

## **DALC Circular No. 02/2009**

**To all Member Town and Parish Councils and Parish Meetings**

### ***GENERAL CIRCULAR***

---

#### **2. NEW LEGAL REGULATIONS FOR MANAGING GRIEVANCE AND DISCIPLINARY PROBLEMS AT WORK**

In April 2009 the current legal framework used by Employers to manage Grievances and Disciplinary issues will be scrapped and replaced with a new set of regulations and guidelines.

What are the key changes?

Employers will have to demonstrate that their procedures used for resolving Discipline and Grievance issues are fair and reasonable. This can best be demonstrated by Employers strictly adhering to their own internal Grievance and Disciplinary procedures. Any deviation from your own procedures may be considered by an Employment Tribunal to be an unreasonable act.

From the 6<sup>th</sup> April 09 –

1. Employees will not have to submit Formal Grievances in writing. They can be submitted verbally and to any tier of management within a business.
2. Employees will not have to fully exhaust their Employer's internal Grievance procedure before they can bring a claim to an Employment Tribunal. If an employee can demonstrate that they have been subjected to unfair and unreasonable treatment at work, they could bring the matter before an Employment Tribunal at any point.
3. Appeals by Employees against disciplinary action or dismissal will not have to be submitted in writing, or by a specific deadline, e.g. 5/7 working days.
4. The previous legal regulations included issues such as redundancy procedures and sickness management. This will no longer apply from 6<sup>th</sup> April 09.
5. All disciplinary procedures, with the exception of gross misconduct, must involve two written warnings prior to dismissal. Employers will not be able to go straight to a Final Written warning as their first disciplinary action, no matter how serious the problem.

6. The introduction of Mediation into the Discipline and Grievance arena, to address issues such as poor performance, personality clashes, lateness and poor attendance caused by personal problems.
7. Pre-claim conciliation. If ACAS are consulted through their help line by an Employee who appears eager to resolve their difficulties through an Employment Tribunal, the ACAS Adviser can inform the caller of all their options including conciliation, if they are still in employment. If the employee has resigned or been dismissed, ACAS can offer the opportunity of conciliation with their employer as an alternative to taking their problem to a Tribunal.

#### How Should Employers Respond?

1. By reviewing their current Grievance and Disciplinary procedure to see if they are straight forward. Employers need to consider whether or not their procedures might be complex, difficult to implement under some circumstances, and therefore prove difficult to fully adhere to under all situations.
2. Review Grievance procedures to ensure that Employees make it absolutely clear to their Employer that they wish to submit a Formal Grievance, whether or not it is in writing or verbally.
3. Ensure that all managers involved with disciplinary action are aware that two forms of Written Warning must be issued prior to dismissing someone for non-Gross Misconduct.
4. Review Redundancy and Sickness Management procedures to ensure they are fair and reasonable.
5. Ensure that an Appeal must be submitted within a 'reasonable' time scale, and the burden is upon the Employee to make Management fully aware that they are submitting an Appeal.
6. Make sure you have a specified Manager / tier of Management to deal with Disciplinary and Grievance meeting, and in separate Manager / tier of management to deal with Appeals.
7. Introduce a Mediation process in to the Grievance and Disciplinary procedure. This should explain the Employer's policy in conducting Mediation, how the process works, issues it will apply to (such as personality problems, performance worries), and who is responsible for managing it. ACAS also recommend employers should consider using, third party external Mediators in some situations.

*The penalties for Employers who make mistakes remains high. The maximum penalty for Unfair Dismissal is currently £63,000*

*This information is purely an interim statement which will result in further detailed advice being circulated at a later date.*

