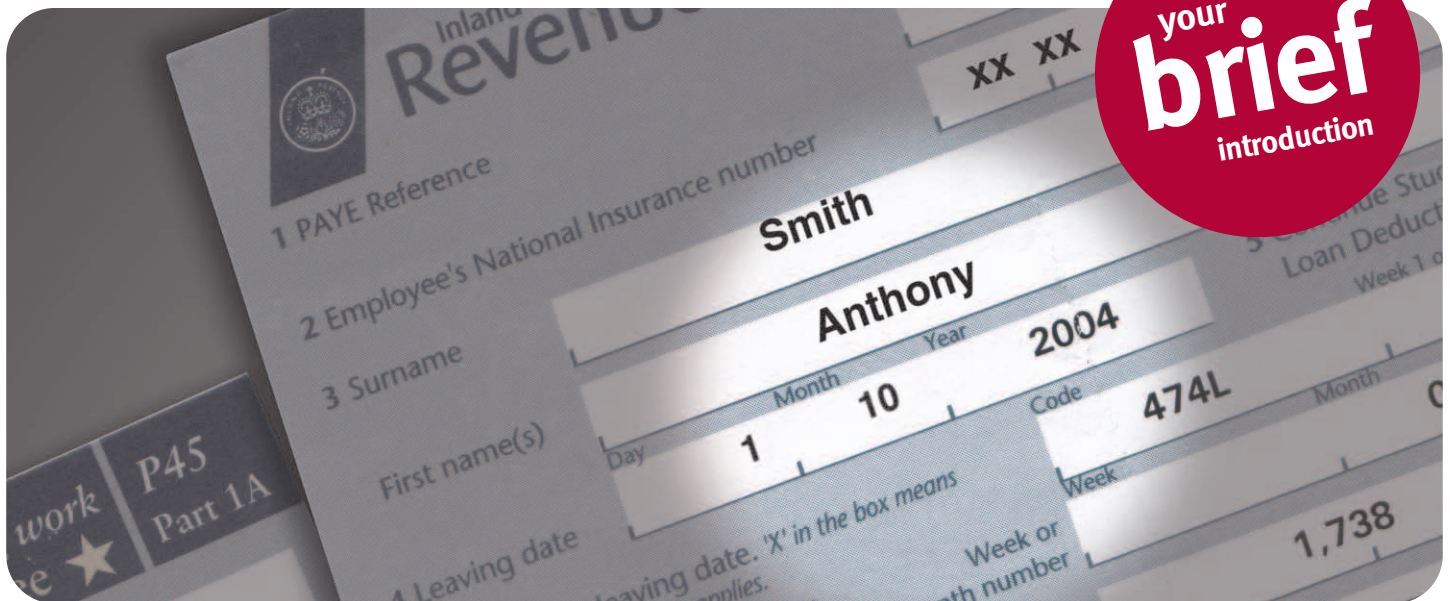


Dismissal, Disciplinary and Grievance Procedure - The New Rules



This is a brief introduction to the compulsory disciplinary and grievance procedures introduced by the Employment Act 2002 as expanded upon by Regulations in 2004. These notes are not intended to be comprehensive and any member who will be affected is advised to seek further advice from his or her Branch Secretary.

Dismissal and Disciplinary Procedure ('DDP')

From the 1st October 2004 all employers are required to follow a statutory procedure when dismissing or disciplining staff. While all the employers that recognise the CWU already have their own contractual disciplinary procedures, which are likely to be more comprehensive than the statutory procedures, there will still be circumstances where the rules will impact on these businesses and their employees.

A brief guide to the new law is set out below.

1 What dismissals are covered?

Any dismissal on the grounds of conduct, capability, redundancy, non-renewal of a fixed term contract or retirement, including compulsory retirement.

2 What disciplinary action is covered?

Any action taken wholly or mainly by reason of the employee's conduct or capability. This will include demotion, suspension without pay, reallocation or duties following ill health and imposed monitoring as part of a performance management procedure. **It will not include oral or written warnings or suspension on full pay.**

3 What is the statutory Standard Procedure?

This is the procedure that will apply in most cases. It consists of three steps:-

Step 1 – Employer sends a written notice to employee of proposed dismissal or disciplinary action.

Step 2 – Disciplinary hearing followed by notice to employee of employer's decision and invitation to appeal.

Step 3 – Appeal hearing followed by notice to employee of final decision.

Exceptionally, the statutory procedure may be modified in cases of gross misconduct followed by immediate dismissal, though a more comprehensive contractual procedure, e.g., Royal Mail's or British Telecom's, would take precedence.

4 When do the Procedures not apply?

The statutory procedures do not apply to dismissals under a number of circumstances including 'constructive dismissal', 'collective' redundancies and dismissal arising from industrial action - **the employers' contractual procedures do.**

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5 What are the consequences of non-compliance with the procedures for the:

● Employee?

If the employee does not comply with the statutory procedures, his or her compensation, if successful at a subsequent tribunal hearing, will be reduced by a least 10% and possibly up to 50%. **The employee should therefore always pursue the relevant procedure in full, including requesting an appeal.**

● Employer?

