

Director of Legal Services :
David Tatlow

BRIEFING

STATUTORY DISPUTE RESOLUTION IN EMPLOYMENT MATTERS

1. The Employment Act 2002 which introduced the concept of Statutory Dispute Resolution. Following public consultation in July 2003, the Government has now finalised the Dispute Resolution Regulations which will come into effect from 1 October 2004.
2. The highlights of the Regulations are that oral and written warnings and suspension on full pay will not be considered to be disciplinary action under the Regulations. However, rather confusingly, an employee may raise a grievance if they are unhappy with the issuing of a warning or suspension on full pay under the Statutory Grievance Procedure.
3. The Statutory Dismissal Procedure will not apply when an employee retires upon reaching the normal retirement age for the job or when retirement is by mutual agreement.
4. The Statutory Dismissal Procedure will apply upon the expiration of a Fixed Term Contract, giving employees the right to have an appeal against the decision to not renew the Contract of Employment.
5. Employees are only able to use the Statutory Grievance Procedure if the complaint is capable of giving rise to an Employment Tribunal claim. An Employment Tribunal claim can only be brought subsequently if the employee has attempted to use the Grievance Procedure.
6. The aim of the Statutory Dispute Procedure is to ensure that minimum procedural standards for handling either disciplinary or grievances within the workplace for both employers and employees.
7. Further, the concept of Statutory Dispute Resolution was introduced to try and reduce the number of cases proceeding at Employment Tribunal by ensuring that there was an internal procedure to try and resolve matters prior to reaching Tribunal.
8. In many larger organisations it is not anticipated that the Statutory Dispute Resolutions will have a significant impact as they are minimum standards which are often already exceeded in contractual Disciplinary and Grievance Procedures. However, employers need to be careful that they comply with the Statutory Dispute Resolution Regulations when, eg, terminating a Fixed Term Contract, although there is a dismissal in law, and the employee consents to this it is still necessary to offer the right of appeal.

9. We will not see the impact of the new Regulations until after October 2004 once there starts to be interpretation of the Regulations through the Tribunals.

Implications for Birmingham City Council

10. It is important to offer the statutory procedure in respect of cases involving dismissals even if the dismissal is with the consent of the employee. In particular this should be borne in mind if there is a dismissal in the interests of efficiency of the service.
11. It is also important that all disciplinary and grievance procedures are progressed in a timely manner. There is no time limit within the regulations and whether the timescale is reasonable will depend upon the circumstances of the individual case.
12. The Authority must also ensure that the Statutory Procedure is complied with in cases to which a grievance is covered, eg in cases of harassment there is currently no right of appeal against the decision of the Chief Officer. Whilst this is currently under review, a right of appeal against the decision must be offered from 1 October 2004. This right of appeal does not, necessarily, be to members as long as an appeal is offered.

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