

band
hatton
button

solicitors
Incorporating Varley Hibbs

Employment Law

*Disciplinary Procedures, Disciplinary Rules and
Grievance Procedures*



Employers have a statutory duty to give employees a written statement of the main terms and conditions of employment. The written statement must contain disciplinary rules and procedures for disciplinary decisions and appeals, or refer the employee to some other easily accessible document (such as a separate employee manual or handbook) containing that information.

The ACAS statutory Code of Practice on Disciplinary and Grievance Procedures contains recommendations for the handling of disciplinary situations at work. It is accompanied by a non-statutory ACAS Guide to Discipline and Grievances at Work, which gives further information on best practice for handling discipline, but is not part of the Code.

Failure to follow the ACAS Code does not itself give rise to a breach of an employee's legal rights, but must be taken into account by an Employment Tribunal where relevant; for example, in deciding whether a dismissal is unfair. Furthermore, an unreasonable failure to follow the ACAS code may lead a Tribunal, in some cases, to adjust the amount of compensation payable to an employee. It is therefore advisable for an employer to put in place a Disciplinary Procedure that complies with the provisions of the ACAS Code.

From a practical perspective, a comprehensive disciplinary procedure should ensure that managers have access to guidance on how to carry out the disciplinary process from start to finish. A comprehensive, well - drafted procedure can also give managers the confidence to make the right business decision, in the knowledge that they are going about things in the right way.

The ACAS Code recommends that employers involve employees or their representatives in developing procedures. However, the Code does not explicitly require the employees' agreement to the procedure.

There is no need to have a separate document setting out disciplinary rules from the procedure to be followed in the event of their breach. Indeed, many employers simply have a section in the disciplinary procedure setting out examples of gross misconduct and less serious types of misconduct.

Whether drafted as a separate document, or as a section in a disciplinary procedure, disciplinary rules will commonly cover matters such as:

- Timekeeping
- Absence
- Health and safety
- Use of facilities
- Discrimination, bullying and harassment
- Personal appearance
- Types of conduct that might be considered as gross misconduct.

In addition to a Disciplinary Procedure, all employers must have a written Grievance Procedure which complies with certain minimum standards.

An employer has an implied contractual duty to reasonably and promptly afford a reasonable opportunity to its employees to obtain redress of any grievance. Failure to do so could amount to a fundamental breach of contract by the employer, leading to a constructive dismissal claim.

The ACAS Code sets out minimum standards of good practice for employers and employees in relation to grievances. In the event of a successful Employment Tribunal claim, the Tribunal may penalise either party for unreasonably failing to follow the ACAS Code by increasing or reducing compensation by up to 25%.

Employers also have a statutory duty to give employees a written statement of particulars of their employment, and this must identify the person to whom, and the manner in which, the employee should address any grievances. These can either be included in the statement, or set out in a separate reasonably accessible grievance procedure (such as a separate manual or handbook).

The minimum that must legally be set out in a written grievance procedure is:

- The person to whom the grievance should be submitted
- The manner of submitting the grievance, and
- The further steps that will then be taken.

However, a carefully drafted procedure will allow some flexibility for dealing with grievances, to allow the procedure to fit the many different situations in which a grievance may arise.

For further information, please contact:

Mark Ridley
Partner & Head of Employment
Direct Tel: +44(0)24 7649 3126
Email: MER@bandhattonbutton.com