



Practical, Prompt, Professional HR Solutions

## Newsletter - March 2009

At **Complete People Management Ltd** we want you to receive a newsletter that is informative and assists you in dealing with your people matters. If you like the newsletter, tell someone about it. If you don't, please tell us. Your feedback is important to us.

This month we dedicate almost all of the newsletter to the ACAS statutory code of practice on discipline and grievance which is due to come into force on the 6<sup>th</sup> April. As a result there will probably be some changes required to your company discipline and grievance procedures and these of course will need to be communicated to your employees.

The newsletter will cover:

- Recent ET outcomes
- Are you Ready?
- Discipline and Grievance Handling from the 6<sup>th</sup> April
- Question and answer



Sue Schoormans  
Managing Director

**Email:** [sue@completepeoplemanagement.co.uk](mailto:sue@completepeoplemanagement.co.uk)  
**Telephone:** 0208 8168 726  
**Fax:** 0870 4601 129  
**Skype:** sue.schoormans

## Quote of the Month

**Who is wise? He that learns from everyone. Who is powerful? He that governs his passions. Who is rich? He that is content. Who is that? Nobody.**

*Benjamin Franklin*



Practical, Prompt, Professional HR Solutions

## Recent Employment Tribunal Outcomes



### **Matuszowicz versus Kingston Upon Hull Council – Reasonable adjustments**

The question posed to the court of appeal in this case was when the time starts related to an employer failing to make a reasonable adjustment related to an employee's disability.

It was found that the time starts when:

- The employer makes a decision to not make an adjustment and
- Where the employer failed to make a decision at all regarding an adjustment, an artificial limitation start date would be created. In reality this means at the time when the employer might reasonably have been expected to make the adjustment.

### **Richmond Pharmacology versus Dhaliwal – Racial Harassment**

A director at Richmond Pharmacology said to a senior employee who was leaving the company "We will probably bump into each other in the future, unless you are married off in India."

Dhaliwal claimed that this amounted to harassment on the grounds of her race. The EAT found that this did amount to harassment.

### **Small and others versus (1) Boots plc (2) Boots UK Ltd – Discretionary bonuses**

Small and others were employed in warehouses near Nottingham. In 2003 some of the claimants in one warehouse transferred to Unipart and in 2004 the claimants in the other warehouse transferred to Unipart. The transfers were within the TUPE regulations 1981. In 2007 the warehouse undertakings were transferred back to Boots under the TUPE regulations 2006.

Bonuses were paid to the employees while employed by Boots (up to 2003 and 2004 respectively) but not while employed by Unipart.

Small and others brought claims for unlawful deductions from wages as they had not been paid the bonuses while employed by Unipart.

The ET ruled that the bonuses were not a contractual right and that the bonus terms implied discretion as opposed to obligation.

The EAT referred the case to a different tribunal stating that just because the bonus terms implied discretion did not mean that the bonus was not contractual.

### **Keep up to date with ET cases here:**

[http://www.completepeoplemanagement.co.uk/24/?form\\_16.userid=4&form\\_16.replyids=10](http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=10)



Practical, Prompt, Professional HR Solutions

## Are you Ready?



In April there are many employment legislation changes. The headlines of this are as follows:

### **Working Time Regulations – 1<sup>st</sup> April 2009**

The minimum paid holiday entitlement increases to 28 days from 24 days. The days can include the usual 8 bank holiday days.

### **Repeal of the Workplace Dispute Resolution Procedures – April 2009**

The dispute resolution procedures were introduced in 2004 and most employers have complained about their complexity and the administrative burden that they create. The repeal means the return to the old law on unfair dismissal and the abolition of the statutory dismissal and grievance procedures.

### **The Employment Act 2008 - Acas Discipline and Grievance Code of Practice – 6<sup>th</sup> April 2009**

The revised statutory Acas Code of Practice on disciplinary and grievance procedures comes into force. Any breach of the Code of Practice will result in a tribunal increasing or decreasing any award made by up to 25%.

### **Extension of the Right to Request Flexible Working – April 2009**

Employees will be given the right to request to work flexibly where they have children up to the age of 16. This currently stands at age 6 or under 18 where the child is disabled.

### **Extension of right to time off for public duties – April 2009**

Time off for employees undertaking public duties will be extended to cover members of probation boards, members of court boards and youth offender panel members.

### **Maternity, Paternity and Adoption Pay increases - April 2009**

Increases to £123.06 per week.

### **Statutory Sick Pay increases - April 2009**

Increases to £79.15 per week.

