

## **Disciplinary and Grievance Procedures**

Any dismissals made between 1<sup>st</sup> October 2004 and 5<sup>th</sup> April 2009 were subject to the statutory Dismissal and Disciplinary Procedures established by the Employment Act 2002.

The statutory procedures came in for a lot of criticism for being unworkable and producing unfair results. As a result they were repealed on 6<sup>th</sup> April 2009 and although there are some technical transition provisions in place essentially any dismissal which takes place on or after that date will not be subject to the DDP.

We have largely gone back to a situation which existed prior to 1<sup>st</sup> October 2004 whereby in order to effect a fair dismissal an employer must act in a reasonable manner. The leading case of *Polkey v A E Dayton Services* held that a dismissal which takes place without following a fair procedure will normally be unfair. However, there is now a move away from a rigid statutory definition of what amounts to a fair procedure, with Tribunals having far more flexibility to look at the circumstances of a particular dismissal in order to determine whether or not the procedure followed was fair and reasonable

Tribunals have also been given the discretion to increase or reduce awards by up to 25% in cases of misconduct or performance dismissals whether either the employer or the employee unreasonably fails to comply with the new ACAS Code of Practice on Disciplinary and Grievance Procedures.

Although, inevitably, the ACAS Code is far less prescriptive than the statutory Dismissal and Disciplinary Procedures, there are general principles laid down in it which employers should adhere to in dealing with cases of misconduct or poor performance – make sure your legal advisor keep you up to date.



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There are also a number of practical steps for an employer to take to ensure compliance with the ACAS Code of Practice:

- Ensure that disciplinary procedures are transparent and accessible to employees;
- Manage conduct and performance issues proactively before they develop into formal disciplinary action;
- Investigate issues thoroughly. Even if the employee has attended an investigatory interview, always hold a disciplinary hearing once all the evidence is available, and allow the employee to put their side of the story, including calling witnesses unless this is unreasonable, before making any decision;
- Keep written recording, including minutes of meetings;
- Communicate decisions effectively and promptly, setting out reasons for any decisions taken.

**Please note that the answers provided are for general guidance only. If you have any legal problems you should always ensure that you obtain specific legal advice.**