

White Paper

Purpose and type of consultation

To invite written comments on the 'Disciplinary and Grievance Procedures' code of practice prior to the Minister formalising the code of practice by Order under the Employment (Jersey) Law 2003.

Closing date 7 November 2013

Summary

A revised 'Disciplinary and Grievance Procedures' code of practice has been prepared following consultation undertaken by the Employment Forum.

The purpose of this code of practice is to help employers and employees in businesses of all sizes to deal with matters relating to discipline and grievance in a fair and appropriate way.

Article 2A of the Employment (Jersey) Law 2003 (the 'Employment Law') enables the Minister for Social Security (the 'Minister') to approve codes of practice for the purposes of the Employment Law, subject to certain requirements being met, including a requirement to consult stakeholders.

Background

Article 2A of the Employment Law requires that, prior to approving any code of practice for the purposes of the Employment Law, the Minister must publish a notice in the Jersey Gazette –

- a) stating that a copy of the code of practice will be available for inspection during normal working hours, free of charge, at a place specified in the notice;
- b) specifying a period during which it will be available for inspection (being a reasonable period of not less than 21 days, beginning after the notice is published); and
- c) explaining that anyone may make representations in writing to the Minister in respect of the code of practice at any time before the expiry of the 7 days following the period for inspection.

In addition, the Employment Law requires the Minister to consult the Jersey Advisory and Conciliation Service (JACS), the Employment Forum (the 'Forum') and other persons, or representatives of such persons that might be affected.

Employment Forum consultation

Earlier this year, the Minister directed the Forum to review and circulate the 'Disciplinary and Grievance Procedures' code of practice and to make a

recommendation to him. The Forum consulted during the period 25 February to 1 April 2013; details of which are on the website¹.

The Forum presented its recommendation to the Minister on 25 July 2013 which included a revised 'Disciplinary and Grievance Procedures' code of practice. The Forum had concluded that, rather than modifying and revising individual elements of the code of practice, it would be beneficial to provide a simplified procedure. The Forum commented that, *"the revised draft code of practice would provide greater clarity and a more straightforward approach that provides sufficient flexibility for any size of business. The revised draft code of practice covers the fundamental principles of a fair process which are set out in a logical order, using clearer language."*²

Revised code of practice

The Minister presented the Forum's recommendation and the revised code of practice to the States on 6 August 2013. The Minister then considered the Forum's code of practice in conjunction with JACS and decided to make some minor revisions before inviting comments. Those revisions are shown as tracked changes in the attached code of practice. The two most significant of those changes are:

1. Paragraph 3 – The Minister has listed as one of the basic standards of reasonableness that the employee should have the right of appeal if the employer has taken disciplinary action. The Minister noted that it is evident from the decisions of the Tribunal that it will expect to see a right of appeal in a reasonable process and the requirement for a right of appeal was already specified in the code of practice (paragraphs 43 to 46 and 58 to 61).
2. Appendices – The Minister has removed the appendices from the code of practice. The Minister considered it to be potentially confusing to include appendices that do not form part of the code of practice because it leaves their status questionable. The Minister decided that it would be clearer for employers if there were only two sources of information; codes of practice that the Tribunal must consider and JACS guides that the Tribunal is not required to consider. The appendices have been removed from the code of practice and will instead form the basis for JACS guidance. All references to the appendices in the code of practice have been replaced with references to JACS guidance.

The Minister believes that the code of practice is a great improvement and that a simplified, more streamlined procedure should make it easier for business of all sizes to take appropriate steps to provide a fair disciplinary and grievance procedure. The revised code of practice will help to address one of the findings of the recent review of the Employment Tribunal's decisions³ – that we should increase employers' awareness of the need to provide fair warning of dismissal in order to help avoid employment disputes.

The Minister invites representations from stakeholders and will consider any comments received before making the code of practice by Order under the Employment Law.

Please submit your comments by 7 November by email or by post to:

Kate Morel
Policy Principal
Social Security Department

¹ www.gov.je/Government/Consultations/Pages/CodesPracticeEmploymentForum.aspx

² Page 15 of the Forum's recommendation, included in the Minister's report to the States (R.98/2013) www.statesassembly.gov.je/AssemblyReports/2013/R.098-2013.pdf

³ www.statesassembly.gov.je/AssemblyReports/2013/R.028-2013.pdf

Philip Le Feuvre House
La Motte Street
St Helier
JE4 8PE

Telephone 01534 44203
Email K.Morel@gov.je

Please provide the following information with your comments;

1. Your name and contact details.
2. Specify whether your comments are submitted on behalf of particular business or organization.
3. Indicate whether your comments may be;
 - a. may be made public and attributed to you
 - b. made public but not attributed to you (i.e. anonymous)
 - c. not quoted publicly at all.

This consultation paper has been sent to the following:

The Public Consultation Register
The Employment Forum's consultation database

Supporting documents attached

Disciplinary and Grievance Procedures Code of Practice (showing tracked changes)