**If you require further information or require your policies and procedures reviewing regarding any of the above contact Sue on 0208 8168 726 or at [sue@completepeoplemanagement.co.uk](mailto:sue@completepeoplemanagement.co.uk)**



Practical, Prompt, Professional HR Solutions

## Discipline and Grievance Handling



From the 3 step procedure

to informal resolution



From the 6<sup>th</sup> April the ACAS statutory code of practice on discipline and grievance will come into force.

### **The headlines of this are as follows:**

- Issues will be sought to be resolved informally and in a more relaxed manner in the first instance.
- Where issues are not able to be resolved informally in the first instance an independent third party will be sought to help resolve the issue. The third party can be an internal mediator.
- Failure to resolve the issue(s) informally will result in a formal approach.
- The code will not apply to dismissals for the reason of redundancy and the non-renewal of fixed term contracts.
- Bullying, harassment and victimisation matters will be dealt with under a separate procedure.
- Whistle blowing will be dealt with under a separate procedure.
- Capability can be dealt with under a separate procedure.
- Employment tribunals (ET's) will adjust awards by up to 25% for unreasonable failure to comply with the new code.
- ET's will reduce any award made to an employee by up to 25% where the employee has unreasonably failed to follow the guidance in the code.



Practical, Prompt, Professional HR Solutions

## DISCIPLINE



Under the code **DISCIPLINE** is referred to as misconduct and/or poor performance.

When dealing with such issues the code states the following:

- Investigate to establish the facts without delay



- Investigation meetings do not lead to disciplinary action.
- Employees have no right to representation at the investigation meeting but the company can allow this if they so wish within their own procedure
- In cases on misconduct the person doing the investigation meeting should be different to the person doing the disciplinary meeting
- Suspension should be as brief as possible, should be kept under review and should not be a disciplinary action

## DISCIPLINARY MEETINGS

### Before the disciplinary meeting

- Where disciplinary action is necessary the employee should be notified in writing of the:
  - Alleged misconduct or poor performance
  - Possible consequences
  - The time, date and location of the meeting
  - The right to be accompanied
- The employee should be provided with copies of written evidence e.g. witness statements.
- Any disciplinary meeting should be held without unreasonable delay.
- All parties should make every effort to attend the meeting.
- Witnesses should be given advanced notice of the meeting.



Practical, Prompt, Professional HR Solutions

### At the disciplinary meeting:



- The complaint against the employee should be explained;
- The evidence should be gone through;
- The employee should be given the opportunity to present their case;
- The employee should be given reasonable opportunity to ask questions, present evidence, call any witnesses and raise any matters about the information raised by any witness(es).

Any failure by the employee to attend the meeting (persistent or unwilling) without good cause will result in a decision being made based on the evidence available.

### Representation

An employee has a statutory right to be accompanied by a companion at a disciplinary meeting. An employee representative may be a:

- Fellow employee
- Trade Union representative
- Official of a trade union\*

\*If an official is not employed by a trade union the official must be certified by a trade union to be competent to accompany an employee.

Employees are entitled to be accompanied at a meeting when:

- A formal warning is to be issued
- Some other disciplinary action is to be enforced
- Confirmation of a warning or other actions is to be communicated

Employees must make a reasonable request to be accompanied.

An unreasonable request would include:

- A person who would prejudice the hearing
- A person from a remote geographical location where a person is suitable and willingly available locally

A representative has the following powers:

- Put forward and sum up the employee case
- Respond on behalf of the employee related to any views expressed at the meeting
- Confer with the employee during the meeting

A representative cannot:

- Answer questions on behalf of the employee
- Address the hearing if the employee does not wish this
- Prevent the employer from exploring their case



Practical, Prompt, Professional HR Solutions

### Action

The employer will:

- Decide if disciplinary action is justified and notify the employee of this in writing without unreasonable delay.
- Issue a written warning in the event of misconduct or poor performance
- Issue a final written warning where misconduct or poor performance is sufficiently serious (where the actions had or were liable to have serious or harmful impact on the company)
- Dismiss rather than issue a warning if the offence is serious enough
- Refer to acts of gross misconduct in the company disciplinary procedure

The action must detail:

- The nature of the misconduct and/or poor performance
- Any changes to the requirements and/or timescales
- The consequences of further misconduct and/or poor performance

## **DISMISSAL**



Where a disciplinary meeting results in dismissal of the employee the employee must apply:

- The meeting can only be carried out by someone who has the authority to do so
- The reasons for the dismissal must be detailed
- The date of termination must be stated
- The notice period must be stated
- The right to appeal must be stated

## **APPEALS**

The employee:

- Must detail the grounds for the appeal in writing.
- Has a right to be accompanied at the meeting.

