

UPDATE

THE CODE OF GOOD PRACTICE: DISMISSAL

Good Practice

The old Code of Good Practice: Dismissal (Schedule 8, LRA 1995) provided a concise and flexible framework, focusing primarily on misconduct and incapacity. It recognised three grounds for dismissal; conduct, capacity, and operational requirements, but gave little detail on retrenchments. Its emphasis was on mutual respect, employment justice, and business efficiency.

Discipline was approached through progressive measures, encouraging corrective action such as counselling and warnings before dismissal. Procedural fairness required notice of allegations, an opportunity to respond, representation, and reasonable time for preparation, but the process was relatively informal, particularly for smaller employers. Probation was acknowledged, but employers had wide discretion in setting its length, and the obligations to train and guide employees were less prescriptive.

Similarly, incapacity due to poor performance or ill health required evaluation and consideration of alternatives, but the Code left much to employer judgment.

CONCLUSION

Overall, the shift from old to new Code reflects a move from general, flexible guidance to a detailed, prescriptive standard. The new Code codifies fairness more rigorously, ensures transparency, and enhances job security, particularly in retrenchment and incapacity cases, while still recognising operational needs of employers

NEW CODE

The new Code (2025 revision) significantly broadens and strengthens protections for employees while formalising employers' obligations. It explicitly and equally addresses misconduct, incapacity, and operational requirements, with a full section on retrenchments.

Employers are now required to consult meaningfully on alternatives, apply objective selection criteria, pay severance, and consider re-employment. Probation is more structured, obligating employers to provide training, counselling, and sufficient time for improvement. Incapacity dismissals require greater emphasis on rehabilitation, accommodation, and alternative work before termination.

Procedural fairness has become stricter and more formalised, with written allegations, documented hearings, and consistent application across employees.

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