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Department for
**Employment
and Learning**
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THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

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DO NOT DISCARD

New laws for resolving disputes

It's as simple as...

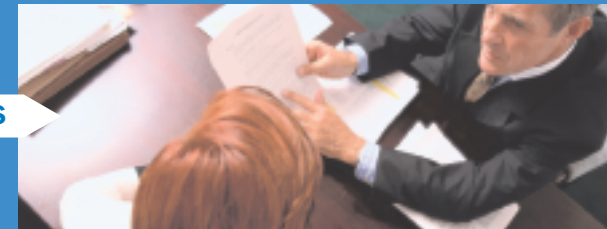
1

PUT IT IN WRITING



2

MEET AND DISCUSS



3

APPEAL



**Key information
for employers.**



Few people would disagree that employment rights disputes between individuals and employers are bad for business. At best, the time and effort spent on them diverts valuable resources from a company's core activities. At worst, they can have serious long-term implications for staff morale and relations with other employees in the firm.

On 3rd April 2005, the Department for Employment and Learning introduced new legislation to ensure that disputes at work are handled fairly and effectively. By ensuring that problems are dealt with soon after they occur, good relationships are maintained between employer and employee, and problems are prevented from becoming more serious.

This guide describes the new dispute resolution procedures and their implications for employers. It gives general guidance only. It has no legal force and cannot cover every point and situation. It describes the position which applies in Northern Ireland.

For more information on the Department, visit www.delni.gov.uk.

To learn more about the new laws, visit www.delni.gov.uk/resolvingdisputes.

The Department for Employment and Learning produces a series of Employment Rights Booklets offering further advice and information on rights and responsibilities in employment. Visit the online Library facility at www.delni.gov.uk/er

For general advice on employment-related issues, contact the Labour Relations Agency (LRA) by telephoning their Head Office on **028 9032 1442** or their Regional Office on **028 7126 9639**. Alternatively, visit the Agency's website at www.lra.org.uk

Invest Northern Ireland publishes a No-Nonsense Guide for employers. Visit www.investni.gov.uk and download the latest information on the rules and regulations that employers must follow.

The new laws will apply to businesses operating in Northern Ireland. England, Scotland and Wales have had similar laws since October 2004 – visit www.dti.gov.uk/resolvingdisputes for further information.

The new laws are designed to encourage employers and employees to discuss problems first, before resorting to tribunals. All employers and employees must follow the minimum 3-step process when dealing with most dismissals, disciplinary actions or grievances¹.

If they don't, they could face a financial penalty if a dispute ends up before a tribunal.

This leaflet will help you to understand the new laws for resolving disputes and guide you through everything you must do to meet your obligations.

Resolving disputes needn't be difficult – it's as simple as

1 2 3

¹There are some exemptions: see www.delni.gov.uk/resolvingdisputes

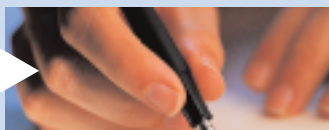
Get guidance on the new laws and extra help at www.delni.gov.uk/resolvingdisputes



On 3rd April 2005, a new 3-step process for resolving disputes in the workplace came into effect, giving you and your staff new rights and responsibilities. Broadly speaking, these are as follows:

1

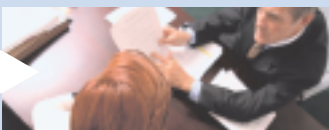
PUT IT IN WRITING



You must put the reasons why you are considering disciplinary action or dismissal in writing, in broad terms, to the employee. Similarly, the employee must put the reasons for a grievance in writing to you.

2

MEET AND DISCUSS



Hold a face-to-face meeting between you and the employee. You must both be given time to consider the facts of the other's complaint prior to the meeting. After this meeting, you must inform the employee of your decision and their right to appeal.

3

APPEAL



If required, have an appeal meeting. This may happen after sanctions have already been imposed. You must inform the employee of the outcome of the appeal.

What you need to do

As an employer, the responsibility lies with you to make sure your business meets the minimum 3-step procedure, and to inform your staff of their new rights and responsibilities.

- **Understand the new laws** – read this leaflet. If you need more information, go to www.delni.gov.uk/resolvingdisputes or contact the Labour Relations Agency on 028 9032 1442 or 028 7126 9639.
- **Review existing procedures** – if you already have dispute procedures in place, do they meet the minimum standard? If not, change them.
- **Put in place new procedures** – if you have no existing dispute resolution procedures, install at least the minimum standard.
- **Inform your employees** – let your staff know what their new rights and responsibilities are under the new legislation and where they can get full information about them.
- **Update your company literature** – e.g. employee handbook.
- **Follow the 3-step process** – be strict about following the minimum 3-step process to make it common practice. Remember, you could face a financial penalty if you don't.

