LAW AT WORK

When companions can come into disciplinary and grievance meetings

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The new Acas Code of Practice on Disciplinary and Grievance Procedures, which came into force on 6 April, incorporates the existing statutory right to be accompanied to disciplinary and grievance meetings and provides specific guidance on the circumstances in which those attending such meetings may have a companion with them.

Who has the right to be accompanied and to what?

The statutory right to be accompanied extends to workers and not only employees. Workers have the right to a companion if they are required, or invited, to attend a disciplinary or grievance hearing, or an appeal meeting.

Is this an absolute right?

No. Employees' request for a companion must be "reasonable". The Acas code suggests it would not normally be reasonable to request a companion who would prejudice the hearing or one from a remote geographical location if someone suitable and willing was available on site.

CASE LAW CONFLICT

In *Kulkarni v Milton Keynes Hospital NHS Trust* (2008 IRLR 949 QB), an employee argued he was entitled to be accompanied by a lawyer to a disciplinary hearing because it involved serious and complex allegations. The argument failed because the court considered the employer's own disciplinary procedures provided adequate protection. By contrast, in *R (on the application of G) v The Governors of X School* (2009 EWHC 504 HC) the court established that R did have the right to legal representation in a disciplinary hearing because the allegations – sexual impropriety – were so serious in this context.

What qualifies as a disciplinary hearing?

For these purposes, a disciplinary hearing is one that could result in a formal warning or some other action, or confirmation of the same. Informal meetings that could lead to informal warnings are, arguably, not covered.

Do investigatory meetings qualify?

Not normally, because they would not be expected to result in a warning. The new Acas code indicates that employers may allow workers to be accompanied to investigatory hearings, but this is not expressed as a requirement or a good practice recommendation.

When is a complaint serious enough to permit a "companion"?

In this context, it is a complaint about the employer performing, or not performing, a duty in relation to a worker. For example, a complaint over a request for a pay rise would not constitute a grievance if the worker had no contractual right to a pay review, whereas a complaint about the working environment could because it involves a potential breach of health and safety responsibilities.

What kinds of companions are allowed?

They can be colleagues, full-time trade union officials (whether or not the union is recognised) or trade union lay officials with written certification of their experience or training in disciplinary or grievance work. Workers can only have one companion.

Can the worker ask a friend or lawyer to attend instead?

In statutory terms, employees are only entitled to the companions above. So unless the employer's procedures provide otherwise, or circumstances suggest the employer should relax the legislation's strict requirements (perhaps the allegations are particularly sensitive), employers can refuse requests to be accompanied by a spouse, partner or other representatives.

What is the companion's role?

The new Acas code says companions should be allowed to address the hearing, put forward a worker's case and sum up, respond on behalf of workers to any views expressed and confer with them. Companions do not, however, have the right to answer questions on a worker's behalf, address the hearing if a worker does not want them to, or prevent the employer from explaining its case.

What if the companion is unavailable?

If the companion is not available at the time set for the meeting, but can be available at an alternative time, the employer must postpone the meeting to the time proposed. An alternative time must be convenient for the employer, the worker and the companion, and must be within five working days of the original date of the meeting.

What is the penalty for failure to comply?

An employment tribunal can award up to two weeks' pay if an employer breaches the worker's statutory right to be accompanied to a disciplinary or grievance hearing. Failing to comply with the right is also a breach of the new Acas code, leading to a potential uplift of up to 25 per cent in the compensation awarded to the employee in a successful claim (subject in unfair dismissal cases to the usual compensation limit of £66,200).

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