want to resolve the matter by legal means.
- As a general rule, you will not be able to make a claim to an employment tribunal based on a grievance unless you have put your grievance to the employer in writing and then allowed 28 days to pass. This rule does not apply if your grievance is about dismissal, or about disciplinary action that you agree was taken against you on conduct or capability grounds (unless you think the action involved unlawful discrimination against you).

DISCIPLINARY ACTION AND DISMISSAL PROCEDURE

- If your employer is contemplating taking disciplinary action against you on conduct or capability grounds, or dismissing you, the responsibility lies with him or her to start a dismissal or disciplinary procedure.
- Your employer is required to send you a written statement of his or her reasons and to arrange a meeting to discuss it with you. If you disagree with the decision he or she makes after that meeting, you have a right to appeal, and your employer must arrange a further meeting. You must appeal to complete the procedure in the Regulations. If you disagree with what your employer decides to do after the appeal meeting, you may decide to make a claim to an employment tribunal. Before doing so you may wish to take further advice, possibly from your union representative if you are a union member or local CAB.

THE MEETINGS

- You have a right to be accompanied to any meetings to discuss your grievance, and any meetings about dismissal or disciplinary action which your employer intends to take against you. You may choose to be accompanied by someone you work with or a trade union official.

GOING TO A TRIBUNAL

- You can make a claim to an employment tribunal by completing a claim form, available from Jobcentres, Law Centres and Citizens Advice Bureaux, or online at www.employmenttribunals.gov.uk. You should note that you will generally need to do this within a specified time limit, which can be as short as three months beginning with the day your employment ended or when the matter you are complaining about happened. However, in certain circumstances this time limit will be extended if you complete the first step of the statutory procedure.

Chapter 1 - How to raise a grievance

Grievance procedures

Grievance procedures are procedures which enable you to raise any concerns you have about your job with management. These concerns could be about the work itself, your working conditions or about the people you work with. Your employer must, by law, tell you in writing what procedures you should follow at your place of work if you want to raise a grievance.

The first thing to do if you have concerns is raise the matter with the person specified in the grievance procedures, usually your line manager. If this is not possible, or if your problem is with that person, you should go to the next most senior person. Try to get the problem resolved informally at this stage.

Although these first discussions are informal, you may find it helpful to keep a brief note of any discussions you had, noting the date and time, whom you spoke to, and the main points covered. These will be useful if the problem is not resolved at this stage and you have to go on to more formal procedures.

You should begin a formal grievance procedure if your employer fails to resolve the matter to your satisfaction. If you do not begin a formal procedure, you will not be able to make a claim to an employment tribunal that your employer has failed to honour your statutory employment rights. (This does not apply, though, if your grievance concerns dismissal, or disciplinary action short of dismissal that you agree was taken on conduct or capability grounds. See Dismissal and Disciplinary Procedures for more details.)

If you do have to take matters further, the grievance procedure has three steps:

The written statement

You must set out your grievance in writing and send a copy to your employer. If you have problems expressing yourself in writing you can ask for help at a CAB or, if you are a union member, from a trade union representative. An example of a written statement is on page 16.

The meeting

When your employer has read your written statement he or she must invite you to a meeting to discuss your grievance. He or she can allow himself or herself a little time to look into your complaint but should not delay for an unreasonable amount of time.

You have a **right to be accompanied** to this meeting by someone who works with you or by a trade union official. The meeting must be held at a time and place that are reasonable for you and anyone accompanying you. If either of you is disabled, the employer must take all reasonable steps to make sure that you have no problems getting to the meeting.

You should attend the meeting. If for some reason you, or the person you have chosen to come with you, cannot get there for a reason which you did not know about when the meeting was arranged, the employer must arrange another meeting and you should attend it.

Prepare carefully for the meeting and discuss the matter fully with anyone you have asked to accompany you. If there is anyone there you don't know, ask your employer to introduce them. Your employer should explain how the meeting will be held, who will speak and when. Your employer should give you an opportunity to set your case out calmly and clearly, and, if appropriate, to explain what you have done to try to resolve the problem informally. Be proactive. Use the opportunity to make some suggestions as to how the problem might be resolved. This will help you and your employer. Be concise. If you have any other grievances, consider if you need to raise them separately.