- **Act reasonably** – following the 3-step process is not in itself enough, you must act reasonably. The Labour Relations Agency (LRA) Code of Practice on Disciplinary and Grievance Procedures provides useful guidance on this point. This Code is being updated to reflect the new legislation and will be available from the LRA website www.lra.org.uk or by calling the LRA on 028 9032 1442 or 028 7126 9639. The LRA can also provide advice on any questions you might have.
- **Ask for help** – if you are unsure of anything regarding the new laws or need further assistance in implementing them, go to www.delni.gov.uk/resolvingdisputes or contact the Labour Relations Agency. The Agency is hosting a series of free seminars on the procedures and offers a free service to employers to check whether dispute procedures comply with the minimum standards required. For further details contact the Agency on **028 9032 1442** or **028 7126 9639** or go to www.lra.org.uk.

Informing your staff

As part of the new law, it is your duty to fully inform your staff of the procedures they must follow when resolving a dispute in the workplace.

As a minimum, you need to let them know:

- The disciplinary, dismissal and grievance procedures which operate in your business and when these apply (these **must** include the 3 statutory steps **as a minimum**)
- Where they can find information on these procedures

Where should they expect to find that information?

This will depend on how you operate. But the 3-step process must be set out in one of the following:

- Initial offer letter
- Written statement of employment particulars
- Contract of employment

For further information, consult the series of Employment Rights Booklets published in the Department for Employment and Learning online Library facility at www.delni.gov.uk/er. For practical help and support in developing effective employment documentation, contact the Labour Relations Agency.

How should you tell them?

You should tell your staff where they can find out about the new laws set out in this booklet. We suggest you use one of the following methods:

- Verbal briefing – group meeting/workshop
- Email or memo – download samples at www.delni.gov.uk/resolvingdisputes
- Poster – pin up the enclosed poster on your staff noticeboard. You can even photocopy it and give one to each member of staff



Dismissal and disciplinary procedures

Having to discipline or dismiss a member of staff is never a comfortable process. This process can be eased by talking things through informally. Where that does not work, by using the new laws for resolving disputes you will ensure everything is clear and unhidden, providing a fair process for both you and your staff with the minimum of disruption to your business. This section takes you through the new dismissal and disciplinary procedures and how they affect you and your employees – REMEMBER THE NEED TO ACT REASONABLY.

There are two procedures that you can initiate in the event of a dismissal or disciplinary matter:

In brief, the standard dismissal and disciplinary procedure (3-step process) is as follows:

1. Put it in writing

- Send the employee a written explanation of the conduct, capability or other circumstances that have led you to think about taking dismissal or disciplinary action against them

2. Meet and discuss

- Invite the employee to a meeting to discuss the issue (both you and the employee should take all reasonable steps to attend)
- After the meeting, inform the employee of your decision and offer them the right to appeal

3. Appeal

- If the employee wishes to appeal, they must inform you
- Invite the employee to a second meeting to discuss the appeal
- Give the employee your final decision after the meeting

This standard dismissal and disciplinary procedure generally applies to:

- **All dismissals except:** some collective or constructive dismissals; some gross misconduct dismissals; and dismissals where employment cannot continue for a reason beyond anyone's control
- **All disciplinary action except:** oral and written warnings; and suspension on full pay

There may be some very rare cases of gross misconduct dismissals (but not other dismissals) where you can use the second (modified) procedure. However, these situations have to be very exceptional and you should seek advice and more detailed information from the Labour Relations Agency and/or www.delni.gov.uk/resolvingdisputes.

In brief, the modified dismissal procedure (2-step process), which is for dismissals only, is as follows:

1. Put it in writing

- Send the employee a written explanation of the alleged misconduct that led to their dismissal – including the evidence for this decision. Mention the employee's right to appeal

2. Appeal

- If the employee wishes to appeal, they must inform you
- Invite the employee to a meeting to discuss the appeal
- Give the employee your final decision after the meeting

You must also bear the following requirements in mind when implementing either of these procedures:

- Each step and action of the procedures must be taken without unreasonable delay
- The timing and location of meetings must be reasonable
- You must ensure the employee has all the relevant information in advance of the meeting
- Meetings must allow both you and the employee to explain your cases
- In the case of an appeal meeting, you should, wherever possible, be represented by a more senior manager than attended the first meeting
- The employee has the right to choose to be accompanied at both meetings by either a colleague or a trade union official
- If the employee or person accompanying them is disabled, you must take this into account and make reasonable provision to ensure they can participate fully

Changes to dismissal penalties

The new dismissal and disciplinary procedures are law and must be followed in full, subject to some exceptions. If a dispute reaches tribunal and one of the parties has not followed the steps in full, they will face penalties in most cases. For you, as an employer, the penalty will be financial.

