



## STATUTORY DISCIPLINARY PROCEDURES

In October 2004, the Employment Act 2002 (Dispute Resolution) Regulations 2004 ('the Regulations') came into effect. The Regulations provided that a standard disciplinary and grievance procedure must be followed when dealing with such issues and failure to comply would result in any unfair dismissal claim being found to be automatically unfair. The Regulations also provide that a Tribunal can increase any compensation by up to 50% for failure to comply with the procedures. More than ever, it is essential for employers to get it right.

There are two procedures set out by the Regulations: the standard procedure and the modified procedure, although the modified procedure should only be used in rare circumstances.

### Standard procedure

The standard procedure is a three step procedure and should be used in each and every disciplinary action. An employer must follow these steps:

#### Step 1

The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances which lead him to contemplate dismissing or taking disciplinary action against the employee.

The employer must then send this letter to the employee asking him to attend a meeting to discuss the matter.

Whilst the Regulations do not specify precisely what must be in the letter, it is advisable to include as much detail of the conduct complained of as possible, in order to avoid any future dispute.

#### Step 2

The meeting must then take place before any disciplinary action is taken (save for suspension, as this is not classed as disciplinary action).

The meeting must not take place until:

- The employee has received the step 1 letter;
- The employee has had a reasonable opportunity to consider his response to that letter

Again, the Regulations do not specify what is a reasonable time for an employee to consider the letter, but good practice is generally 3 – 5 days, depending on the seriousness of the allegations, and the extent to which an investigation is required.

The employee must take all reasonable steps to attend the meeting.

After the meeting, the employer must inform the employee of his decision and inform him of his right to appeal against the decision.

### Step 3

If the employee then wishes to appeal against the decision, he must inform the employer.

The employer must then invite the employee to attend a further meeting to discuss the matter. As far as is practicable, the appeal should be held by a more senior member of management, and someone who has had no involvement with the disciplinary proceedings.

After the meeting, the employer must inform the employee of his decision.

### Modified Procedure

The modified procedure is a two step procedure, and should rarely be used. An example of where the modified procedure may be used is where an employee has conducted himself in such a way as to leave the employer to dismiss him immediately on the spot. Employers should only use this procedure in serious situations, where the step 3 procedure was impossible.

### Step 1

The employer must set out in writing the employee's alleged misconduct which has led to the dismissal, what the basis was for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct and the employee's right to appeal against the dismissal.

The employer must then send a copy of this to the employee.

### Step 2

If the employee wishes to appeal against the decision, he must inform the employer, who must then invite the employee to attend a meeting.

Again, the employee must take all reasonable steps to attend the meeting.

After the appeal meeting, the employer must inform the employee of the outcome.

If you have any concerns about the above, you can contact our Employment Law team for some free advice.

**Should you require further information about how our Employment Law team can help you - just call 0800 040 73 99 – and one of our specialist advisors will be pleased to assist.**

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