

BRIEFING PAPER ON...

STATUTORY DISCIPLINARY AND DISMISSAL PROCEDURES

Dismissal and Disciplinary Procedures –the background

Since 1 October 2004 it has been a legal requirement that all employers follow the Statutory Dismissal and Disciplinary Procedure (“the Statutory Procedure”)¹. Any failure to do so will render a dismissal automatically unfair and the employee could have any award of compensation at tribunal increased by between 10% and 50% as a result.

The Statutory Procedure applies where the employer is contemplating:

- dismissing an employee; or
- subjecting an employee to “relevant disciplinary action” (defined as a sanction short of dismissal such as demotion or unpaid suspension but excluding suspension on full pay and warnings).

Whilst the Statutory Procedure need not be followed where the only sanction being contemplated is paid suspension and/or a warning, it is good practice to follow the procedure wherever disciplinary action (of whatever kind) or dismissals are under consideration. This precautionary measure also avoids the employer having to back-track and institute the Statutory Procedure if the allegations should transpire to be more serious than had previously been thought and dismissal becomes a possibility.

Please note that the Statutory Procedure applies to all dismissal scenarios and these include redundancies, expiry of fixed term contracts and termination of employment due to retirement.

WHAT DOES THE STATUTORY PROCEDURE INVOLVE?²

Step 1 - write to the employee to invite them to a disciplinary hearing

They must be given reasonable advance notice of the hearing. The allegations must be set out in sufficient detail so that the employee understands what he or she is being accused of. Any supporting evidence (witness statements or documentation) which should have been collated as part of the investigatory process should be provided along with that letter and the employee must be advised in that letter of their right to be accompanied by a work colleague or a trade union representative.

Where the allegations are very serious and (if found proven) might result in summary dismissal the employer may refer to this in the letter but it must be clear that this is only a possible sanction if the allegations are found to be true and if there are applicable no mitigating circumstances.

¹ You should be aware that there is also a Statutory Grievance Procedure which obliges employers to take certain steps if an employee makes certain complaints about employment. Case-law suggests that what constitutes a “grievance” and will trigger the procedure will be very widely interpreted.

² This is the standard procedure. There is a “modified” dismissal procedure that is supposed to apply where the employer dismisses the employee without notice and where it is reasonable for the employer to dismiss without investigating the circumstances. Employers are strongly advised never to rely upon the modified procedure as tribunals are not likely to find summary dismissal to be within the band of reasonable responses where there has been no prior investigation.

Step 2 – hold the meeting

The hearing is an opportunity for both sides to put forward their version of events. The individual conducting the hearing should have a colleague present to take minutes. It is usual to circulate the minutes to the employee and if you can get them to sign the minutes as being a true reflection of what was said, so much the better. The employee's companion may pose questions and may confer with the employee but may not answer questions on their behalf.

Following the meeting the employer must write to the employee setting out the decision and the reasons for it. The letter must advise the employee of their right to appeal the decision. It is usual to add the name of the person to whom the appeal letter should be addressed and the timeframe within which any appeal should be lodged. It is wise to add that the decision of the person hearing the appeal is final.

Step 3 – appeal

If the employee lodges an appeal the employer must write to the employee and invite them to an appeal hearing, once more advising them of their right to be accompanied.

Following the appeal (which should be conducted by a more senior manager with no prior involvement in the disciplinary process and which should be conducted by way of thorough unbiased rehearing of all relevant circumstances) the employer must write to the employee advising them of the outcome of the appeal process.

General principles to observe

In managing the disciplinary process you also need to be aware that the Statutory Procedure imposes the following obligations:

- each step in the procedure must be taken without unreasonable delay;
- timings and location of the meetings must be reasonable;
- the meetings must allow both employer and employee to explain their cases.