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Monthly Employment Law Bulletin

RESOLVING DISPUTES AT WORK – A GUIDE FOR EMPLOYERS IN NORTHERN IRELAND

Donna Reilly, Morgan McManus Solicitors, Enniskillen advises on the new procedures which will apply in Northern Ireland under the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004

From 3rd April 2005, subject to of the approval of this order by parliament, in Northern Ireland, where an employment dispute occurs, employers and employees will be required to follow minimum procedures to attempt to resolve it in the workplace. If they do not, a tribunal may reject an application or alter an award of compensation. This article contains practical advice for employers on what they can expect.

It is important to be aware of these rules and guidelines, which place reciprocal duties and procedures on employers and employees in resolving work disputes and dealing with dismissals. It is significant for the employer to note that the new minimum procedures apply to employees, but not to other workers who supply services to employers; for example, subcontractors.

An employer is bound by law to have established disciplinary, dismissal and grievance procedures and to inform the employee of these. Before using these procedures however, all parties should attempt to resolve issues informally.

DISCIPLINARY ACTION AND DISMISSAL PROCEDURE:

If an employer is considering taking disciplinary action against the employee on capability or conduct grounds, or dismissing the employee, the responsibility lies with him/her to start dismissal or disciplinary procedures. The employer is required to send a written statement of his/her reasons and to arrange a meeting to discuss this with the employee. If the employee disagrees with the decision, then the employer must arrange an appeal. If this is unsuccessful, the employee may consider pursuing a claim against the employer in a Tribunal.

GRIEVANCE PROCEDURES:

Grievance procedures enable an employee to raise any concerns, which the employee may have about his/her job with management. Firstly, discussions between an employee and employer should be made to resolve all issues informally and notes should be kept by both sides. An employer must, under law, inform the employee in writing what are the work procedures he/she may use to raise a complaint and the employee must use these procedures, as outlined, to make a complaint.

However if the employee needs to take matters further, the process is a simple three step one:

1. The employee must set out his/her grievance in writing and send a copy to the employer.
2. When the employer has read the written statement, he/she must invite the employee to a meeting to discuss the grievance. The employee has the right to be accompanied by someone who works with him/her or by a trade union representative. This meeting must be held at a reasonable time and place for the employee.
3. If the employee does not agree with the employer's decision, he/she has the right to appeal. If the employee does not appeal but goes straight to a Tribunal with his/her complaint, any money awarded may be reduced by between 10% and 50%. After the meeting, the employer must inform the employee of the decision. If the employee considers that his rights have been infringed, then the employee may pursue this in a Tribunal.

As a general rule, the employee will not be entitled to make a claim to a Tribunal based on a grievance unless the employee has put his/her grievance to the employer in writing and then allowed 28 days to pass. This rule does not apply if the grievance is about dismissal, or about disciplinary action which the employee agrees was taken against him/her on conduct or capability grounds (unless the employee thinks that the action involved unlawful discrimination against him/her)

RAISING A GRIEVANCE POST JOB:

TWO STEP PROCESS:

The employee can use the two-step process if:

1. the employee and the employer agree in writing to use the modified procedure; and
2. the employer did not know about the grievance **or** the procedure was either not started or started but not completed before the employee left the employment.

In this process, the employee sends a written statement of grievance to the former employer and the former employer writes back answering the points raised by the employee.

DISMISSAL AND DISCIPLINARY ACTION:

If the employer is concerned about an employee's conduct and capacity, the employer should try to sort out things informally before considering disciplinary action or dismissal. At the point the employer contemplates taking disciplinary action or dismissing the employee, he or she should follow the minimum statutory disciplinary procedures. 'Disciplinary action' means action taken on grounds of the employee's conduct or capability and does not include warnings or suspension on full pay.

If the employer does not follow the statutory minimum procedures and,

1. dismisses an employee, the employee may complain to a tribunal, which will normally find the dismissal to be automatically unfair and increase compensation; or
2. takes other disciplinary action short of dismissal, against the employee and the employee subsequently makes a successful tribunal claim about that action, any money awarded to the employee is likely to be increased by between 10% and 50%.

