

Briefing Note



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New Statutory Disciplinary and Grievance Procedures

From October 2004 the government will implement new rules that may prove to be the biggest change to the employment tribunal system since its introduction in 1971. *The Employment Act 2002 (Dispute Resolution) Regulations 2004 SI 2004/752* will come into force on 1 October 2004 and implements rules concerning disciplinary and grievance procedures as set out in Schedule 2 to the *Employment Act 2002*. The government has estimated that the new provisions will result in a reduction of between 34,000 and 37,000 in the number of tribunal claims being brought. This amounts to a drop of over 30% and a consequential cost saving of between £68 and £74 million to the taxpayer.

The new statutory procedures will be implied into every contract of employment and amount to a minimum standard required of employers. In the meantime employment tribunals will rely on guidance issued by the Department of Trade and Industry and the new draft ACAS Code of Practice on Disciplinary and Grievance Procedures. The Final ACAS Code is to be published after the new rules come into force.

The Main Provisions

The main effect of the new procedures are:

Employees will not normally be able to make unfair dismissal or other claims to an employment tribunal unless they have first made a serious attempt to get an "out of court" settlement by raising a formal grievance with the employer in writing and then completing the in-house statutory grievance procedure. This aspect of the new rules is likely to have most effect on reducing the number of claims being brought and in this respect is more important than the new statutory disciplinary procedure rules.

Time limits for making applications to the employment tribunal will be extended to allow discussions between the employer and employee to take place.

All employees of all employers, regardless of size will be entitled to the benefit of a minimum standard formal disciplinary procedure before they are dismissed. Except in rare circum-

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stances, such as where a business suddenly ceases to function for unforeseen reasons, any dismissal will be automatically unfair where an employer dismisses an employee without going through the required disciplinary procedure.

Employment tribunals will be required to adjust awards by a minimum of 10% (up to a maximum of 50%) either up or down in cases where there has been a failure by the employer or employee to abide by the new rules (Employment Act 2002 S31).

There will be some exemptions to the statutory procedures, for example if one party reasonably believes that there is a significant threat, harassment or it is not practical to go through the procedure in a reasonable period and if there are issues of national security.

One of the stated purposes of the new rules is to provide increased protection to employees but reducing the cost to taxpayer has also been an exerting force. The government has been concerned at the rising cost of running the Employment Tribunals Service and these new provisions are doubtless aimed

at reducing the number of applications to employment tribunals, saving costs and encouraging alternative forms of dispute resolution.

Whilst the new rules are likely to be of benefit to both employers and employees it will be essential that those tasked with implementing the new rules have the necessary training and guidance to do so.

Should you wish for more detail on the above topic either contact Dominique Torode-Parker on +44 207 404 2121 or contact us via info@key2law.co.uk

Note: this update is intended only as a general statement of the law and no action should be taken in reliance upon its contents.