

Briefing on ...

Employment Act 2008

New Discipline and Grievance Procedures

Introduction **The Employment Act 2008**

The Dispute Resolution Regulations were introduced in 2004 in an attempt to reduce claims to Employment Tribunals. The effect was the opposite of the intent and the regulations in fact led to additional legal disputes over the

technicalities of the regulations themselves. In recognition of this, the legislative machinery prescribing disciplinary and grievance procedures has been dismantled wholesale from April 2009*.

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Abolition

Employment Act 2002 Sections 29 to 33

From April 2009* there will no longer be a requirement to lodge a grievance before lodging an Employment Tribunal claim. Likewise, the employer will not

have to follow the statutory dismissal procedures. It follows that in both cases neither the employer nor the employee can apply for an uplift in a Tribunal award for a failure to comply with the relevant procedure.

Employment Act 2002 (Dispute Resolution) Regulations 2004

Regulation 15

There will no longer be an automatic 3 month extension to allow for the parties to go through the dismissal or grievance procedures.

For all claims in respect of dismissal, the claim must now be lodged with the Employment Tribunal **no later than 3 months from the date of dismissal.**

For all other claims, except Equal Pay, the claim must be lodged **within 3 months of the last act the claim is based on.** So, if the

claim is based on a failure by the employer to do something, the claim must be made within 3 months of that failure being discovered.

For Equal Pay, the time limit will be **6 months** from the end of the contract.
Employment Rights Act 1996 s. 98A

Employees will no longer be able to claim 'automatic' unfair dismissal for an employer's failure to follow the statutory dismissal procedures.

New ACAS Code of Practice

Introduced to coincide with the Employment Act 2008, the Code will have the force of law in that Employment Tribunals will have to consider it when judging the actions of employers and employees.

Does not apply to:

Redundancy, expiry of fixed term contracts or collective grievances.

Discipline

The Code obliges the employer to provide evidence to the employee in advance of any hearing. This would include witness statements.

Oral warnings are no longer a recognised disciplinary sanction and the Code only refers to written warnings and final written warnings.

Failure to Comply the New Code Employment Tribunals will be able to increase or reduce awards by up to 25% where there has been an unreasonable failure to follow the Code in a case to which it applies.

Also, failure to follow a reasonable procedure could lead a tribunal to find a dismissal unfair.

***Timing**

Although the Employment Act 2008 comes into effect on 6th April 2009, there are a number of transitional measures.

It is essential that all representatives are aware of the changes and when each change takes effect.

Dismissals

If the employer has written to the employee inviting them to a disciplinary hearing, *or* has held a disciplinary hearing, *or* has dismissed before 6th April 2009, then the old procedures apply.

Grievances

If the employee is complaining about an act that happened before 6th April 2009 then the old procedure applies.

Continuing Acts

If the events that led to the claim started before 6th April 2009 but carry on after that date the old procedure will still apply: In the case of claims with a 3 month time limit, if the grievance is lodged before 5th July 2009.

In the case of claims with a 6 month time limit, if the grievance is lodged before 5th October 2009.

Action for Branches

Branches should reconsider employers' existing discipline and grievance policies to ensure they comply with the new ACAS Code, which can be found at the link below. There is also a Guide which complements the Code. As the time limits for Employment Tribunal claims have been considerably shortened it is more

important than ever that CASE forms requesting ET representation are forwarded to Regional Organisers as early as possible.

Additional Information can found at:

ACAS Code of Practice on Discipline & Grievance

<http://www.acas.org.uk/CHttpHandler.ashx?id=961&p=0>