



BERR

Department for Business
Enterprise & Regulatory Reform

**AVOIDING AND RESOLVING
DISCIPLINE AND GRIEVANCE
ISSUES AT WORK**

Simpler laws, better services

acas



Introduction

This leaflet has been jointly produced by the Department for Business, Enterprise and Regulatory Reform (BERR) the Chartered Institute of Personnel and Development (the CIPD) and Acas (the Advisory, Conciliation and Arbitration Service) to inform employers about the changes to dealing with workplace disputes.

The legislation governing how employers and employees deal with discipline, dismissal and grievance issues at work is changing from 6 April 2009.

The new simpler and more flexible system has the potential to save employers time, money and stress. As a result of the changes, employers will benefit from greater opportunities to resolve disputes in the workplace before they escalate to the point where they end up in an employment tribunal. The new dispute resolution system places increased emphasis on alternative dispute resolution mechanisms, including mediation, to encourage earlier resolution.

In this leaflet you can find out about the new procedures in place for dealing with discipline and grievance issues in the workplace.

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Employment Act 2008

The Employment Act 2008 covers aspects of UK employment law, including dealing with discipline and grievance issues, the enforcement of the national minimum wage, and the employment agency standards enforcement regime.

Sections 1-7 of the Employment Act apply to the handling of discipline, dismissal and grievance issues. They make the following changes to the law:

- The existing statutory procedures for dealing with discipline, dismissal and grievance issues, as set out in the Employment Act 2002, will be repealed;
- Employment tribunals will have discretionary powers to adjust awards by up to 25% if employers or employees have failed unreasonably to comply with the Acas Code;
- There will be some technical changes to the law relating to Acas' provision of conciliation services during disputes;
- Tribunals will be allowed to award compensation for financial loss in certain types of monetary claims.

The Act also paves the way for a revised Acas Code. This is concise and principles-based and is supported by accompanying guidance on handling discipline and grievance situations in the workplace.

The dispute resolution provisions in the Employment Act 2008 will come into force on 6 April 2009. You can access the full Employment Act and explanatory notes at: www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-act-2008

Acas Code of Practice and Guidance on Disciplinary and Grievance Procedures

The statutory Acas Code of Practice provides basic practical guidance on discipline and grievance handling in the workplace. The Acas Code comes into effect on 6 April 2009 and will replace the previous Acas Code on discipline and grievance handling which was issued in 2004.

The new Code sets out the principles of what an employer and employee should do to achieve a reasonable standard of behaviour. Unlike the 2004 Code, it does not require employers and employees to follow mandatory steps in the process.

Employment tribunals will take the Code into account when considering relevant cases. The tribunal will consider whether a failure to follow the Code was unreasonable, taking into account factors such as the size and resources of the business. If a tribunal regards a failure by either the employee or the employer to follow the Code of Practice as unreasonable, it will have the power to adjust awards up or down by up to 25%.

More comprehensive advice and guidance on how to deal with disciplinary and grievance situations is contained in the Acas guidance booklet which accompanies the Code. This does not form part of the Code but has been prepared by Acas to help employers and employees understand the Code and how to reflect it in their procedures and behaviour. The guidance also contains sample disciplinary and grievance procedures.

To access the Acas Code and accompanying guidance, go to:
www.acas.org.uk/dgcode2009

Options for dealing with employment disputes

Employers and employees should always try to resolve problems in the workplace at the earliest possible opportunity and usually with the least possible formality.

Ideally, matters should be addressed before they even get to the stage of becoming disciplinary or grievance issues.

Where possible, line managers should be trained in conflict management skills to give them the confidence to step in at an early stage and intervene where they suspect conflict is growing between employees. In many cases early intervention by line managers will nip workplace disputes in the bud and prevent them from escalating to the point where the formal disciplinary procedure has to be used or a grievance is lodged.

If that's not possible, fair and transparent procedures should be used in accordance with the Acas Code of Practice. Adopting this approach will almost always be less time consuming and less likely to damage working relations. Where problems are not resolved using internal procedures, employers should consider using an independent third party to help resolve the problem.

1. Mediation

A mediator can sometimes help resolve disciplinary or grievance issues, although mediation may not be suitable for serious offences. The mediator may be a person who works within the same organisation (so long as they are properly trained and not directly involved in the issue) or may come from outside. There is usually a charge for externally sourced mediation services.

