



Welcome to the fourth edition of IntERact. In this quarterly newsletter we are focusing on the revised Code of Practice for Discipline and Grievance, flexible working and recent cases of interest.

ACAS Discipline and Grievance

Most managers are already familiar with existing disciplinary and grievance procedures and if using IntERact will already be fully aware of the process to be followed and therefore the new code will change little in the way they handle issues. The new ACAS code clarifies areas such as the use of separate investigation and hearing managers etc. The code will not apply to redundancies or the termination of fixed-term contracts which differs from previous statutory procedures. Employers and employees may be penalised by up to 25% on any award of compensation for an unreasonable failure to comply with a provision of the code.

General principles

The code sets out guidelines for employers dealing with discipline and grievance such as the need to deal with issues promptly and consistently.

Discipline

The key stages for handling disciplinary problems in the workplace are:

- establish the facts
- inform the employee of the problem
- hold a meeting
- allow the employee to be accompanied
- decide on appropriate action
- allow right of appeal.

The recommended disciplinary process in the code is; written warning, final written warning and dismissal. The

oral/verbal warning has been omitted. In addition the code states: "Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the employer should make a decision on the evidence available." Note term persistent!

Grievances

The key stages of handling grievances in the workplace are clarified including:

- let the employer know the nature of the grievance
- hold a meeting
- allow the employee to be accompanied
- decide on appropriate action
- allow the employee to take the grievance further if not resolved.

A grievance should be raised in writing and it is for the employee to raise an appeal if they are not content with decision made.

Overlapping grievance and discipline

Due to previous difficulties of dealing with overlapping issues the code states that a disciplinary process may be temporarily suspended to allow a grievance to be heard or, if the grievance and discipline are related, the issues may be dealt with concurrently.

Collective grievances

The code does not apply to grievances raised on behalf of two or more employees by a trade union or other appropriate workplace representative. This prevents the risk of a 25% adjustment where such grievances are not handled individually.

Top Tips Managing Discipline & Grievance Matters

1	Employers and Employees should raise issues promptly and deal with issues without unreasonable delay.
2	Employer and employees should act consistently
3	Employers should carry out the investigations necessary to establish the facts
4	Employers should inform employees of the problem and allow them to put their case
5	Employers should allow employees to be accompanied at formal disciplinary and grievance meetings
6	Employers should allow employees to appeal any formal decisions

Statutory dismissal and disciplinary procedure

Zimmer Ltd. v Brezan

Mr. Brezan was employed as a regional sales manager by Zimmer Ltd. Following an investigation into his mileage and expense claims, he was sent an email on 7 November confirming a disciplinary hearing was arranged for 2 days later to discuss these claims. A copy of the disciplinary procedure was attached explaining stages and types of conduct that amounted to misconduct and gross misconduct and potential disciplinary action that might result. After further meetings Mr. Brezan was dismissed for misconduct on 24 November.

The Employment Tribunal found that the dismissal was automatically unfair because Zimmer Ltd had failed to comply with step one of the statutory dismissal and discipline procedure. The email sent on 7 November did not indicate that there was a potential case of gross misconduct and a risk of dismissal. Zimmer Ltd. appealed.

The EAT stated that the purpose of the step one letter is not achieved unless the employee can understand the risk of dismissal. The EAT did not accept the argument that Mr. Brezan knew of the risk of dismissal because he was sent the disciplinary procedure. The email on 7 November made no reference to misconduct or gross misconduct and did not direct Mr. Brezan's attention to any specific part of the procedure. The appeal was dismissed.

Sources - A variety of resources are researched and utilised in constructing the newsletter including; Acas, BERR, CIPD and other internal and external HR and legal resources as necessary.

Change to Flexible Working

From 6th April 2009 the right to request flexible working is being extended to parents of children under the age of 17.

Previously this only applied to employees with caring responsibilities for children under the age of six, and carers responsible for adults who are 18 or over. The right to request flexible working continues to apply to employees with caring responsibilities for disabled children under 18.

An individual applying for a more flexible pattern of working hours must:

- Have been continuously employed by his or her employer for at least 26 weeks at the time of the application
- In the case of an application regarding a child, submit the application by the day before the child's seventeenth birthday
- Have, or expect to have, responsibility for the child or, where the application is being made in relation to an adult, care for, or expect to care for, an adult in need of care; and
- Not have submitted an earlier application to work flexibly within the previous 12 months, regardless of whether the previous application was made in relation to the same caring responsibility or a different one.

Employers should be aware that even if an employee does not meet one of the requirements above, they may still be liable to discrimination claims should they reject a claim for flexible working (for example if an employee has insufficient service).

Therefore, it is advisable that all requests for flexible working are given careful consideration.

Useful Data

Statutory Maternity Pay	effective April 2009	£123.06 per week
Statutory Sick Pay	effective April 2009	£79.15 per week
Minimum Wage		
workers 22 years and older	effective October 2008	£5.73 per hour
workers 18 to 21 years	effective October 2008	£4.77 per hour
workers 16 to 17 years	effective October 2008	£3.53 per hour
Recent survey data of general interest		
Average Absence Cost	CIPD survey 2008	£666 per employee
Average Level of Absence	CIPD survey 2008	8 days per employee per year
Employee Turnover Rate	CIPD Survey 2008	17.3%
Average Recruitment Cost	CIPD Survey 2008	£4,667 per vacancy filled

If you have any questions or comments relating to this newsletter then please contact us on **0845 270 1148** or email

Interact@outsetuk.com.

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking, or refraining from taking, any action.

www.outsetuk.com
E-mail: enquiries@outsetuk.com
Tel: 01622 759900
Fax: 01622 759922
Copyright © 2008 Outset (UK) Limited

