Following the rules

Those who have yet to implement written disciplinary or grievance procedures should use the new Code of Practice as a starting point. Stephen Knowles explains

In one respect, employment law and fashion trends have something in common: if you wait long enough, things turn full circle.

In the heady days of 2004 (when the credit crunch was yet to register), the new trend in employment law was Statutory Dispute Resolution Procedures. Much heralded, these were designed to lay down certain minimum disciplinary and grievance procedures to be used by employers and employees prior to the launch of a Tribunal claim.

The intention of these procedures was to promote the resolution of more disputes in-house. A three-step process was established, broadly incorporating an initial letter, the first hearing and the appeal hearing. The idea was that, if one party did not comply with the binding procedures laid out, this would lead to the imposition of sanctions. This would often produce an automatic finding of unfair dismissal against employers unaware of the procedures, or careless in their operation.

Problematic procedures

After just three years, these procedures had proved so problematic that the Government commissioned a formal review of their effects. The resulting Gibbons Review noted that while the procedures had some benefits, these were outweighed by the negative consequences, which included:

- Formalising disputes too early
- Causing both parties to take action earlier than they might otherwise have done
- Providing a ‘one size fits all’ generic solution that was expected to suit every different situation (in particular, the procedures were deemed applicable in cases of redundancy and fixed term contract expiration)
- Excessive attention to procedure as opposed to the substance of the dispute.

It was no great surprise when the review recommended the repeal of the statutory dispute procedures.

The new code

With effect from April 6 2009, the Government repealed these procedures. So, has this been good news for dentistry?

The procedural nightmare of the three-step approach has come to a welcome end. However, employers cannot simply discard procedure and carry on regardless. For instance, disciplinary and/or grievance cases that began before that date must still comply with these procedures. Also, the Government has continued to focus on resolving disputes by requesting that ACAS produce a revised Code of Practice on Disciplinary and Grievance Procedures. While a failure to comply with the revised code will not make a person liable to proceed, this may well be to their disadvantage as the Tribunal will be able to adjust an award by up to 25 per cent for an unreasonable failure to comply with the revised Code of Practice.

Therefore, an employer failing to comply could expect to pay out more, while a non-compliant employee could see compensation reduced by up to the same amount (as an aside, the code makes it clear that this is not applicable to dismissals due to redundancy or the non-renewal of fixed-term contracts).

Employers are advised to review the new ACAS Code, which can be found at: http://www.acas.org.uk/CHttpHandler.aslx?Id=3846p0.

Some essential reading

A huge number of things Jones for the dentist’s attention these days, but a large number of cases that end up on the solicitor’s desk stem from improper conduct of discipline and grievances by the employer. Dentists need to take the time to establish proper procedure and ensure that they keep their procedures up to date.

At just 10 or so pages and written in an accessible style, it should not take long for dentists to familiarise themselves with it. It essentially outlines the basic principles of good employment practice, many of which were already outlined in the old statutory procedures. For example, in the section that deals with disciplinary matters, the Code concerns:

- Establishing the facts of a case
- Informing the employee of the problem
- Holding a meeting with the employee to discuss the problem (and allowing the employee to be accompanied at the meeting)
- Deciding on appropriate action
- Providing employees with the opportunity to appeal

Although there is no reason why these stages should be unfamiliar to the dentist, many solicitors never cease to be amazed at the number of employers who skip over these details, or miss them completely.

It is recommended that all dentists and employers read the new Code and review their current procedures to ensure compatibility and compliance. Those who have yet to implement written disciplinary or grievance procedures should use the new Code as a starting point.

It is hoped that the new rules will be straightforward in practice and will lead to less emphasis on rigid procedure, and more of a focus on resolving an underlying dispute.

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