Topics for today's briefing:

- Planning and Compulsory Purchase Act 2004
- Capability Procedure
- Grievance Procedure
- The ACAS Code
Unfair Dismissal – The Start Point

The Employment Rights Act 1996 - S94

"An employee has the right not to be unfairly dismissed by his employer"

Pre-Conditions of a claim

- The Claimant was employed under a contract of employment
- The Claimant was dismissed for one of five fair reasons
- The Claimant was employed for the necessary qualifying period - 24 months
Automatically Unfair Dismissal

- Union membership
- Health and safety related dismissals
- Dismissal for asserting a statutory right
- Family related dismissals
- Public interest disclosure cases

The Five Fair Reasons to Dismiss (S98 (2) Employment Rights Act 1996)

- Capability or qualifications
  - Means his capability by reference to skill, aptitude, health or any other physical or mental quality
- Conduct
- Redundancy
- Contravention of a statutory enactment
- Some other substantial reason (SOSR)
Unfair Dismissal

- The General Test of Fairness Section 98 (4) Employment Rights Act 1996
  “Whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee”
- Range of Reasonable Responses
- Substantive Fairness
- Procedural Fairness

Procedural Fairness Continued

Importance of the ACAS Code of Practice
1. Deal with issues promptly
2. Act consistently
3. Investigation
4. Inform employee of problem
5. Allow an employee an opportunity to put their case
6. Allow an employee to be accompanied
7. Allow a right of appeal against any decision made

Note Uplift up to 25% for unreasonable behaviour
Discipline and Unfair Dismissal

Preliminary Issues
1. Internal disciplinary procedure
2. Disciplinary Rules
3. Formal or informal proceedings
4. Suspension

The Investigation
1. Identify investigating officer
2. The investigatory meeting
3. Meet with employee
4. Meet with relevant parties
5. Statements and supporting documents
6. Reluctant witnesses/anonymity
The Disciplinary Hearing

- Identify Chair
- Notify employee in writing:
  - Detail allegation
  - Written statements
  - Written evidence
  - Possible consequences
  - Time and place
  - Right to be accompanied

Conducting the Disciplinary Hearing

The Objective: to establish the facts
- Introduce those present and explain their role
- Introduce and explain the role of the companion
- Explain the purpose of the hearing
- Explain how the meeting will progress
- State the complaint and itemize all evidence to be relied upon
- Adjourn:
  - to allow a cooling off period;
  - to investigate further;
  - to make a decision
The Right to be Accompanied

- A fellow worker
- A Trade Union representative
- A Trade Union representative certified as competent and able to attend

The Role of the Companion

1. To put the employee’s case
2. To confer with the employee
3. To sum up the employee’s case
4. To respond on behalf of the employee to any views expressed
Issues Arising

- Tape Recording
- Choice of companion
- Overlapping grievances
- Long term absence

Disciplinary Sanctions

- Formal verbal warning (6-12 months)
- First written warning (12 months)
- Final written warning (12 months)
- Dismissal (with or without notice)

Alternatives to dismissal

- Demotion
- Suspension
Disciplinary Sanctions

Consider:
- Disciplinary rules
- Consistency
- Previous record
- Length of service
- Mitigation
- Support/training/adjustments

The Appeal
- Grounds of appeal should be in writing
- Identify chair
- The role of the chair
- A re-hearing or review

The Outcome
- Original decision will be upheld
- Original decision will be revoked
- Original decision substituted for a less or more severe sanction
Constructive Unfair Dismissal (Section 95 Employment Rights Act 1996)

- The Claimant must establish:
  - A fundamental breach of contract (express or implied)
  - That he resigned in response to the breach
  - No affirmation of the breach

Constructive Dismissal

What is a fundamental breach?

- Reducing pay
- Changing duties
- Changing working hours
Constructive Dismissal

What can amount to a fundamental breach of the implied term of trust and confidence?

1. Inconsiderate behaviour
2. A refusal to investigate complaints
3. Failure to give support
4. Undermining of an employee
5. Bullying and victimisation
6. Disproportionate disciplinary sanctions

Definition of Grievance

“A problem or concern that an employee has about their work, working conditions or relationship with colleagues”
Disciplinary Procedure

The Importance of Following a Proper Disciplinary Procedure

- Basic Award (up to 30 weeks' pay) £13,500
- Compensatory Award 74,200 [As from July lower of £74,200 or 52 weeks' pay]
- Redundancy Pay £13,500
- Discrimination - no limit
Week's pay £450

Bringing a Claim

1. Time Limit
2. New Regime
   - Fees
   - Pre-ACAS conciliation
   - Changes in compensation
Any Questions?

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