

# FACT SHEET



## NEW ACAS CODE AND REPEAL OF STATUTORY PROCEDURES

On 6 April 2009 the Employment Act 2008 brings about some key changes in employment law. This document outlines some of those changes and some frequently asked questions.

1. **Statutory Disciplinary, Dismissal and Grievance Procedures:** the statutory procedures are abolished and, except in certain circumstances for a limited period only, will no longer apply. That said, the procedures have been around for more than 4 years and have arguably brought about a cultural shift in the way in which we deal with disciplinary and grievance issues which will continue to colour the way we approach matters in practice.
2. **New ACAS Code on Disciplinary and Grievance Procedures (the Code):** there is no legal requirement to comply with the Code but where a party unreasonably fails to do so, an Employment Tribunal can adjust awards by up to 25% (upwards or downwards).
  - Dismissals will not be “automatically” unfair if the employer fails to comply with the Code. However, if they fail to comply employers risk a 25% increase to any potential award.
  - Employees will not be required to raise a grievance before bringing claims in the Employment Tribunal. However, not doing so means they risk a reduction of 25% to any potential award.
3. **Fixed conciliation period for ACAS:** the fixed time limit imposed on ACAS for conciliating unfair dismissal claims no longer applies. Like discrimination claims, ACAS can now conciliate unfair dismissal claims right up to the day of the hearing.
4. **ET1 and ET3 claim forms:** new versions of the forms must be used when bringing or defending a claim in the Tribunal. The new forms will be on the Tribunal website from 6 April.

### WHAT TYPES OF DISCIPLINARY SITUATION DOES THE CODE COVER?

ACAS defines disciplinary issues as relating to performance or conduct. The Code states that it does not apply to redundancy dismissals or expiry of a fixed term contract.

### DO WE HAVE TO CHANGE OUR EXISTING POLICIES AND PROCEDURES?

If they comply with current legislation, probably not. However, it is a good idea to review them just to be sure. If you have a recognised trade union or employee forum run any changes by them for comment, to avoid accusations of failing to consult, as suggested by the ACAS Code.

### CAN I FORGET ABOUT THE STATUTORY PROCEDURES NOW?

Not yet. There are complicated transitional provisions. So where certain steps relating to either disciplinary or grievance matters take place on or before 5 April 2009 then the old statutory provisions will apply.

If you have any queries relating to the new Code and how to apply it please contact Sian Davies on 02920 474474 / [s.davies@capitallaw.co.uk](mailto:s.davies@capitallaw.co.uk) or Nia Cooper on 029 2047 4453 / [n.cooper@capitallaw.co.uk](mailto:n.cooper@capitallaw.co.uk).

\* **Please note that this note does not amount to legal advice and should not be relied upon as such.**