After the meeting – not necessarily straight away – the employer must tell you what he or she has decided. If you do not agree with his or her decision, you have the right to appeal, and your employer should inform you of this.

The Appeal

If you feel that your grievance has not been satisfactorily dealt with, you should tell your employer that you are going to appeal. An example of an appeal letter is on page 16. He or she must arrange a meeting to discuss this. The same rules apply to this as to the original meeting. It must be at a reasonable time and place and you have a right to be accompanied. If you do not appeal, but go straight to an employment tribunal with your complaint, any money you are awarded may be reduced by between 10% and 50%.

After the appeal meeting, the employer must tell you what he or she has decided. This is his or her final decision. If you are still not satisfied, and

you think that your employment rights have been infringed, you may have to take the matter to an employment tribunal (see chapter 3). But discuss it first with your trade union representative or local CAB.

Raising a grievance after you have left your job

If you leave a job but still have an outstanding grievance, you can pursue it using a shorter, two step procedure, known as the modified procedure, if:

- You and your employer agree in writing to use the modified procedure; and
- Your employer did not know about the grievance or the procedure was either not started or was started but not completed before you left the employment.

The two steps are:

- 1 You send a written statement of grievance to your former employer
- 2 Your former employer writes back to you, answering the points you have raised.

When you do not need to go through the procedures, or the procedures do not apply

- You have left the employment before the grievance procedure has commenced and it is not reasonably practicable for you to write a written statement of grievance.
- You have reasonable grounds for believing that that putting your grievance in writing to your employer would result in significant threat to you or your property or some other person or their property.
- You have been subject to harassment and have reasonable grounds to believe that putting the grievance in writing to your employer would result in further harassment.
- You do not need to go through the procedures if the grievance is a collective one, that is if a recognised trade union or workplace representative raises it on behalf of two or more employees.
- Your employment has ended, you did not put your grievance in writing to your employer before your employment ended, and it has

since become not reasonably practicable for you to do so, for example if he or she has gone abroad.

- It is not reasonably practicable for you to put your grievance in writing to your employer within a reasonable period, for example because your employer is a sole trader and is not available due to long-term illness.
- Finally there will be circumstances in which it is just not possible to complete the procedures, for example if one of the parties leaves the country or becomes seriously ill.

CHAPTER 2 - DISMISSAL AND DISCIPLINARY ACTION

If your employer is concerned about your conduct or capability, he or she should try to sort things out with you before considering disciplinary action or dismissal. In some circumstances this may also apply to redundancy, retirement and the end of fixed term contract which is not renewed. Matters of gross misconduct and instant dismissal are covered at page 9.

The new statutory minimum procedures come into play when the employer actually contemplates dismissing you or taking other disciplinary action against you. However, many employers already follow additional, preliminary procedural steps – for instance, holding investigation meetings and/or issuing a series of verbal or written warnings, culminating in a final written warning – before reaching this point. If you are already entitled to this as part of your terms and conditions of employment, the new statutory minimum procedures do not change things. They will need to be followed in addition to your employers' previous procedures. Not to do so may count as unreasonable behaviour.

It would help to make a short note of any discussions you have with management about a work problem, recording the date of the discussion, whom you spoke to and the main points discussed. This may be useful if your employer takes formal proceedings.

At the point your employer contemplates taking disciplinary action or dismissing you, he or she should follow the minimum statutory disciplinary procedures. "Disciplinary action" here means action taken on grounds of your conduct or capability and does not include warnings or suspension on full pay.

If your employer does not follow the new statutory minimum procedures, and

1] dismisses you, you may complain to an employment tribunal, who will normally find the dismissal to be automatically unfair and increase compensation; or

2] takes other disciplinary action, short of dismissal, against you and you subsequently make a successful employment tribunal claim about that action, any money awarded to you is likely to be increased by between 10% and 50% (assuming the failure to follow the procedures was not your fault).

