

DISPUTE AND GRIEVANCE PROCEDURES

From 1 October 2004, all employers have to have minimum procedures for resolving grievances and disciplinary problems at work. If they don't have any procedures, then they have to introduce them.

It's up to your employer to make sure that you know about the new rules and how to follow them when resolving a dispute in the workplace. If you have just started work for someone, they have to give you a written statement of your employment particulars within two months, which must include information about the disciplinary and grievance procedures.

Why have they been introduced?

The Government says the point of the rules, is to encourage more informal resolution of disputes and to cut down on the number of claims that end up before tribunals.

Who do they apply to?

The new procedures only apply to employees, and not to people like freelancers or sub-contractors who may provide a specific service for your employer, but who aren't on the payroll.

Grievances

What is a grievance?

A grievance is defined in the legislation as ‘a complaint by an employee about action (including an omission) which his employer has taken or is contemplating taking in relation to him’.

Basically, grievance procedures exist to enable you to raise any concerns you have about your job with management. These concerns could be about the work itself, your working conditions or about the people you work with.

You should always try to resolve your grievance informally before invoking the formal procedure.

What is the standard grievance procedure?

If, however, your employer does not resolve the issue to your satisfaction and you decide to pursue matters, you now have to follow a three-step grievance procedure (GP):

- Step one** – you give a written statement of the basis for your grievance to your employer
- Step two** – your employer invites you to a meeting, the meeting takes place and your employer informs you of the decision and of your right to appeal
- Step three** – you appeal and your employer informs you of the final decision

When does the standard GP apply?

The standard GP applies when you are aggrieved about any action that your employer has taken in relation to you, unless it is to do with your dismissal or you are being disciplined for your conduct or capability.

That means it applies to written warnings, investigatory suspensions and actions giving rise to constructive dismissals (when you resign because of your employer’s conduct).

What is the modified grievance procedure?

This consists of two steps

- Step one** – you give the written grievance to your employer
- Step two** – your employer gives a written response to you, without any meeting taking place

When does the modified GP apply?

This applies if, when you left your job, your employer was not aware of the grievance. Or your employer was aware, but the procedure had either not started or had not finished by the time you left.

Both of you have to agree to the modified procedure, otherwise the standard grievance procedure applies.

What is excluded under the GPs?

There are a number of circumstances in which you don’t have to follow the GP:

- If you are no longer employed and it is not reasonably practical for you to write the step one grievance letter
- You or your employer have reasonable grounds to believe that you (or anyone else) or your property might be threatened as a result
- You or your employer have been harassed and following the procedure would result in more harassment
- It is not practical to start the procedure, for instance because of illness or the closure of the employer’s business
- There is a collective issue, where your union has raised the problem on behalf of you and your colleagues.

What happens if you don’t lodge a grievance?

As a general rule, if you don’t put your grievance in writing and wait for 28 days to pass, you won’t be able to make a claim to an employment tribunal.

Dismissal and disciplinary Procedures

If your employer is thinking about dismissing you or taking disciplinary action (beyond a warning) on conduct or capability grounds, then it is his or her responsibility to start the relevant procedure. However, he or she should try to sort things out with you informally first.

What is the standard procedure for an employer to follow?

The standard procedure consists of three steps

- Step one** – the employer gives you a written statement and invites you to a meeting
- Step two** – the meeting takes place and the employer informs you of his or her decision and of your right to appeal
- Step three** – you appeal, the appeal takes place and employer informs you of the final decision.

Under these rules, your employer cannot take disciplinary action against you (other than suspension with pay) before the first meeting. However, he or she can take action against you before the appeal hearing.

When does the standard procedure apply?

The new dismissal and disciplinary procedures (DDPs) apply if your employer is thinking about dismissing you for any reason.

If, on the other hand, your employer is thinking about disciplining you, the new procedure only applies if it has to do with your conduct or your capability to do the job.

What is the modified procedure?

There are two steps to the modified DDP:

- Step one** – your employer gives you a written statement of the gross misconduct that led to your dismissal

- Step two** – you appeal and after a hearing the employer informs you of the final decision.

When does the modified procedure apply?

This applies if you have been dismissed without notice because of your gross misconduct. The dismissal must take place more or less on the spot, and it must be reasonable for your employer to have taken that kind of drastic action without any investigation and without giving you any notice.

This will only apply therefore in extremely rare cases.

What is excluded under the DDPs?

The DDPs will not apply to:

- The dismissal and immediate re-engagement of a whole category of employees
- Collective redundancies of 20 or more employees within 90 days
- Almost all dismissals as a result of industrial action
- Sudden and unforeseen closure of the employer's business
- Collective Issues, where discussion between management and employee representatives is the best way of progressing matters
- You or your employer have reasonable grounds to believe that someone might be threatened as a result
- You or your employer have been harassed and following the procedure would result in more harassment
- It is not practical to start the procedure, for instance because of illness or the closure of the employer's business.

GPs and DDPs

Do you have the right to be accompanied?

You have the right to be accompanied to meetings to discuss your grievance, and to meetings about dismissal or disciplinary action that your employer may take against you. This can be someone you work with, or a trade union official.

Which procedure should you follow when?

Disciplinary procedure:

If your employer dismisses you, you should appeal under the DDP. If you are aggrieved because your employer imposed a disciplinary penalty short of dismissal against you (but more than paid suspension or a warning), you should appeal under the standard DDP.

However if you think the penalty has nothing to do with your conduct or capability or is discriminatory, you should follow the DDP appeal route and raise a grievance.

Grievance procedure:

If you intend to leave your job and complain that you have been constructively dismissed, you should use the grievance procedure.

If the disciplinary action consists only of an oral or written warning or a suspension on full pay (in which case the DDP does not apply), you have to follow the applicable GP in the usual way.

In all other cases, you should use the full grievance procedure.

What are the rules on compensation?

If you fail to follow or complete an applicable DDP or GP, the tribunal will reduce your award by 10-50 per cent. If your employer is the guilty party, then your compensation will be similarly increased.

In unfair dismissal cases, these adjustments only affect the compensatory award, not the basic award. You will get a minimum basic award of four weeks' pay if it was because of the employer's failure to complete an applicable DDP.

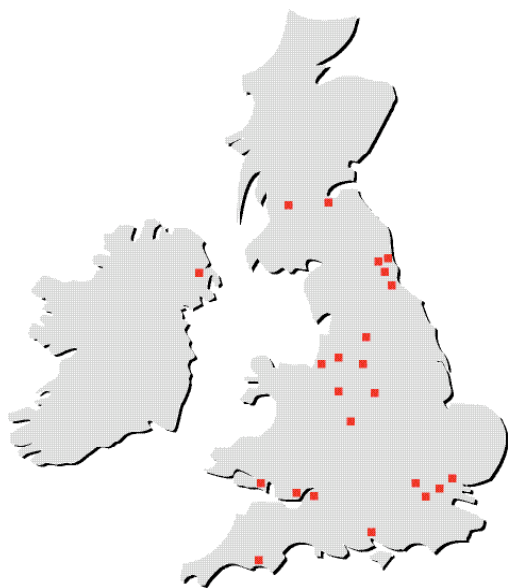
What principles apply to both procedures?

At each stage, you or your employer (as appropriate) must:

- take action without unreasonable delay
- ensure that the timing and location of meetings are reasonable
- ensure that you have all the information you need before the meeting
- conduct the meetings so that each side can explain their case
- if possible, ensure that appeals are heard by a more senior manager than the one who attended the first meeting.

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