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The Employment Act 2008: Update and Implications for Dispute Resolution

The Employment Act 2008 received Royal Assent on 13 November 2008. The Act will herald the repeal of the much criticised statutory dismissal, disciplinary and grievance procedures. The provisions of the Act relating to the repeal of these statutory procedures are expected to come into force on 6 April 2009.

The focus of the Act, as was the focus of the Employment Act 2002, remains the resolution of workplace disputes without recourse to employment tribunals. In order to encourage early resolution of disputes in the absence of the statutory procedures, the Act allows tribunals to have regard to the new ACAS Code of Practice on discipline and grievance in deciding the majority of employment claims. The Code has been approved by the Secretary of State for Business Enterprise and Regulatory Reform and will be laid for parliamentary approval probably early in the new year.

A failure to follow the Code will not, in itself, make an employer or employee liable to proceedings but the tribunal will be able to adjust compensation by up to 25% to reflect a party's unreasonable failure to follow the Code. Consequently, it is important to understand the Code and its impact on an employer's internal procedures.

The Code sets out the basic requirements of fairness that will be applicable in most cases. The Code will not apply to redundancy dismissals or non-renewal of an expired fixed-term contract. However, the ambit of the circumstances to which the Code potentially applies has widened. For example, the Code applies to all disciplinary situations including misconduct and/or poor performance. Similarly, grievances are now defined as "concerns, problems or complaints that employees raise with their employers".

The Code makes it clear that it is not only important to develop rules and procedures for handling disciplinary and grievance situations but also to use them. The Code specifies that rules and procedures should be developed with the involvement of employees and where appropriate their representatives.

The Code also refers to the often tricky area of dealing with overlapping grievance and disciplinary cases as well as collective grievances. The Code suggests that collective grievances should be "handled in accordance with the organisation's collective grievance process".

The repeal of the statutory dispute resolution procedures, and implementation of the new ACAS Code of Practice, means that internal policies will yet again need to be reviewed and amended to comply with the Code. If an employer's internal policies are not in harmony with the Code, there is a greater risk of claims against the employer being successful, as well as the additional threat of a 25% uplift on any compensation awarded by the tribunal.

We mean business

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