The employer will:

- Hear an employee's appeal without reasonable delay;
- Agree the time, date and place and notify the employee in advance of these details;
- Ensure the appeal is heard where possible by another manager to the one that managed the disciplinary hearing;
- Write to the employee detailing the outcome without unreasonable delay.

## **SPECIAL CASES**

- Where the employee facing potential disciplinary action is a trade union representative the employer must after obtaining the employee's agreement, discuss the situation at an early stage with a trade union employed official.
- Where an employee has committed a criminal offence it may not be necessary to invoke disciplinary action against the employee. The decision will be based on what effect the criminal charge will have or the conviction will have on the employee's suitability to do the job and the relationship with the company, its employees, its customers, its suppliers, etc.



Practical, Prompt, Professional HR Solutions

## GRIEVANCE



Under the code **GRIEVANCE** is referred to as concerns, problems, complaints raised by the employee to the employer

When dealing with such issues the code states the following:

- Resolve the matter informally where possible in the first instance
- Where the matter is not resolved informally the matter will be dealt with formally by the employer without unreasonable delay
- The manager dealing with the employee grievance will not be the subject of the grievance
- A formal meeting will be held without unreasonable delay
- Every effort should be made to attend the meeting
- The grievance will be explained by the employee and how s/he thinks it should be resolved
- The employer will consider the details and adjourn the meeting to undertake an investigation if necessary



### Representation

An employee has a statutory right to be accompanied by a companion at a grievance meeting. An employee representative may be a:

- Fellow employee
- Trade Union representative
- Official of a trade union\*

\*If an official is not employed by a trade union the official must be certified by a trade union to be competent to accompany an employee.

Employees must make a reasonable request to be accompanied.

An unreasonable request would include:

- A person who would prejudice the hearing
- A person from a remote geographical location where a person is suitable and willingly available locally



Practical, Prompt, Professional HR Solutions

A representative has the following powers:

- Put forward and sum up the employee case
- Respond on behalf of the employee related to any views expressed at the meeting
- Confer with the employee during the meeting

A representative cannot:

- Answer questions on behalf of the employee
- Address the hearing if the employee does not wish this
- Prevent the employer from exploring their case

### Action

The employer will:

- Decide if action is justified and notify the employee of this in writing without reasonable delay
- Detail what action to take to resolve the grievance
- Detail the right to appeal if the employee is not content with the action

## **APPEALS**

The employee has the right to appeal if they feel their grievance has not been satisfactorily resolved.

The employee must let the employer know the grounds for their appeal without unreasonable delay in writing.

The employer will:

- Hear an employee's appeal without unreasonable delay;
- Agree the time, date and place and notify the employee in advance of these details;
- Ensure the appeal is heard where possible by another manager to the one that managed the grievance hearing;
- Write to the employee detailing the outcome without unreasonable delay.

The employee:

- Must detail the grounds for the appeal in writing;
- Has a right to be accompanied at the meeting.

### What about a disciplinary and grievance situation raised at the same time?

Where an employee raises a grievance while a disciplinary situation is underway the disciplinary process may be temporarily suspended.

Where the situation is linked the situation can be dealt with simultaneously.

### What about collective grievances?

The code of practice will not apply where a grievance is raised on behalf of two or more employees by a representative of a recognised trade union or other workplace representative. In this instance the grievance will be dealt with under the company collective grievance process.

**As a result of the changes if you require your discipline and grievance procedures to be reviewed and updated to come into effect from the 6<sup>th</sup> April contact Sue on 0208 8168 726 or at [sue@completepeoplemanagement.co.uk](mailto:sue@completepeoplemanagement.co.uk)**



Practical, Prompt, Professional HR Solutions

## Question and Answer



At **Complete People Management Limited** we want to help you manage your people effectively. If you have a question that you want answered then ask us. We will not disclose your identity. What have you got to lose? ***It's free!***

Q: An employee has exceeded their probationary period and their performance is not to the standard required. Can we terminate their employment under the terms of the probationary period?

A: If an employee exceeds the probationary period by just one day and no formal meeting has taken place to notify the employee they are not meeting the standards required and that either their employment is terminated or the probationary period extended then the employee's employment becomes permanent and the probationary period terms no longer remain in force.

---

The newsletter is sent to you each month and includes information about employment legislation changes and top tips on an employment subject in a concise format. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at [info@completepeoplemanagement.co.uk](mailto:info@completepeoplemanagement.co.uk) If you know of anyone who may also be interested in receiving the newsletter please ask them to register on the company website or contact us directly.

In the event that you wish to unsubscribe please email us at [info@completepeoplemanagement.co.uk](mailto:info@completepeoplemanagement.co.uk)

**Complete People Management Ltd** is not responsible for the content of external internet sites listed within this newsletter.