

## What is the current law relating to disciplinary and grievance procedures?

New statutory dismissal and disciplinary procedures which create a new minimum standard for addressing disputes about dismissal and certain other types of action became law on 1 October 2004. These new rules only apply to situations between an employer and employee, namely, an individual engaged on a contract of service i.e. a contract of employment and therefore do not apply to temporary workers engaged on contracts for services. New statutory grievance procedures also came into force from the same date.

In summary, the statutory procedure comprises two procedures. Firstly, a standard three step procedure of letter, meeting and appeal hearing, which will apply in 99% of all matters, and secondly, a modified two step procedure which consists of a letter and appeal meeting only.

It is important that employers and employees alike understand these new procedures. The compensatory awards can be increased or reduced depending on where the fault lies, in circumstances where the procedures are not followed. Employees can be barred from bringing a claim and employers could find that claims brought against them are automatically found to be unfair.

## What is the new procedure?

There are two new statutory procedures which now apply. The new dismissal and disciplinary procedures are very similar to the new grievance procedure and both contain the standard three step procedure and the modified two step procedure.

### Standard (three step) Procedure (*Grievance Procedure differences in bold*)

Step One: **Written Statement** The employer sets down in writing the nature of the employee's conduct, capability or other circumstances which may result in dismissal or disciplinary action, and sends a copy of this statement to the employee. The employer must inform the employee of the basis for his/her complaint/ **The employee sends their employer a written statement stating the grounds of their grievance.**

Step Two: **Meeting** The employer should invite the employee to a meeting to discuss the issue before any action is taken. The employee should take all reasonable steps to attend. After the meeting, the employer must inform the employee about any decision, and offer the employee the right of appeal.

Step Three: **Appeal** If the employee wishes to appeal against the decision, he/she must inform the employer. The employer should invite the employee to attend a further meeting to discuss the appeal. The final decision must be communicated to the employee.

### Modified (two step) Procedure (*Grievance Procedure differences in bold*)

Step The employer sets down in writing the nature of the alleged misconduct that has led

One: to the dismissal, the evidence for this decision, and the right to appeal against the  
**Written Statement** decision, and sends a copy of this to the employee/ **The employee sends their employer a written statement of the basis for their grievance.**

Step Two: If the employee wishes to appeal, he/she must inform the employer. The employer  
**Appeal** should invite the employee to attend a further meeting to discuss the appeal. The final decision must be communicated to the employee/ **The employer sends the employee a written response to their grievance.**

The modified procedure will only apply to very exceptional circumstances. In the case of disciplinary/dismissal it will only be relevant when a dismissal has already taken place, i.e. for gross misconduct. In the case of a grievance, it is likely to apply only where an employee has already left the company, e.g. they have resigned and the parties have agreed in writing that the modified procedure should apply.

The procedures apply to all employees irrespective of length of service and therefore the REC advise that you follow the procedures in all cases to protect your position and to ensure that you do not have a penalty against you in the tribunal.

#### **In what circumstances do I have to apply the new rules?**

These new procedures have been in force since 1st October 2004. They apply generally to all types of dismissal including dismissals on grounds of capability, conduct, redundancy, expiry of a fixed term contract and redundancy. They do not however apply to collective dismissals, constructive dismissals and dismissals in circumstances where the employment cannot continue, or to a small sub-set of immediate gross misconduct dismissals where, very exceptionally, an employment tribunal would find an immediate dismissal to be fair.

Additionally, the new procedures apply to action short of dismissal taken by an employer in relation to an employee wholly or mainly by reason of the employee's conduct or capability e.g. demotion. However they do not apply to warnings, either oral or written, or to suspensions (with pay) or collective actions.

However the REC advise that since these procedures are not onerous and are fair and transparent, that members can use this procedures in all their formal disciplinary matters.

#### **What are the procedural steps I need to know?**

- Each step and action of the procedure must be taken without unreasonable delay.
- The timing and location of meetings must be reasonable.
- Meetings must allow both the employer and employee to explain their cases.

- At the appeal meetings the employer should, as far as is reasonably practicable, be represented by a more senior manager than attended the first meeting.
- The employee can choose to be accompanied to the Step Two meeting and/or the Step Three appeal by either a work colleague or trade union representative.

When a disabled employee is involved in a statutory dispute resolution procedure, the employer will be required to make “reasonable adjustments” to any provisions, criteria or practices associated with following the statutory procedure that may affect the employee.

### **What happens if I fail to follow these procedures?**

Failure to complete the statutory dispute procedures will affect subsequent tribunal cases under specified jurisdictions.

- If you dismiss an employee without completing the statutory dismissal and disciplinary procedure, then that dismissal becomes automatically unfair. An employee must satisfy the one year qualifying period to be able to bring such a claim. If an Employment Tribunal makes this finding, there will be a mandatory minimum award of four weeks’ pay – any additional compensation for the employee must be increased by 10% and can be increased by up to 50%.
- However, if an Employment Tribunal finds the statutory procedures were completed satisfactorily but the dismissal is still unfair due to the reason for the dismissal, there will be no adjustment of awards.
- If an employee raises a formal grievance with you, and you do not comply with the grievance procedure, again the employment tribunal is likely to increase any compensation made in favour of the employee.

There is a statutory maximum for unfair dismissal claims above which a tribunal cannot award. Any adjustment awarded must not exceed this limit (see [Section 2A: Current rates of statutory pay](#)).

- If an employee does not have the one year qualifying period of service but brings an employment tribunal claim that does not require a qualifying period, for example a discrimination claim or an automatically unfair dismissal claim e.g. by reason of pregnancy, and you have not followed the statutory procedures, again an employee’s compensation can be increased by between 10%-50%. This could become very costly in a discrimination claim where compensation is uncapped, and therefore the REC advise that you follow the procedures for all employees, irrespective of length of service.

### **What happens if my employee fails to follow these procedures?**

- If the disciplinary/dismissal or grievance procedure is not completed or there is some non-compliance because the employee did not meet their obligations, e.g. they did not take reasonable steps to attend the meeting, any ensuing award is likely to be subject to a reduction of 10% and may be reduced by up to 50%.
- If an employee tries to bring a claim to an employment tribunal without first raising a formal grievance with you, or has raised a grievance but has not waited 28 days before lodging their claim, a tribunal will not accept that claim. Note that tribunals are likely to extend time periods to allow employees to go through the grievance procedure.