

# Spearing | Waite

Employment Law

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Amanda Badley:  
amanda.b@spearingwaite.co.uk  
0116 242 1238

## Newsletter News update For HR Specialists

**Spearing Waite**  
41 Friar Lane, Leicester  
0116 2624 225  
[www.spearingwaite.co.uk](http://www.spearingwaite.co.uk)

### News in brief!

#### **Redundancy Payment Changes from 1st February 2009**

- The statutory minimum redundancy payment will increase from £330 to £350 per week.

#### **Unfair Dismissal Awards**

- Currently the maximum compensatory award for an unfair dismissal claim is £63,000 and will increase to £66,200

#### **Proposed Changes to Workplace Disputes**

Resolving disputes in the workplace will be radically transformed by the introduction of the Employment Act 2008, which comes into force on 6th April 2009, alongside the new highly anticipated ACAS Code ("the Code").

Currently, an employer must follow a defined statutory dismissal and disciplinary procedure before dismissing employees or taking other relevant disciplinary action. Failure to comply with the procedures means employers face liability for automatically unfair dismissal and will be liable to pay a higher rate of compensation to the employee as a result.

Similarly, employees must also follow a statutory grievance procedure before being allowed to bring a claim to the Employment Tribunal.

The current procedures attracted widespread criticism for being overly complicated and rigid in nature. The procedures were initially intended to improve the standards of internal disputes within the work place, and in turn, reduce the need to involve the Employment Tribunal. Instead the procedures formalised disputes and discouraged the prospects of informal settlements.

The proposed changes focus on providing clearer guidance to employers and employees, with the main aim of resolving workplace disputes within the workplace itself.

#### **The Main Changes**

The Employment Act 2008 ("the Act") introduces the following changes:

- The statutory procedures for disciplinary and grievance issues are to be removed.
- The Act removes automatic unfair dismissal for non-completion of the statutory procedures. This means that employers are now only under an obligation to follow a fair dismissal procedure in line with the principles outlined in the Code.
- Currently, failure to complete the statutory procedures attracts 10 – 50 % increase in compensation. Under the new regime, the Employment Tribunal may, if it considers it just and equitable, increase or decrease any

award it makes to an employee by no more than 25 %.

- Employers are now under an obligation to advise employees of their right to be accompanied. This has been expressly included in the Code whereas previously this obligation did not exist.

### **The ACAS Code**

This new Code is being introduced to provide employers and employees with clearer guidance in connection with work place disputes. It is vital that they are familiar with the Code's provisions as the Code will be used by Employment Tribunals to determine the fairness of a dismissal.

#### **The main changes are as follows:**

- The Code now covers disciplinary warnings, which were not previously currently covered within the dismissal and disciplinary procedures. However, the Code does not apply to redundancies or non renewal of fixed term contracts.
- The statutory right to be accompanied is now expressly included in the Code which in turn, places an obligation upon employers to advise employees of their right to be accompanied.
- Under the current regime, a modified statutory procedure exists. This modified procedure involves a two step process and can be followed in limited circumstances, namely where there are dismissals for gross misconduct. After the Code is introduced there will be no such modified procedure available. Instead, employers will be under an obligation to follow a fair disciplinary process as per the Code.
- There is increased emphasis on the need to conduct separate investigations from the use of disciplinary action. The Code specifies that the statutory right for an employee to be accompanied in a meeting does not apply to investigation meetings. However, the Code does encourage employees to allow an employee to be accompanied under their own procedures.
- Employees must make every effort to attend disciplinary or grievance meetings.

- An employee must make a reasonable request to be accompanied, and is now obligated to appeal in writing if they feel that any disciplinary action is wrong or unjust, or if they are unsatisfied with the outcome from raising a grievance.
- The obligations placed upon an employee are stricter than previous rules. In order to raise a grievance, an employee must raise it formally in writing, setting out the nature of the grievance with a manager who is not the subject of the grievance and without unreasonable delay.

### **The ACAS Guide**

The Guide supplements the Code and is purely advisory; it primarily focuses on the conduct of the parties during disciplinary and grievance meetings, and is likely to be referred to by parties at Employment Tribunal hearings.

### **Practical Guidance**

The new reforms come into force on 6th April 2009, however there is no clear guidance as to what happens if either employer or employee trigger the statutory procedures prior to the changes. What happens if procedures governed by the old regime continue post April 6<sup>th</sup> 2009.

It has been suggested that the old regime would remain if either of these events happened pre-April 6th 2009, and continue post the new changes being implemented. However the situation remains unclear.

In view of the pending changes, it is advisable that employers have their policies and procedures reviewed to check compliance with the new Code. Training of line managers should also be considered.

Should employers require any assistance in this regard, please do not hesitate to contact the Spearing Waite Employment Team.

### **Seminar-February 2009**

The Employment team's next seminar will look at the area of Unfair Dismissal including dismissals by way of redundancy ...details to follow shortly.

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