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## **ACAS launches consultation on code of practice on disciplinary and grievance procedure**

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ACAS has launched a consultation on a change to the wording of paragraphs 15 and 36 of the ACAS Code of Practice on Disciplinary and Grievance Procedures relating to the statutory right of workers to be accompanied at disciplinary and grievance hearings. The change comes as a result of the EAT's recent decision in *Toal* and another v GB Oils Ltd, which suggested the Code did not accurately reflect the law on the statutory right to be accompanied and, in particular, the law relating to the need to make a reasonable request.

Section 10 of the Employment Relations Act 1999 states that workers have a right to be accompanied at a disciplinary or grievance hearing where they make a reasonable request. What constitutes a 'reasonable request' is not defined in the legislation but the ACAS Code of Practice states that it would not normally be reasonable for a worker to insist on being accompanied by a companion who would have to travel from a remote geographical location if someone suitable and willing was available on site, or a companion whose presence would prejudice the hearing. However, in *Toal*, the EAT stated that if a worker has been invited to a disciplinary or grievance hearing then, provided they made a reasonable request to be accompanied at the hearing, they have the absolute right to choose whoever they like as a companion, provided the companion is from one of the categories set out in the legislation (i.e. a fellow worker, a trade union official or an appropriate and certified trade union representative).

The proposed changes to the ACAS Code of Practice make clear that workers have a right to choose whoever they like as a companion, so long as they come from one of the defined categories of companion. However, it is proposing to retain the good practice point that workers should have some regard to the effect that their choice of companion will have on the disciplinary or grievance process itself – so it also states that it may neither be sensible nor helpful to request accompaniment by a colleague from a geographically remote location when someone suitably qualified is available on site, nor to be accompanied by a colleague whose presence might prejudice the hearing or who might have a conflict of interest. The revised wording also gives some guidance on what 'making a reasonable request' might or might not involve, by including some indications of the manner in which requests to be accompanied might be made. It states that the request does not have to be in writing or made within a certain time frame but workers should consider how they make their request so that it is clearly understood and provides enough time for it to be considered by their employer.

The consultation closes on 7 January 2014.

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