Penalties if the EMPLOYER fails to follow the procedure

- The dismissal becomes automatically unfair (where the employee has the right to claim unfair dismissal)
- A mandatory minimum of four weeks' pay is awarded to the employee
- Any additional compensation is generally increased by a minimum of 10% up to a maximum of 50%

Penalties if the EMPLOYEE fails to follow the procedure

- Where the tribunal finds that the employee was unfairly dismissed, any award they are accorded by a tribunal is generally reduced by a minimum of 10% up to a maximum of 50%



Grievance procedures for employees

Your employees have new rights to have grievances in the workplace addressed by you.

This section takes you through the new statutory minimum grievance procedures and how they affect you and your employees.

There are two ways in which an employee can seek to resolve a grievance they may have.

In brief, the standard grievance procedure (3-step process) is as follows:

1. Put it in writing

- The employee must send a written explanation of their grievance to you

2. Meet and discuss

- You must invite the employee to a meeting to discuss the issue (both you and the employee should take all reasonable steps to attend)
- After the meeting, inform the employee of your decision and offer them the right to appeal

3. Appeal

- If the employee wishes to appeal against your decision they must inform you
- Invite the employee to a second meeting to discuss the appeal
- Give the employee your final decision after the meeting

This procedure allows your employees to air openly any issues they encounter, giving you the chance to resolve matters as quickly and amicably as possible. Having such a procedure in place is good for a company's culture.

In most cases, the procedure will be used when an employee is aggrieved about an action you have taken relating to them, that does not generally involve their conduct or capability. For example – actions giving rise to constructive dismissals or where an employee feels that they have been unlawfully discriminated against. This procedure will also apply if an employee wishes to complain about actions taken by colleagues. In the vast majority of cases, if the employee doesn't at least start the grievance procedure, they will be unable to take you to a tribunal.

The standard grievance procedure will apply in all cases, whether the employee is still in your employment or not. A shorter (modified) procedure can be used where the employee is no longer working for you if:

- You and your employee agree in writing to use the modified procedure; and
- You did not know about the grievance **or** the procedure was not started or not completed before your employee stopped working for you.

(For a full explanation of when the standard grievance procedure and modified grievance procedure may be applied, go to www.delni.gov.uk/resolvingdisputes)



In brief, the modified grievance procedure (2-step process) is as follows:

1. Put it in writing

- The employee must send a written explanation of their grievance to you, stating the basis for their complaint

2. Appeal

- Set out your response in writing and send it to the employee

You must also bear in mind the following requirements when implementing either of these procedures:

- Each step and action of the procedures must be taken without unreasonable delay
- The timing and location of meetings must be reasonable
- Meetings must allow both you and the employee to explain your cases
- In the case of an appeal meeting, you should, wherever possible, be represented by a more senior manager than attended the first meeting
- The employee has the right to choose to be accompanied at both meetings by either a colleague or a trade union official
- If the employee or person accompanying them is disabled, you must take this into account and make reasonable provision to ensure they can participate fully

Changes to grievance penalties

The new grievance procedures are law and must be followed in full, subject to some exceptions. If a dispute reaches tribunal and one of the parties has not followed the steps in full, they will face penalties in most cases. For you, as an employer, the penalty will be financial.

Penalties if the EMPLOYER fails to follow the procedure

- Any award made to the employee is generally increased by a minimum of 10% up to a maximum of 50%

Penalties if the EMPLOYEE fails to follow the procedure

- Any award they are accorded by a tribunal is generally reduced by a minimum of 10% up to a maximum of 50%

N.B. In most cases, if an employee wishes to take a grievance to tribunal they must wait 28 days after they have written their 'step 1' letter. If this has not happened, they will not usually be able to make a tribunal claim.

Be ready

Get extra help and guidance

If you still feel like you've got a mountain to climb to reach the minimum standard and you don't know where to start, we can help. Go to www.delni.gov.uk/resolvingdisputes

The Labour Relations Agency can provide information and advice. Telephone **028 9032 1442** or **028 7126 9639** or visit www.lra.org.uk