The new statutory minimum procedures also apply if;

1. the person is an employee; and
2. the person is on a fixed-term contract of a year or more which is not renewed; and
3. the person is dismissed on grounds of age and the person has not reached the age of 65, or if different, the normal retirement age for the type of job.

WHEN AN EMPLOYEE IS NOT REQUIRED TO GO THROUGH THE NEW PROCEDURES

This includes:

1. If the employer gives the employee a verbal or written warning or suspends an employee on full pay.
2. If there are reasonable grounds for believing that going through the procedures would result in a significant threat to the employee's person or property or some other person or their property

3. If there are collective issues where discussion between management and employee representatives are the best way of taking matters forward.
4. If the employer is under a duty to consult employee representatives in relation to collective redundancies.
5. If it is not practicable for the procedures to be compiled with within a reasonable period.

CAN THE GRIEVANCE PROCEDURE APPLY TO A DISMISSAL OR DISCIPLINARY PROCEDURE?

There is no need for the employee to start a grievance procedure over a dismissal in any circumstances (unless the employee is complaining about constructive dismissal).

In this scenario, the employee can take action against the employer if:

1. the employee disagrees with the employer that the action was taken on conduct or capability grounds; and/or
2. the employee perceives that the action equated with an unlawful discrimination against the employee.

In the circumstances, the employee should put this before the employer in writing and this should be done prior to an appeal meeting. If the employee puts the grievance in writing before the appeal, the requirements will be satisfied. If this is done subsequent to the meeting taking place, then the employee will be required to begin a full procedure i.e. a complaint in writing, initial meeting, appeal meeting.

INSTANT DISMISSAL

An instant dismissal of an employee where an employer does not investigate any circumstances is nearly always unfair.

TIME LIMITS FOR MAKING APPLICATION

The time limit is generally three months from the date of the matter complained of. If the claim is received after the end of the time limit that applies to the employee's complaint, the Tribunal will not normally accept the claim. In certain circumstances the normal time limit for submitting Tribunal claims will be extended to allow extra time for workplace discussions.

WHEN THE EMPLOYEE'S CLAIM WILL NOT BE ACCEPTED

If the employee's claim is based on a grievance with the employer or former employer and the statutory grievance procedure applies, the employee's claim will not be accepted at all unless either he/she:

1. puts the grievance in writing to the employer and then allow at least 28 days to pass before putting in the claim to the Tribunal office; and
2. gives a valid reason on the claim form why the employee believes that the legal requirement does not apply in this case.

APPLYING TO AN INDUSTRIAL TRIBUNAL

Where a dispute over an employment issue cannot be resolved by those involved, or with outside assistance, a claim can be submitted to the Tribunal. There are two types of tribunals in Northern Ireland. Industrial Tribunals can hear claims about the majority of disputes; for example, unfair dismissal; The Fair Employment Tribunal deals only with cases involving alleged discrimination.

Preliminary Hearings, known as Pre-Hearing Reviews (PHRs) occur before a legally qualified chairman. Full hearings decide outstanding issues and reach conclusions and occur before three Tribunal members constituting the chairman and specialists in work related problems. More information can be obtained at <http://www.industrialfairemploymenttribunalsni.gov.uk>

APRIL 2005 – IMPORTANCE FOR EMPLOYERS

In summary, employers should be aware of the changes implemented in April 2005 for two main reasons. Firstly, employers should take account of the duty placed on him/her to resolve work disputes with employees through the new minimum procedures. Secondly, it is equally important for employers to know the employee's rights and obligations in these situations and what course of action the employee must take before it will be possible for him/her to pursue a claim effectively in a Tribunal. In conclusion, it is essential that all employers put in operation these new minimum procedures to ensure effective management of employment issues and disputes and be aware of what actions could be taken by employees in the tribunals in certain situations.

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This Bulletin is intended as a general guide only. Care and attention has been taken to ensure the accuracy of the information in this Bulletin however, we advise that specific professional advice should be taken. Employment legislation is subject to change.