



» SCALES OF JUSTICE Employers are urged to learn the law in detail now that the new Code of Practice has been introduced

Trying times for employment law

■ New Code of Practice introduced

■ Managers given more responsibility

SHERYL MOORE

THEY were introduced to reduce the need for expensive tribunals in the workplace. But four years later and, after causing much confusion among employers and the legal profession, the Statutory Dispute Resolution Procedures (SDRPs) have been replaced with the ACAS Code of Practice.

But will it be a new dawn for employment law or further hinder the resolution of disputes in the workplace?

The aim of the SDRPs was to reduce the number of tribunals but, according to employment experts, that did not happen, and statistics show they actually increased.

They also created confusion, inconsistency and on occasion led to somewhat harsh decisions relating to uplifts in compensation by employers who failed to adhere rigidly to them.

Andrew Moore, employment law consultant at Clough Willis, said that while there appears to be an initial level of excitement

about it, employers need to concentrate on the details and the potentially detrimental impact they could have – especially in such tough trading times.

He said: "There is a lack of certainty as to their influence on a tribunal's decision. For example, previously, if an employer didn't follow the minimum procedures they automatically lost the tribunal and the employee could receive up to 50 per cent more compensation."

"But now, there's no minimum procedure so if a company fails to follow the Code of Practice it won't be immediately deemed an unfair dismissal – the outcome will be dependent on how much emphasis each tribunal panel puts on the code."

Philip Richardson at Stephenson Solicitors said the code does not apply to redundancies and therefore employers will have to grapple and familiarise themselves with the provisions of both codes to make sure they're adopting best practice.

He added: "Overall though, while there may be an initial bedding-in period, the Code of Practice should be embraced as I anticipate it will provide a more pragmatic approach to dealing with disciplinary and grievance issues in

the workplace.

"It should also enable employment judges more latitude to arrive at decisions so that a technical lapse will not automatically be greeted with a finding of unfair dismissal."

The Code of Practice does however give a much higher role to managers in discipline and grievance proceedings.

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Fiona McKay, director at Seminars & Solutions, said under the SDRPs, managers found it inconceivable in gross misconduct cases that they could lose a case in tribunal for simply omitting in a letter that an employee had the right to appeal. This new code should make better sense to managers as a common sense set of rules rather than a process of restrictive procedures.

Fiona said: "The Code clearly states that a decision to dismiss may only be taken by a manager with authority to do so. It is now imperative that the right people take the ultimate decision to dismiss. Do managers and staff know who has that authority in their business?"

Fiona added that grievances are also a key area for concern: "Employees

current and past now do not have to issue a grievance first in order to bring a claim in tribunal. This is a danger zone for employers, especially around discrimination. An employee could bring a case to tribunal for any aspect of discrimination, still continue in their employment and the first an employer may know about it is when they are served with an ET1 – a tribunal claim form."

Lee Jefcott, partner at Blue Sky Law, said while the new system abolishes the requirement to raise a grievance first with the employer as a precondition of a claim, there is still a sanction for employees, who make no effort to engage with their employer and go straight to issue a claim, that their compensation can be reduced by up to 25 per cent under the new regime.

Lee added: "This seems much less draconian than the old system and would appear to strike the right balance."

"However, from my experience I still have a real concern that both employers and employees take an entrenched view of disputes from the start and one of the jobs of lawyers is to take some of the heat out of this. To act as devils advocate and to explain the harsh realities of both bringing and defending a claim. If there is a way of bringing the parties together then this should always be considered."



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