If the employer fails to comply, the dismissal will be automatically unfair and any award that the tribunal makes to the employee will be increased.

Will the dismissal be automatically unfair if the employer fails to comply with their own more comprehensive contractual procedures?

Not automatically. The dismissal will only be unfair if the employer is unable to show that the failure to follow their procedures would not have made any difference to their decision to dismiss. However, the employer must still prove that the dismissal was for a fair reason and that it was reasonable in all the circumstances. For example, the decision to dismiss must be one within a range of reasonable responses available to the employer.

Statutory Grievance Procedures

1 When do these apply?

The statutory grievance procedures will apply to complaints by an employee about action taken by their employer that could give rise to tribunal claims, e.g., unlawful discrimination. It will also include conduct by the employer that could give rise to a claim for constructive dismissal; that is, any conduct which would constitute a **fundamental** breach of contract.

Again, where an employer has or introduces a better **contractual** grievance procedure through agreement with the Union, that should be followed wherever its terms go further than the statutory procedure. All CWU/employer agreements qualify.

2 What is Standard Procedure?

This will apply in most cases where the employee wishes to bring a complaint:

Step 1 – Employee sends written notice of grievance to employer.

Step 2 – At least one meeting between employer and employee to discuss grievance followed by notice to employee of employer's decision and invitation to appeal.

Step 3 – Appeal hearing followed by notice to employee of final decision.

3 When do the Procedures not apply and when are they deemed to have been complied with?

The Grievance Procedures may not apply if the employment has already ended and a procedure has not been commenced. They may be deemed to have been complied with under a range of circumstances; for example, if to follow the procedure would result in threats or harassment to one of the parties or it is not practicable to complete the process in a reasonable time.

4 What are the consequences of non-compliance with the procedures for the:

● Employee?

If the employee makes a tribunal claim before raising the grievance internally in writing **and** does not allow **28 days** for a response from the employer, the Tribunal will strike out the complaint. However, a further ET application can be made once the grievance has been lodged and 28 days has elapsed. **In that case the time limit will be extended by 3 extra months, provided that the employee sends the letter of grievance to the employer promptly.**

If s/he fails to comply with other parts of the procedure such as not taking reasonable steps to attend a meeting then, if the claim is successful, the Tribunal is likely to reduce their award. As with the disciplinary and dismissal procedures, the employee should always submit an appeal under the procedures.

● Employer?

Conversely, if the employer fails to comply, any award made to the employee by a Tribunal is likely to be increased by at least 10% and possibly up to 50%.

Extension of time-limits for Tribunal claims

The time limit for bringing Tribunal claims remains three months from the act complained of. However, in claims arising from 1 October the normal limitation period can be extended by three months from the expiry of the 'normal' time limit.

1 When is the time limit extended for claims arising out of a disciplinary or dismissal procedure?

Time will be extended if, at the time the normal time limit expired, the employer was following a dismissal and disciplinary procedure and this was still underway.

2 When is the time limit extended for claims arising out of a grievance?

It will be extended by three months if the employee makes a claim to the ET before submitting an internal grievance and does not allow **28 days** for a response (see above). It will also be extended if the employee sends a letter under step 1 of the statutory grievance procedure before the end of the normal three-month time limit.

When the Disciplinary and Grievance Procedures overlap

What if there is a grievance as well as a disciplinary claim?

If the employer is pursuing a disciplinary action that arises from the employee's conduct or capability and the employee believes that either the action is discriminatory or it is being taken for reasons other than conduct or capability, s/he may be entitled to bring a grievance against the employer under the statutory procedures. The grievance must be raised before the appeal in the discipline case. You should seek advice in these circumstances.

Questions about this newsletter?

Contact:

Jim Moher

CWU EMPLOYMENT LAW DEPT.

Telephone

0208 971 7201

Tony Hows

SIMPSON MILLAR EMPLOYMENT LAW DEPT.

Telephone

0870 855 1800

Email

tony.hows@simpsonmillar.co.uk

Produced by the CWU in partnership with SIMPSON MILLAR'S EMPLOYMENT LAW DEPT.

Simpson
solicitors
Millar
Incorporating A. J. HOWS solicitors 

UK Offices

39 St. Paul's Street
LEEDS LS1 2JG

Tel: 0870 855 1200

Fax: 0870 855 1299

Trafford House
Chester Road Stretford
MANCHESTER M32 0RS

Tel: 0870 855 1300

Fax: 0870 855 1399

101 Borough High Street
LONDON SE1 1NL

Tel: 0870 855 1400

Fax: 0870 855 1499

47 Summer Lane
BIRMINGHAM B19 3TH

Tel: 0870 855 1500

Fax: 0870 855 1599

20 Church Road
Lawrence Hill

BRISTOL BS5 9JA

Tel: 0870 855 1600

Fax: 0870 855 1699

271 Cowbridge Road East
CARDIFF CF5 1JB

Tel: 0870 855 1700

Fax: 0870 855 1799

165 The Broadway
WIMBLEDON

London SW19 1NE

Tel: 0870 855 1800

Fax: 0870 855 1899

www.simpsonmillar.co.uk

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solicitors
Millar
Incorporating A. J. HOWS solicitors 

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