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Attwaters' Employment Update

On 6 April 2009 the statutory disciplinary and grievance procedures, commonly known as the "3-step process" (step one letter, step two meeting and step three appeal), was abolished with the enactment of the Employment Act 2008. The new Code of Practice ("the Code") provided by ACAS now sets out the guidelines to be followed by an employer to make any disciplinary and/or grievance fair. An employer however cannot assume that by following the Code a dismissal will automatically be considered fair and thereby avoid unfair dismissal claims.

Should an Employment Tribunal deem that there was a failure to follow the Code, whether by the employee or employer, and that it was unreasonable to do so there will be discretion to increase or decrease the award accordingly by up to 25%. Essentially the Code has been designed to reduce claims reaching the Employment Tribunal by seeking early resolution and keeping cost and stress to a minimum. The Code is only applicable to "disciplinary" action, such as dismissals relating to misconduct, and only in the case of "employees" and not "workers".

Further steps for employers;

- Consider training management in the requirements of the Code to stop matters from developing;
- Appreciate that in certain circumstances a less formal management of disciplinary and/or grievance issues may be beneficial in the long run;
- Review current disciplinary, dismissal and grievance procedures so that they are consistent with the Code.

In some cases employees may have contracts which incorporate the "3-step process"; if this is the case an employer must follow that process or possibly be in breach of contract. The main point to remember is that of consistency and fairness in any process.

Should you wish any further information concerning this article or any other employment matters please contact Tim Carter by clicking on the button below.

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