

Issue I 2009

The grievance, dismissal and disciplinary procedures are changing

At present there is a 'three-step' procedure in place, otherwise known as the Statutory Disciplinary and Dismissal Procedures (SDDP's), which an employer should follow in respect of grievances made by an employee and when disciplining an employee or dismissing an employee.

However, this is all set to change and on 6th April 2009 the 'three-step' procedure will be repealed. The new ACAS Statutory Code of Practice on disciplinary and grievance matters will provide practical guidance to employers, employees and representatives. However, the code does not apply to redundancy or the non-renewal of fixed term contracts.

One of the main differences is the effect of an employer not following the procedures. At present, if an employer does not follow the 'three-step' procedure for grievance, discipline and dismissal, a Tribunal can award between a 10% and 50% increase in any award of compensation for an unfair dismissal claim brought by an employee.

Under the new ACAS Code, the Tribunal can award up to a 25% increase in compensation for the employer's unreasonable failure to comply with the provisions of the Code. Alternatively, if the employee has failed to follow the Code then the Tribunal can reduce compensation

awarded by 25%. The Tribunal will take into account the size of the business in deciding the parts of the Code that were reasonable for the employer to follow.

The draft Code of Practice was issued for consultation in May 2008 and 172 businesses, trade unions, employers, legal bodies and individuals provided their opinions.

The code states that a grievance or disciplinary procedure must be dealt with properly and fairly and to do this employers should:

- Deal with issues promptly
- Act consistently
- Make appropriate investigations
- Keep employees up to date and informed
- Allow an employee to state their case
- Allow employees to be accompanied at formal grievance or disciplinary meetings

The hope is that when the Code comes into effect in April 2009 that the final version is workable and that even though it is not legally binding it aims to help employers and employees deal with grievance and discipline



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Employment Law updates

Compensation increases

The maximum compensatory award for unfair dismissal claims will increase on 1st February 2009 to £66,200.

The maximum weekly pay will be £350.

Disability Discrimination Act

A recent court ruling stated that the Disability Discrimination Act could and should also protect fully able employees who are caring for a disabled person.

National Minimum Wage

The National Minimum Wage will increase as follows:-

22 years old plus = from £5.52 to £5.73

18 to 21 years old = from £4.60 to £4.77

16 to 17 years old = from £3.40 to £3.53

If you require further updates please forward your details to
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Licence for immigrants

Back in February 2008 a new points system for immigrant workers began and is now well under way. It aims to make it easier for highly skilled workers to enter the UK.

The new system is made up of five tiers and separates the different types of immigrant worker.

Tier 1 Highly skilled workers

Tier 2 Skilled workers with a job offer. This type of worker is given points on their talent and who will fill gaps in the UK labour force (i.e teaching, nursing)

Tier 3 Low skilled workers

Tier 4 Students

Tier 5 Temporary workers and youth mobility

Tier 2 of the points based system has now come into effect and replaces the work permit scheme. Workers under this category should have a job offer from a UK employer and they will be awarded points on certain criteria, including their qualifications and future earnings. If approved these workers are permitted to stay in the UK for a maximum of 3 years plus one month.

To employ migrant workers under Tiers 2, 4 and 5, businesses are required to have a 'sponsors licence' by registering with the

UK Border Agency's (UKBA). Without the sponsors licence an employer cannot employ migrant workers.

Sponsors must then provide their prospective migrant workers with a certificate of sponsorship. The migrant worker can then apply for permission to enter or stay in the UK to work.

The certificate of sponsorship will act as an assurance from the sponsor that the applicant has the ability to do a particular job and is regarded as trustworthy.

The employer has a responsibility to inform the Home Office if the worker does not turn up to work on the first day, does not enrol on the course or takes prolonged absence.

Businesses who fail to implement illegal working laws leave themselves open to possible prison sentences and fines of £10,000 for each illegal worker found in a business.

Case update: Primark have found themselves in the headlines as TNS Knitwear, who provide them with clothing, has been found to be employing illegal immigrants. **For further information or advice please contact andrew.egan@clmlaw.co.uk.**

Employees can accrue holiday whilst on sick leave

The Court of Appeal previously ruled that workers absent on long-term sick leave could not claim holidays or holiday pay for the time they were absent from work, nor could they expect compensation for lost holiday if they left their job before returning to work.

But now, in the case of Stringer v HMRC, the European Court of Justice has provided its opinion on those employees on sick leave and whether they are entitled to accrue holiday.

The ECJ has stated that employees **are** entitled to accrue holiday whilst on sick leave and they can even carry that accrued holiday leave over into the next holiday year. Further, the court ruled that employees could be paid in lieu where the employment relationship has ended prior to their return to work.

The decision also indicates that this will apply even where the accrued holiday relates to an earlier leave year so employees on sick leave for one year would be entitled to four week's paid

holiday in addition to any holidays they are entitled to and have accrued in the new holiday year.

The ruling only applies to statutory holiday entitlement but the effect on employers could be costly. As

well as payouts for accrued statutory holiday employers may also need to change their policies on accruing and taking holiday.

The case will now be sent to the House of Lords for a final decision as to whether this will be incorporated into UK law.

If you need more details call Andrew Egan on 0800 180 4835



Associative Discrimination

At the beginning of 2007 it was confirmed that the European Court of Justice was to rule on whether a care of a disabled person who suffers a detriment at work because of their caring duties can claim disability discrimination under the Disability Discrimination Act 1995.

The individual in question was a Mrs Coleman who cared for her disabled child. She requested flexible working with her employer but this was refused. She claimed that she had been unlawfully discriminated against by her employer on the grounds of her child's disability.

At the end of 2008 the court ruled that able-bodied people can be covered by the Disability Discrimination Act. Therefore the Act will from now state:-

"A person directly discriminates against a disabled person or a person associated with a disabled person if, on the ground of the disabled person's disability, he treats the disabled person or a person associated with the disabled person less favourably than he treats or would treat a person not having that particular disability or association (as the case may be) whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person or the person associated with the disabled person"