



HR Briefing

May 2007

STATUTORY GRIEVANCE PROCEDURES

ANYONE FANCY A GAME OF GRIEVANCE SPOTTING?

Background

On 1 October 2004, compulsory procedures aimed at improving the resolution of disputes in the workplace were introduced. Intended to reduce the number of claims going to the Employment Tribunal (ET), they introduced a system whereby both employers and employees had set procedures to follow in resolving a grievance. The employee is required to raise the grievance internally first, and is subsequently barred from issuing a Tribunal claim if they fail to do so.

Upon raising a statement of grievance the employer is obliged to hold a meeting and subsequently offer the employee the right to appeal. If the employer fails to take these steps and a claim is successful in the ET, the ET can increase the compensation awarded by 10-50%. Early indications show that the ET is taking the view that 50% is the appropriate figure, unless there is a good reason to reduce it.

Sounds simple - so, what has gone wrong?

Unfortunately, the procedures have proven to be vague and the way in which they are to be followed is especially complex for the employer. This has led to satellite litigation on the question of 'what constitutes a grievance?'.

The Government is currently consulting on this issue and it has called for a radical overhaul of the current approach to resolving workplace disputes. The procedures are therefore likely to be repealed or amended in time. (No current indication as to when).

Key Recommendations

- Ensure that staff are aware of the internal grievance procedure and make sure that they receive training on how to properly implement it.
- Make sure that employees, and especially managers, are alive to the current issues surrounding this area. Provide staff with training on how to 'grievance spot' and explain why it is important.

What constitutes a grievance?

The problem has arisen as in order to bring a grievance against an employer, the employee must set down in writing the nature of the alleged grievance and then send this to the employer. The ET have been interpreting this widely and has found that this does not just mean a letter. The grievance can be in an email, a resignation letter or even a letter sent by a firm of solicitors on behalf of an ex-employee.

A recent case concluded this month in the Employment Appeal Tribunal (**EAT**), found that even notes taken at a departmental meeting can constitute a grievance. This is set to cause employers a great deal of concern. In that case, the employee did not set down the grievance in writing but described the situation to the employer at an internal meeting where it was then written down in the minutes. The EAT concluded that this was sufficient to constitute the grievance. It could be argued that this turns the requirement for the grievance to be 'in writing' on its head.

Grievance Spotting

Make sure that your managers are alive to "grievance spotting". Given the state of the case law on this area, employers would be well advised to be aware and vigilant to any issues and/or complaints raised by employees – either on a formal or informal basis. These could potentially constitute a grievance and so an employer could risk facing an increase in compensation should the employee take the claim to the ET. Employers should train staff on this issue and instruct them to report any complaints from employees and make sure that these are put in writing. It is good practice to conduct exit interviews in any event, and if you do so, this should give employees the opportunity to raise any complaints or issues they have, and they can be asked if they would like to pursue a grievance. This should help limit any surprises at a later date and protect the employer's position.

If you have any queries on any of the above, or if you require any further information about implementing the Regulations, and implementing a pre-existing agreement, please contact either **Alison Loveday** at alisonl@berg.co.uk or **Lee Jecott** at leej@berg.co.uk to discuss further issues. Alternatively you contact either **Alison** or **Lee** on **0161 833 9211**.

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- Remember - as an employer, compensation can be increased by as much as 50% if you fail to follow the correct procedures.

- As it appears that a complaint in any form could be all that is required to fall foul of the procedures, if you are in any doubt, ask the employee to put their grievance down in writing and follow the correct procedures.
- Conduct exit interviews.