



Bulletin 136

April 2009

## **Employment Act 2008: Makes Spring the Season of Change**

Several important changes to employment law are due to happen during April, mainly as a result of the Employment Act 2008 coming into effect. The most significant development is the repeal of the statutory disciplinary and grievance procedures effective from 6<sup>th</sup> April.

### **Repeal of the Statutory Disciplinary and Grievance Procedures**

The Employment Act 2008 will repeal the statutory dispute resolution procedures that have applied since 2004, in favour of a more flexible regime. This will happen in conjunction with the introduction of a new ACAS code setting out good practice for disciplinary or grievance processes. The ACAS code will apply only to 'disciplinary situations' e.g. misconduct or poor performance, but not redundancy or non-renewal of a fixed term contract.

Employers will now be expected to follow guidelines set out in the ACAS code without being obliged to adhere to such a rigid statutory framework. The ACAS code provides the standard by which Tribunals will judge cases. Tribunals must take the ACAS code into account and will have discretion to increase awards by up to 25% where the employer has unreasonably failed to comply with the ACAS code, or reduce them by 25% where the employee unreasonably fails to comply. However, unlike the outgoing system, failure to follow the code will not make a dismissal automatically unfair.

Although the new regime will introduce more flexibility, and the potential penalties will be less draconian, the recommended structure for conduct of both procedures is similar to the existing statutory procedures:

#### *Disciplinary*

1. The employer should investigate the issues before taking action
2. The employer should inform the employee of the issues and possible consequences and invite them to a disciplinary meeting.
3. A disciplinary meeting should be held, without unreasonable delay, at which the employee can be accompanied.
4. The employer's decision should be sent to the employee in writing giving them the right to appeal
5. An appeal should be heard, if requested.

#### *Grievance*

1. The employee should raise the grievance in writing (if it cannot be resolved informally).
2. The employer should hold a meeting (at which the employee can be accompanied) and investigate the complaint.
3. The employer's decision should be sent to the employee in writing giving them the right to appeal
4. An appeal should be heard, if requested

It is very important that the steps set out above should all be seen to be taken without unreasonable delay.

There are also tricky transitional provisions in place which govern the procedure to be followed where certain steps have already been taken under the previous regime.

## Flexible Working for Parents

The Government will extend the right to request flexible working practices to parents of children up to 16 years old. This is a significant increase on the existing right, available only for parents of children up to 6 years old, and is estimated to cover 4.5 million more members of the workforce. However, it is important to remember that this is a right to request flexible working, and employers are not obliged to grant requests if it is reasonable not to do so. This right will come into effect during April, although the exact date has not been finalised.

## Increase in Annual Holiday Entitlement

The statutory annual leave entitlement, under the Working Time Regulations, increased by 0.8 weeks (i.e. 4 days for full-time workers) to a total of 5.6 weeks, from 1<sup>st</sup> April.

## Increase in Statutory Sick Pay and Maternity/Paternity/Adoption Pay

The weekly rates for the above payments increased from 6<sup>th</sup> April. Statutory sick pay increased from £75.40 to £79.15 per week. Statutory maternity, paternity and adoption pay increased from £117.18 to £123.06 per week.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

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