The new statutory minimum procedures apply if you are an employee; on a fixed-term contract of a year or more which is not renewed; and if you are dismissed on grounds of age and you have not reached the age of 65 or, if different, the normal retirement age for your job.

Like the grievance procedure, the discipline and dismissal procedure has three steps.

The written statement

Your employer must prepare a written statement of his or her reasons for considering disciplinary action or dismissal and send you a copy of it.

Read the statement carefully. The statement should be clear and explain your employer's position. If you have trouble understanding it, discuss it with a workmate or a trade union official or take it to a CAB.

The hearing

Once he or she has sent you the statement your employer must invite you to a meeting to discuss the issue. He or she should allow you enough time to think about what has been said but should not delay the meeting for an unreasonable time.

You have a right to be accompanied to this meeting by someone who works with you or by a trade union official. The meeting must be held at a time and place, which is reasonable for you and anyone accompanying you. If either of you are disabled the employer must take all reasonable steps to make sure that you have no problems getting to the meeting.

You have a duty to attend the meeting. If for some reason you or the person you have chosen to come with you cannot get there for a reason which was not foreseen when the meeting was arranged the employer must arrange another meeting and you must attend it.

Prepare carefully for the meeting and discuss the matter fully with anyone you have asked to accompany you. If there is anyone there you don't

know, ask your employer to introduce them. Your employer should explain how the meeting will be held, who will speak and when. Your employer must give you an opportunity to set your case out calmly and clearly. Listen to what your employer has to say and give your side of the case. Be concise. The employer may dismiss or take the disciplinary action against you at this point.

The appeal meeting

After the meeting, your employer must let you know his or her decision. If you want to appeal against this decision, you must tell your employer. An example of an appeal letter is on page 17. You must appeal to complete the statutory procedures.

Your employer must then arrange a meeting to hear the appeal.

Again you have a **right to be accompanied** to this appeal meeting by someone who works with you or by a trade union official. The meeting must be held at a time and place, which is reasonable for you and anyone accompanying you. If either of you are disabled the employer must take all reasonable steps to make sure that you have no problems getting to the meeting. **You have a duty to attend.**

If for some reason you or the person you have chosen to come with you cannot get there for a reason which was not foreseen when the meeting was arranged, the employer must arrange another meeting and you must attend it.

Prepare carefully for the meeting and discuss the matter fully with anyone you have asked to accompany you.

After the meeting the employer must decide what he or she is going to do and tell you what it is. This is his or her final decision and if you are still not happy with it, and wish to continue, you will need to take your case to an employment tribunal.

Can the grievance procedure apply to a dismissal or disciplinary procedure?

You do not need to start a grievance procedure over a dismissal in any circumstances (unless you are complaining about constructive dismissal – i.e. you are claiming that you were forced to resign because of your employer's behaviour).

You can start a grievance procedure about disciplinary action if:

- you disagree with your employer that the action was taken on conduct or capability grounds; **and/or**
- you consider that the action constituted unlawful discrimination against you.

In either of these circumstances, you should put your grievance to the employer in writing. Provided you do this before the appeal meeting under the disciplinary procedure that meets the legal requirements. If you leave it until after the appeal meeting under the disciplinary procedure has already taken place, you should go through a full grievance procedure.

Instant dismissal

An instant dismissal when the employer has not made any investigation of the circumstances is nearly always unfair. However there are some very rare cases involving gross misconduct where tribunals have ruled that the dismissal was fair because the circumstances made an investigation unnecessary. In these cases the Regulations allow the employer to dismiss first and then operate a two-step procedure going straight from the written statement to the appeal without holding a hearing in between.

When an employer does not need to go through the new procedures

There are some circumstances in which an employer is allowed to dismiss someone or take disciplinary action without going through the procedures. These are:

- disciplinary or dismissal action taken before 1 October 2004, even if the disciplinary action continues after that date. Nor will they apply where the grievance about which the employee is complaining occurred before 1 October, even if the grievance action continues after that date.
- If the action your employer takes is to give you a verbal or written warning or suspend you on full pay. [If you do not agree with such action you can raise a grievance].
- If there are reasonable grounds for believing that doing so would result in significant threat to his/her person or property or some other person or their property.
- Collective Issues, where discussion between management and employee representatives is the best way of taking matters forward. An example is when an employer lays off a group of staff

and either before or when the employment terminates offers to re-hire them under different terms and conditions.

