



Disciplinary & Grievance Procedures

- **A Disciplinary Procedure is...**
Used by an employer to take disciplinary action against an employee for misconduct or poor performance.
- **A Grievance Procedure is...**
Used by employees when they want to make a complaint to their employer about any aspect of their work.

Why are the Procedures Necessary?

In order to provide a clear and transparent framework to deal with difficulties which may arise during the employer and employee relationship, to make sure everybody is treated fairly and to make sure that employer's comply with employment legislation and the ACAS Code of Practice.

The Current Legal Position

From the 6th April 2009 the statutory disciplinary and grievance procedures have been repealed and replaced with

- The Employment Act 2008
- The Employment Tribunals (Constitution and Rules of Procedure)(Amendment) Regulations 2008
- ACAS Code of Good Practice/Discipline and Grievances at Work; The ACAS Guide

Tribunals will now look to see whether employers have followed a fair procedure in line with the ACAS Code of Practice. Failure to follow the code does not amount to an automatic unfair dismissal like the old regime, but can result in the employee's award being increased by up to 25%. The same reductions apply if employees fail to follow the procedures, e.g. Fail to put their grievances in writing.



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The ACAS Code of Practice – A Summary

The principle points of the Code of Practice for both discipline and grievance procedures are as follows;

1. The employer should carry out a reasonable investigation into the facts and issues in question. This is likely to involve the gathering of evidence, interviewing witnesses, obtaining statements and the holding of investigatory meetings.
2. The employee should only be suspended if necessary, and then only for as long as is necessary trying to keep the suspension period to a minimum.
3. The employee must be given a written notice of the alleged misconduct or poor performance and the possible outcomes if the allegations are proven e.g. Dismissal, final warning or warning. The notice should provide enough detail to enable the employee to answer the allegations at a disciplinary meeting.
4. The employee should be given copies of any witness statements and other evidence being relied upon.
5. The written notice should invite the employee to a disciplinary meeting. The meeting should take place without delay, but providing the employee with a reasonable time to properly prepare (typically 5 working days).
6. The written notice must inform the employee of his or her legal right to be accompanied at the meeting by a fellow worker or a trade union representative.
7. The employer and the employee should give each other advance notice of any witnesses they intend to call.
8. A disciplinary meeting must be held. If the employee unreasonably fails to attend, in their absence the employer may make a decision on the evidence available at the time.
9. At the meeting the employer should explain the allegations and go through the evidence that has been gathered. The employee should be given reasonable opportunity to ask questions, present evidence and call relevant witnesses. If the evidence of a witness is challenged in his or her absence, consideration should be given to adjourning the meeting to enable the witness to attend and be cross-examined.
10. After the meeting the employer should inform the employee of it's decision in writing without delay. A written warning should set out the misconduct or poor performance in question, the improvement required, the timescale for improvement, how long it will remain current and the consequences of further misconduct or poor performance. Dismissal is usually only appropriate for gross misconduct or if there has been a written warning and a final written warning.
11. The employee must be given a right of appeal. The new regime specifically provides for a right of appeal against warnings as well as dismissals, unlike the 'old' law.



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12. The employer must inform the employee of his or her legal right to be accompanied at any appeal meeting by a fellow worker or a trade union representative.
13. Any appeal should be heard without delay and should be handled by a different manager with more seniority than the previous manager and who has no prior involvement in the case.
14. At all times employers should manage conduct and poor performance cases pro-actively and nothing precludes cases being dealt with informally if that is appropriate.
15. Written records of all communications and minutes of all meetings should always be kept.

There is no longer a time extension for presenting claims to the Employment Tribunal outside the normal 3 months from the effective date of termination.

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