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## **Employment Act 2002 (Dispute Resolution) Regulations 2004**

The above regulations introduced minimum standards for employers and employees in terms of Discipline, Appeal & Grievance Procedures from October 2004. From that date every employer's procedures have to meet at least the minimum standards set in the Regulations, and where appropriate exceed them. The key aspects of the new regulations are set out in brief below.

### **Statutory Dismissal and Disciplinary Procedure**

The Guidance to the Regulations states that the standard Dismissal and Disciplinary Procedure will apply to:

***"All dismissals except- some collective or constructive dismissals, some gross misconduct dismissals and dismissals where employment cannot be continued for reasons beyond anyone's control", and***  
***All disciplinary action except-oral and written warnings and suspensions on full pay"***

In the case of disciplinary action, it is suggested that to be safe, an employer should follow the three-step procedure set out below if as a result of the disciplinary process, the employer may decide to take disciplinary action at a **final warning** "last chance" stage. It is not essential (though possibly desirable) to use the minimum procedure also in a situation where only a first written warning is likely to be the outcome.

### **The Procedure**

#### **Step One**

The employer must set out in writing the alleged conduct or characteristics or other circumstances which have led the employer to consider taking disciplinary action. This must be sent to the employee with an invitation to attend a meeting to discuss the matter. This meeting should be at a reasonable time and place which allows sufficient time for the employee to consider the facts of the complaint against him/her, and to prepare any defence. The employee should be told in the letter of his/her right to be accompanied or represented by a work colleague or a trade union official at the meeting.

#### **Step Two**

A face to face meeting between the employer and employee must take place at which both sides must be given adequate opportunity to state their case. (It is advisable, if possible, for the manager conducting the disciplinary hearing to have a colleague

present to take notes of what is said by both sides. However, this should not be someone who may be involved at any later appeal hearing if one should be required).

After the meeting and having given due consideration to everything that was said, the employer must write to the employee informing him/her of the outcome. In that letter the employee must be told that he/she has the right to appeal against the decision and that if he/she wishes to do so, he/she must tell the employer.

### **Step Three**

The Appeal hearing (if one is requested by the employee) should be arranged at a mutually convenient time and place. Normally the Appeal hearing should be conducted by a more senior authority (e.g. Chair of Trustees), who was not in any way involved in the previous hearing or discussion of the issues at that stage. After that meeting, the employee should be notified of the decision, which will be the final decision. It should be stressed that the above statutory procedure does not prevent the employer from carrying out a more comprehensive process in these situations. Indeed, following this procedure will not necessarily be seen as completely fair by an employment tribunal hearing a claim of unfair dismissal, particularly if previously the employer operated a more comprehensive dismissal and disciplinary process.

### **Statutory Grievance Procedure**

This represents the minimum grievance process that the employer must have in its policies and procedures. Like the Statutory Dismissal and Disciplinary Procedure, there are three steps in the process.

#### **Step One**

The employee must submit to the employer a written explanation of his/her grievance stating the basis for his/her complaint

#### **Step Two**

The employer must invite the employee to a meeting to discuss the issue(s). Once again the employee has the right to have a colleague or union representative to accompany/represent him/her.

After the hearing, the employer must inform the employee of any decision and offer the employee the right to appeal.

#### **Step Three**

If the employee wishes to appeal against the outcome of the grievance hearing, he/she must inform the employer. A second meeting should be held to hear the appeal, preferably with a more senior manager, and after the meeting the employee should be informed of the final decision.

**Please do not hesitate to contact the Employment Advice service at NYFVO if you require further advice or clarification of what steps you should take to adapt/revise your existing policies in this area.**

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