- When the employer is under a duty to consult employee representatives in relation to collective redundancies.
- When employees are dismissed whilst taking industrial action. (In the case of lawful, officially organised action, special arrangements apply.)
- When it is not possible for employment to continue, for example when a factory burns down and it is no longer practicable for the employer to employ anyone or where it becomes illegal to employ a particular employee.
- It is not practicable for the procedures to be complied with within a reasonable period.

CHAPTER 3 - APPLYING TO AN EMPLOYMENT TRIBUNAL

Employment Tribunals hear claims about matters to do with employment such as unfair dismissal. The Tribunals are courts, but have less formal procedures than the ordinary civil courts. Preliminary hearings, known as Pre-Hearing Reviews (PHRs), usually take place before a legally-qualified chairman on his or her own. Full hearings, which decide outstanding issues and conclude cases, usually take place before three tribunal members; the chairman, and two members who are experienced in dealing with work related problems. Usually one of these members will have a background in management and the other will have experience of representing employees. If you would like more information, you can use the Employment Tribunal public enquiry line on 0845 795 9775.

Time limits for making an application

There are time limits to follow when making a claim to a tribunal. In unfair dismissal cases, this is usually three months from the date your employment ended. In other cases, if the statutory grievance procedure applies, the three months may be extended to six months (see paragraph below). If your claim is received after the applicable time limit, the tribunal will not normally accept it. Though, in certain circumstances, the normal time limit will be extended for submitting tribunal claims, to allow extra time for workplace discussions to continue, without obliging employees to submit premature applications in order to meet deadlines.

It should be noted that the existing discretion of the tribunal to extend a time limit where it was not reasonably practicable for it to be met (or,

under some jurisdictions, where it is just and equitable to extend it) is unaffected by these changes.

There are certain types of cases which are subject to different time limits. These are set out below under the heading 'Special Cases'. In particular, if your claim is concerned with equal pay the time limit is six months, which may be extended to nine months if the statutory grievance procedure applies in your case (see paragraph below).

If your claim is based on a **grievance** with your employer or former employer, and the statutory grievance procedure applies, your claim will not be accepted at all unless you either:

- Put your grievance in writing to the employer and then allow at least 28 days to pass before putting in your claim to the tribunal office; **or**
- Give a valid reason on the claim form why you think this legal requirement does not apply in your case.

A list of valid reasons is set out below. Some of them involve complex legal matters and if you are uncertain as to whether the reasons apply in your case you should get advice from trade union representative or your nearest Citizens Advice Bureau.

The reasons for not lodging a written grievance are:

- You were not an employee of the employer (but were, for instance, a worker supplying services as a freelancer or contractor, or were a job applicant).
- Your claim is brought under a law that is not listed in Schedule 4 to the Employment Act 2002 - the main example is a claim about a breach of contract (but you may still be penalised in terms of compensation if you do not complete the procedures).
- Your employment has ended, you did not put your grievance in writing to your employer before your employment ended, and it has since become not reasonably practicable for you to do so, for example if he or she has gone abroad.
- It is not practicable for you to put your grievance in writing to your employer within a reasonable period, for example because your employer is a sole trader and is not available due to long-term illness.

- Your grievance is that you were dismissed or about disciplinary action that your employer says was taken on the grounds of your conduct or capability (unless you disagree that those were the grounds, or think that the action was unlawfully discriminatory).
- You have reasonable grounds for believing that that putting your grievance in writing to your employer would result in significant threat to you or your property or some other person or their property.
- You have been subject to harassment and have reasonable grounds to believe that putting the grievance in writing to your employer would result in further harassment.
- The grievance was put to your employer in writing by an appropriate representative (for example, an official of a recognised trade union) on behalf of you and at least one other employee.
- You have raised the grievance under an industry level grievance procedure that has been agreed between at least two employers or an employers' association and one or more independent trades unions.
- You have raised the matter that is the subject of your grievance as a "protected disclosure" under the public interest disclosure ('whistleblowing') provisions in the Employment Rights Act 1996.
- Your claim raises an issue of national security.

