

Using the Statutory Grievance procedure

Why raise a grievance.

1. Since October 2004, in order to bring a claim in the employment tribunal in respect of certain claims, there has been a requirement that an employee must first of all write to the employer to raise a grievance and must set out the basis of that grievance.
2. This factsheet is to help you comply with the requirements of the statutory grievance procedures. We have tried to simplify the explanations

When will the grievance procedure apply?

3. Schedule 4 of the Employment Act 2002 sets out the types of employment tribunal claims for which a grievance letter must be sent to the employer. A grievance does not have to be written in relation to a dismissal *unless* the claim is one of constructive unfair dismissal. Basically however, most claims other than those relating to a dismissal, will need a grievance letter to be written. Examples of things that need a grievance are: - unpaid or deductions from wages, unpaid holiday pay and discrimination. If you are unsure whether a grievance needs to be raised or not, you can contact the law centre for advice about this.

Standard or modified procedures?

There are two different statutory grievance procedures, the standard and the modified procedure.

4. The standard procedure involves the employee complying with the following steps: -
 - a) Sending a letter setting out the basis of the grievance
 - b) Attending a meeting organised by the employer to discuss the grievance
 - c) Appealing against the decision of the employer if the matter is not resolved and attending an appeal meeting.
5. The modified procedure involves
 - a) Sending a letter setting out the basis of the grievance
 - b) The employer responding in writing to the grievance.
6. You will see from these requirements that the modified procedure does not require a meeting and there is no appeal. In order for the modified procedure to apply, certain conditions must be met. These are: -
 - a) The employee no longer works for the employer

- b) Both the employee and the employer have agreed in writing to use the modified procedure
- c) The employer was not aware of the grievance prior to the employee leaving, or the standard procedure had not been completed prior to the employee leaving.

What does the grievance have to cover? Setting out the basis of the grievance.

- 7. The requirements for the grievance letter are slightly different for the standard and modified procedure. The safest way for you to proceed is to set out your grievance in the same way for both procedures.
- 8. The requirements of the statutory procedure are that the employee must set out in writing what the grievance is and the basis for it. In practice, what this means is that you should give sufficient information to your employer to enable the employer to fully understand what your complaint is about and to be able to investigate the matter based on the information you have provided. (Hopefully they may also be able to satisfactorily resolve it too).

Time limits for bringing an Employment Tribunal Claim.

- 9. Each different claim to an employment tribunal has its own separate time limits. Most claims to a tribunal have a 3 month time limit although some have different time limits for example equal pay claims and redundancy pay claims each have a 6 month time limit.
- 10. In circumstances where a grievance is required under the statutory procedures, that grievance must be sent within that original (usually 3 month) time limit. The effect of this is that the original time limit is then automatically extended by a further 3 months.
- 11. Where an employee submits an application to the tribunal within the original time limit, without first sending a grievance, so long as they send a grievance within one month of the original time limit, the automatic 3-month extension from the expiry of the original time limit will apply. (s32(4)(b) Employment Rights Act 2002). NB This will normally apply where you forget to send a grievance letter and the tribunal rejects your claim because of this failure.

When can I submit an Employment Tribunal claim?

- 12. Once you have sent your grievance to the employer, you must *wait 28 days* before you can submit your claim to the tribunal. You do not have to wait until the grievance procedure has been completed.
- 13. If, in addition to matters about which a grievance must be raised, you are also submitting a claim to the tribunal about unfair dismissal, which does not require a grievance, it will be a lot simpler if you can get your grievance sent, wait 28 days and send your claim for unfair dismissal and the claims about which you have raised your grievance on the

same tribunal application form. This would all have to be done within the 3-month unfair dismissal time limit.

14. If you do not do this, you will end up having to submit two separate employment tribunal claims, which will just complicate the paperwork and make it slightly more difficult for you to keep track of everything.

When will these procedures not apply?

15. There are certain situations when the grievance procedures will not have to be followed. The two possibilities are that the grievance procedure is not started at all or where it is started but not completed. These situations will be quite rare. If you think once of these situations might apply to you, you should seek advice before relying on this. The relevant situations are: -

- a) You have reasonable grounds for believing that starting or completing the procedure would result in significant threat to yourself, your property, any other person or the property of any other person.
- b) You have been subjected to harassment and starting or continuing with the grievance would result in you being further harassed.
- c) It is not practicable to start or complete the grievance procedure.

If you think one of these exemptions may apply you should seek advice about this.

Effects of not following the Grievance Procedures – jurisdiction and adjustments to employment tribunal awards.

16. There are two possible ways you may fall foul of the grievance procedures. The first, and more serious, is by not even starting the procedure by sending a letter. The effect of this is that the tribunal will not have jurisdiction to hear your claim and you will not be allowed to pursue the claim.

17. The second, less serious possibility, is that you start the procedure but don't complete it, for example you don't attend a meeting. In those circumstances, the employment tribunal will have the power to reduce any compensation you are awarded if you are ultimately successful with your claim by between 10-50%. Equally if the employer fails to complete the procedure, a tribunal can increase by 10-50% any compensation they award you.

When will you be treated as having complied with the procedure?

18. There may be unforeseen circumstances, which prevent a party (the employee, the employer or an employee's chosen work companion or trade union representative) to attend a meeting. Examples of unforeseen circumstances could be illness or a car breaking down preventing attendance at the meeting. Where this happens an employer is under a duty to re-arrange a meeting. If unforeseen

circumstances prevent the second meeting taking place then both parties will be treated as having complied with the procedure.

Right of accompaniment to grievance hearings

19. This right is contained in sections 10 – 15 of the Employment Relations Act 1999. *A worker has a right to be accompanied by a trade union representative or another of the employer's workers.* In order to qualify for the right to be accompanied the employee must make a reasonable request (it is best to make this request in writing in case there is a dispute later as to whether the request was made) to be accompanied and the employer is under a duty to allow a worker to take time off during working hours to undertake the role of companion.

20. The role of the companion is to address the hearing (but not to answer questions on behalf of the worker) and to confer with the worker during the hearing.

An example of a grievance letter relating to unpaid / deduction from wages and accrued holiday.

Wages.

21. I write to inform you that I wish to raise a grievance about my wages. I believe that I have been wrongly paid for week ending 27/2/08. My wage slip shows that I have been paid for 37 ½ hours and a deduction has been made from my wages for till shortages. I believe that I should have received more pay as I worked 4 hours overtime on the 26/2/08, which has not been paid, and I also believe that you have no right to make the deduction. I am happy for this matter to be dealt with in writing.

Holiday pay.

22. I write to raise a grievance about holiday pay. I resigned with effect from 1/3/08. I was entitled under my contract to 24 days holidays a year plus bank holidays. I believe your holiday year runs from 1st October. As I had not taken any holidays since October 1st I had accrued 5 months worth of holiday pay and believe therefore that I should have been paid for 10 days holiday (5/12ths of 24 days). I did not receive any accrued holiday pay when I left so would be grateful if you could send this to me as soon as possible. I am happy for this matter to be dealt with in writing.

23. All you need to do is address the letter, put the date on, sign it and keep a photocopy. The statutory requirement is to send the letter so if you are going to obtain any proof you have sent it this should be proof of posting (free from the post office) rather than recorded delivery.

If you require assistance from Sheffield Law Centre, the telephone advice line (0114 2731888) is open Monday to Friday 10am - 4pm.

Fact sheet updated March 2008.