

Employment Legislation

New ACAS Code of Practice

As is quite common with Employment Law legislation, there has recently been another change in the law and it changes how employers need to handle any disputes within their business. Whilst it may be hoped that the new laws will solve existing problems, there are bound to be some challenges as companies attempt to implement the new rules and procedures.

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The **Employment Act 2008** received Royal Assent on 13th November 2008 and the majority of its provisions came into force on 6th April 2009.

As a background, "Statutory Dispute Resolution Procedures" (SDRPs) were introduced in October 2004 to encourage employers and employees to contain and resolve disputes in the workplace. This would in theory help to reduce the number of employment tribunal complaints as the employment tribunals service was overstretched and needed some assistance in reducing its workload. The view within the Government was that if employers were made to do things properly, then any outcomes would be fair, so employees would be less likely to seek the opinion of an employment tribunal. Likewise, if employees were made to raise any grievances they had with their employers in the first place, then they wouldn't have to go to a tribunal to air any issues they may have had during employment, as the problem would be solved within the workplace.

Unfortunately these SDRPs actually became one of the major causes of the huge rise in employment tribunals over the next few years because they didn't give any margin for error. This allowed employees to automatically claim unfair dismissal on any number of technical breaches, which caused the employment tribunal to spend more time looking at how the dispute resolution process had been undertaken rather than the actual dispute itself. So, according to the Government commissioned Gibbons Review of 2007, the procedures have been "a resounding failure".

This resulted in a bit of a U-turn, with the review's top proposal being "Repeal the Statutory Dispute Resolution Procedures". The current three step statutory procedures, covering disciplinary action, dismissals and grievances, have been replaced by a new 45-point ACAS Code of Practice, which has prompted speculation that it could do more harm than good. Employment tribunals will be able to decide whether there has been an "unreasonable" failure by either the claimant or

the respondent to follow the ACAS Code, and to increase or decrease awards by up to 25% for defaulters. (A proposed late amendment to increase awards by up to 50% failed.)

The Government has published the transitional rules for the move away from the current SDRPs to the new code as follows:

- **6th April 2009 was confirmed as the date on which the Employment Act 2008 repealed the statutory dispute resolution procedures**
- **The 'old' disciplinary and dismissal rules will still apply through to the completion of the procedure for a dismissal or relevant disciplinary action that occurred before 6 April 2009, and for a statutory disciplinary procedure that was already ongoing before 6 April**
- **The 'old' statutory grievance procedures will continue to apply where the action that forms the basis of the grievance began before 6 April 2009**

There will also be some transitional arrangements for the automatic extension of the three-month time limit for bringing Employment Tribunal claims with the time limit reverting to three months for all tribunal claims (except equal pay and redundancy) from 4th July 2009.

Employers had hoped that the Government would come up with a simpler process for employers to follow. However, replacing the current three-step procedures with a 45-point Code of Practice, backed up by a 167-point, 74-page Guide may well cause more problems for employers, not less. With a code that is more detailed than the previous procedures and a lack of clear guidance on what constitutes 'unreasonable' (there is no definition of 'unreasonable' or 'failure'), there will be even more scope for employers to slip on the latest employment law banana skin.

