

# Improve your chances of business success

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Get ready for the new Disciplinary & Grievance Code of Practice with Mentor's complimentary guide



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## 2 Contact Information

# RBS Mentor

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# Do I need to know about the changing procedures?

## If you employ people in your business – yes, you do!

All employers, whether they employ one person or one thousand, need procedures for dealing with disciplinary matters, such as misconduct or poor work performance, and also for handling complaints by employees, formally referred to as “grievances”.

**The way disciplinary and grievance matters must be handled by employers is changing.**

From the 6th of April 2009, the Statutory Dispute Resolution Procedures (SDRPs), only introduced in 2004, are being abolished. To replace them, a new Code of Practice has been issued by ACAS, the Advisory, Conciliation and Arbitration Service.

**If you employ people and do not comply with the Code you could be breaking the law.**

If employers don't follow the Code and go on to dismiss an employee, the dismissal is very likely to be deemed unfair and the employer will also have to pay up to 25% more compensation to the employee.

**Also, for the first time, the Code will govern the procedure for all disciplinary action, not just dismissals. This is a crucial change.**

This means that Managers will have to be much more careful that they act properly, for example, when giving out written warnings.

**If you do only one thing...** understand that from the 6th of April 2009, all disciplinary matters in the workplace should be handled according to the new ACAS Code.

This complimentary guide, written by our employment experts, tells you everything you need to know about the changes.

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**For more on working with the new disciplinary and grievance procedures**

Please call RBS Mentor on **0800 634 7001** or visit [www.rbsmentor.co.uk](http://www.rbsmentor.co.uk)

# Which regulations are being amended?

**Since 2004, the rules on handling dismissals and workplace grievances have been governed by the Statutory Dispute Resolution Procedures (SDRPs).**

Many employers found the SDRPs hard to operate, resulting in disputes at Employment Tribunals as to whether the procedures had been followed, as well as the question of whether the employer had acted “fairly”.

A review of the procedures has now recommended that they should be replaced and The Employment Act 2008 formally abolishes them from the 6th of April 2009. They are being replaced with a new Code of Practice issued by the Advisory, Conciliation and Arbitration Service, (ACAS).

## **Changes to the current disciplinary and dismissal procedures**

Unlike the SDRPs, which only applied to dismissals, demotions and suspensions without pay, the new ACAS Code applies to all formal disciplinary action. This now includes written and final written warnings.

## **Changes to grievance procedures**

Under the SDRPs, employees were banned from making a claim to an Employment Tribunal if they had not raised a grievance with the employer first. The ACAS Code removes this requirement, so it will be easier for employees to bring Tribunal claims without warning. However, an employee who does this faces having any financial compensation awarded to them reduced by up to 25% for unreasonably failing to raise a grievance in accordance with an employer’s procedure.

The better news for employers is that they will no longer be under any duty to handle grievances by staff who have left their employment. However, employers should consider any concerns raised by staff who leave, particularly if they do so with little or no notice, as these may highlight deeper, more general problems in the workplace, such as bullying or sexual or racial harassment.

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# How do the changes affect me?

**If you don't follow the new rules, you run the risk of having unfair dismissal claims brought against you and having to pay 25% more if financial compensation is awarded to the claimant.**

Although the new ACAS Code is not technically compulsory – an employer cannot be taken to court or be fined for failing to have disciplinary or grievance procedures in place – **employers will be unable to defend claims of unfair dismissal by employees if they do not follow the Code.**

In addition, employers will be ordered to pay up to 25% more compensation to the employee bringing the claim for acting unreasonably.

## **Disputes with employees can happen at any time**

In an increasingly challenging economic climate, you may feel less tolerant of poor timekeeping, a bad attendance record or unsatisfactory performance and their effect on your business.

## **From the 6th April, the way you handle these matters will be under more scrutiny**

If you eventually dismiss an employee, the way you handled the first disciplinary hearing – perhaps to give a written warning – can also be looked at by an Employment Tribunal. If the initial hearing was not handled in accordance with the ACAS Code, the Tribunal may find the eventual dismissal of the employee to be unfair.

## **In addition, a lax approach to dealing with staff concerns could land you in an Employment Tribunal**

If the employee concerned has a well-founded claim for unlawful discrimination, you could be faced with paying unlimited financial compensation. How would your business survive?

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# How can I safeguard my business?

**By reading, understanding and implementing the advice detailed below, you should be well on your way to protecting your business from unwelcome and costly Employment Tribunal claims.**

## Three things to remember...

1. The new ACAS Code applies to all formal disciplinary proceedings, not just to dismissals.
2. The Code gives employees the right to six things at all disciplinary hearings and you will be in breach of the Code if you deny employees these rights. The employee has the right to:
  - be given advance notice of any witnesses the employer intends to call to the hearing;
  - state their case and answer allegations;
  - ask questions;
  - present their own evidence;
  - call their own witnesses;
  - raise points about any information provided by witnesses.
3. It is in your best interest to deal effectively with any employee grievances, as employees can now go straight to an Employment Tribunal if you fail to do so.

Before you deal with any disciplinary matter or respond to an employee grievance, be prepared to take the following action:

## Three things to do now...

1. Tell Managers who handle disciplinary matters about the new procedures and make sure they don't begin any disciplinary action until they understand the new Code of Practice.
2. Check that your disciplinary and grievance procedures meet the requirements of the new ACAS Code, and recognise that employees are entitled to the six rights outlined above at disciplinary hearings.
3. Make sure your grievance procedure contains strict rules about how, when and to whom employees should raise any concerns.

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# Where can I go for help?

There are a number of ways in which Mentor can help you protect your business, depending on your individual circumstances.

1. If you don't have any disciplinary or grievance policies in place, you could be leaving your business at risk.

Call us to find out what you need to do and to arrange a free, no-obligation discussion.

2. If you don't know whether your existing discipline and grievance procedures are compliant, you've come to the right place.

For a specially discounted rate of just £99, one of our expert Employment Law Consultants can audit your current policies and procedures over the phone and provide you with a detailed report outlining any actions you need to take. (This service normally costs £450).

3. If you have received an Employment Tribunal Claim form (an ET1), we're here to help.

Call us for up to two hours of free advice on completing the documents you need to submit in response (the ET3). This service normally costs £250.

4. If you are still concerned about how this change will affect your business, or if you have any questions relating to the new Code or Employment Law in general, why not Ask the Expert?

This completely free service can be accessed via our website at:

[www.rbsmentor.co.uk](http://www.rbsmentor.co.uk)

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## For more information, please call RBS Mentor

Telephone: **0800 634 7001** (Minicom on **0800 634 7008**)

Calls may be recorded

Visit our website at [www.rbsmentor.co.uk](http://www.rbsmentor.co.uk)

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Registered Office: 36 St Andrew Square, Edinburgh EH2 2YB.

Registered in Scotland No. 90312.

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