In certain circumstances the normal time limit for submitting a claim can be extended by three months to allow you and your employer the chance to sort out the dispute between you without involving the tribunal. These circumstances are:

- You have raised your grievance in writing with your employer and have done so within the normal time limit.
- You put your claim to the tribunal office within the normal time limit but were turned down because you needed to put your grievance in writing to your employer and either had not done so or had not then allowed 28 days before putting in your claim. (Note that in this case you must put your grievance in writing to your employer within one month of the expiry of the normal time limit or your claim will not be accepted in any circumstances).
- Your claim is about a dismissal, or about disciplinary action that your employer says was on the grounds of your conduct or

capability, and at the time that the normal time limit expired, you had reason to believe that a dismissal or disciplinary procedure was still in progress.

Special cases

If you are applying for a **redundancy payment** special time limits apply. These are complicated and you should seek advice from the Redundancy Payment Helpline on 0845 145 0004.

If your complaint is related to the **National Minimum Wage** you should seek advice from the National Minimum Wage Helpline on 0845 600 0678.

If you are dismissed because of:

- trade union activities;
- membership or non-membership of a trade union;
- activities as a pension scheme trustee;
- being, or proposing to become an employee representative;
- being a shop worker or betting worker who refuses Sunday work;

you can apply for an immediate re-employment order. This application must be made within seven days of dismissal. You should seek advice from your trade union representative, a CAB or the Employment Tribunal Service immediately if you are in this position.

Costs

Unless you (or your representative, if you have one) abuse the system by acting unreasonably, or by pursuing a claim which has no reasonable prospect of success, you will not have to meet the respondent's costs. This is one of the ways in which the employment tribunals differ from the ordinary civil courts.

The circumstances in which a claimant can be ordered to make a payment towards a respondent's costs (or preparation time, if the respondent is not legally represented) are where the claimant (or claimant's representative) acts "vexatiously, abusively, disruptively or otherwise unreasonably", or brings proceeds with a misconceived claim. Even then, when considering whether or not to make such an award, and if so the amount, the tribunal may take into account the claimant's ability to pay.

If a respondent (or respondent's representative) acts unreasonably, he or she can be required to pay for the claimant's costs (or preparation time). Unreasonable behaviour by a respondent could include making unjustified

threats – e.g. threats that the claimant will be automatically required to meet the respondent's costs – to try to persuade the claimant to withdraw the claim.

In 2003/04, costs awards were made in fewer than 0.1% of tribunal cases. Only 998 awards were made – and a third of these were made against respondents, rather than claimants. The average award was £1,859. Awards are based on actual costs, reasonably incurred.

ANNEX - EXAMPLE LETTERS

Letter 1- Raising a grievance

Dear.....

Date.....

I am writing to tell you that I wish to raise a grievance.

This action is being considered with regard to the following circumstances:

.....
.....
.....
.....

I am entitled to a hearing to discuss this matter. I am entitled, if I wish, to be accompanied by another work colleague or my trade union representative. Please reply within (not more than 28) days of the date of this letter.

Yours sincerely

Signed Employee

Letter 2 - Request for appeal hearing (grievance procedures)

Dear.....

Date.....

On I was informed that the Company had decided to based on my grievance of raised on

I would like to appeal against this decision. I wish the following information to be taken into account:

.....
.....
.....
.....

Please reply within x days from the date of this letter.

Yours sincerely

Signed Employee

Letter 3 - Request for appeal hearing (dismissal or disciplinary action procedures)

Dear..... Date.....

On I was informed that [insert organisation name] was considering dismissing OR taking disciplinary action [insert proposed action] against me.

I would like to appeal against this decision. I wish the following information to be taken into account:

.....
.....
.....
.....

Yours sincerely

Signed Employee