Mediation is a voluntary process where an independent and impartial third party helps two or more people in a dispute to try to reach an agreement. Mediation can be used at any stage in the dispute and, in some organisations, may be even written into formal discipline or grievance procedures.

A number of mediation providers are registered members of the Civil Mediation Council (CMC) (for England and Wales) or are on the Scottish Mediation Register managed by the Scottish Mediation Network (for Scotland). These providers declare that they meet certain standards covering training, practice development, codes of conduct, complaints handling and indemnity insurance.

A list of registered workplace mediation providers can be found at www.scottishmediationregister.org.uk for Scotland now, and at www.civilmediation.org for England and Wales from April. These are not exhaustive lists of all providers who may offer workplace mediation services in the UK.

2. Pre-claim conciliation

Acas has a statutory role to promote the resolution of claims, or prospective claims, to an employment tribunal. Where no claim has yet been submitted, this service is referred to as pre-claim conciliation.

Pre-claim conciliation is a free service available to all employers and employees in appropriate circumstances. It is delivered via a network of Acas conciliators across Great Britain. Disputes that employees and employers have been unable to resolve by other means (such as internal grievance, discipline or appeal

procedures), and which are likely to give rise to an employment tribunal claim if third party help is not provided, may be suitable for pre-claim conciliation.

If you think that you are facing a claim, despite having done all you can to resolve the dispute, call the Acas helpline on 08457 47 47 47. The helpline adviser you speak to will be able to identify whether the case is suitable for referral to the pre-claim conciliation service, and if so, will put you in touch with a conciliator.

Dealing with an employment dispute during 2009

As we approach the April changeover to the new system, employers will be wondering how to deal with employment disputes that straddle the 6 April deadline.

The date of a 'trigger' event will be used to decide whether the new regime (based on the Employment Act 2008) or the old regime (based on the Employment Act 2002) applies.

If the trigger date is on or after 6 April 2009, the new regime will apply.

If the trigger date is on or before 5 April 2009, the old regime will continue to apply.

In the case of a **disciplinary or dismissal issue**, the date of the trigger event will be the date when the employer has started action against the employee. This would usually be the date when the employee receives a letter explaining disciplinary action is being considered. If no such letter is issued, but the matter is raised at a meeting, then the date of the meeting will be the trigger point. If neither of these steps is taken, then the date on which the disciplinary action (including dismissal) is taken will be the trigger.

In the case of a **grievance issue**, the trigger date will be the date of the action about which the employee complains, even if the action continues beyond this initial date.

In cases where the action about which the employee complains begins on or before 5th April 2009 and continues

beyond that date, the pre-6th April 2009 regime will continue subject to final cut off dates as follows:

- The employee has made a claim to the employment tribunal or lodges a grievance with the employer on, or before, 4 July 2009 in cases which the law says are normally subject to a three month time limit for making a tribunal claim (such as discrimination cases).
- The employee has made a claim to the employment tribunal or lodges a grievance with the employer on, or before, 4 October 2009 in cases which the law says are normally subject to a six month time limit for making a tribunal claim (such as a claim relating to equal pay).

For more detailed information on whether the new regime or the old regime applies in your organisation's particular circumstances, and for example scenarios, go to:

www.berr.gov.uk/resolvingdisputes

You can also access the Government's response to the consultation on the dispute resolution secondary legislation measures including transitional arrangements, on:

www.berr.gov.uk/whatwedo/employment/whats-new

Further advice and information

1. Go to www.businesslink.gov.uk/resolvingdisputes and www.acas.org.uk/drr to find out more about how to:

- handle discipline and grievance issues;
- follow the correct procedures;
- reduce the risk of employment tribunal claims;
- and handle employment tribunal claims.

These pages on the businesslink website also include an interactive tool to show you what you can do to resolve a disciplinary issue.

2. Call the Acas helpline on 08457 47 47 47. The Acas helpline service is free, impartial and confidential, offering detailed advice on the options available for resolving workplace problems.

- Until 5 April 2009, the Acas helpline will be open from 0800–1800 Monday to Friday.
- From 6 April 2009, the Acas helpline will be open from 0800-2000 Monday to Friday and 0900-1300 on Saturday.

3. Go to www.cipd.co.uk/guides to download:

Mediation: an employers' guide

Managing conflict at work: a guide for line managers