

DISCIPLINARY & GRIEVANCE PROCEDURES AND PRACTICE

From October 1st, 2004 the law changed substantially regarding the conduct of disciplinary and grievance procedures within the workplace. The new procedures also affected the way in which a claim is brought or defended in the Tribunal.

The intention behind the new procedures was to encourage employers and employees to try to resolve disputes at an early stage with the aim also being to reduce the number of cases in the Tribunals. However, both employers and employees and the Tribunals themselves have struggled with the new rules and the Government is currently consulting on whether they should be repealed. However, for the moment they remain in force and employers and employees must continue to abide by them or face the consequences.

The procedures set out the minimum steps which must be followed before a disciplinary action can be taken and the means by which the parties should deal with any grievance an employee may have against the employer. Failure to follow the minimum steps will impact on the admissibility of any subsequent claim and any compensation which may potentially be awarded.

If an employer does not follow the **minimum** dismissal and disciplinary procedures any dismissal will automatically be unfair. The Employment Tribunal will have the power to increase the size of the award made against the employer if these procedures have not been followed.

However (other than in respect of an unfair dismissal claim) an employee will not in normal circumstances be allowed to bring a claim before the Employment Tribunal unless they have lodged a formal internal grievance and have given the employer a period of 28 days within which to try and resolve the matter.

The main changes to the law relating to disciplinary hearings were;

- There are now minimum procedures which employers need to go through when dismissing an employee.
- The minimum procedures apply whatever the reason for dismissal except in a few cases. These procedures must therefore be followed when dismissing employees for redundancy and absence from work through ill health as well as misconduct dismissals.
- The new procedures do not apply to verbal or first written warnings although please note that the employee still has the right under existing legislation to be accompanied by a work-place colleague or a trade union official (whether or not you recognise that trade union).
- There are two types of procedure under the new regulations known as 'standard' and 'modified' procedures. The standard procedure will be used in most cases and it is suitable for most day-to-day cases of disciplinary action.

In more limited cases the modified procedure which is a much shorter procedure will be used where very serious cases of gross misconduct are discovered and where the employee really has to be dismissed as soon as the misconduct comes to light.

ESSENTIAL FEATURES OF DISCIPLINARY PROCEDURES

The main aim of disciplinary procedures should be to encourage improvements in an individual's conduct, rather than be seen as merely a means of just imposing sanctions.

The essential features of disciplinary procedures are:

- They should state to whom they apply.
- Issues should be dealt with quickly.
- State the disciplinary actions which may be taken.
- Explain who will deal with the stages of the disciplinary action. This can provide certain challenges for PA employers.
- Employees should be told of the complaint against them and given an opportunity to put forward their case before any decision is made.
- The employee has a right to be accompanied by a Trade Union representative or a colleague of their choice, whether or not the employer recognises the trade union.

- Employees should not be dismissed for their first breach of discipline, except for gross misconduct.
 - The case must be fully investigated before the disciplinary action takes place.
 - The employee must be given an explanation for any penalty imposed.
 - The employee must be given a right of appeal, to whom and the time limit in which to appeal.
- It is important that a disciplinary procedure for poor performance will differ slightly to that for misconduct. An informal approach should be taken before the verbal warning stage is implemented, there should be a review period and consideration should always be given as to whether additional training should be provided to an employee who is not performing adequately.
- Before taking action for any but the most minor offences you should consult a Legal Advisor.
- A Code of Practice on Disciplinary and Grievance Procedures which incorporates changes made by the Employment Relations Act 1999 is available on the ACAS website (www.acas.org.uk)
 - An employer is required to go through the following steps as far as disciplinary action is concerned.

DISCIPLINARY PROCEDURES

Non Contractual Disciplinary Policy

Introduction

Your employment is subject, among other things, to satisfactory conduct and performance of your duties. This disciplinary policy is designed to help and encourage you to achieve and maintain appropriate standards of conduct, attendance and job performance.

This disciplinary policy and the procedure set out below does *not* form part of your contract of employment and is not contractually binding upon the employer.

This policy indicates the disciplinary procedures that will normally be followed in the event of misconduct. However the employer reserves the right to amend the policy from time to time, to omit stages of the procedures or to apply such disciplinary procedures as, in his/her absolute discretion, the employer believes appropriate in the circumstances.

For first instances of minor misconduct your employer may speak with you informally before implementing this formal disciplinary policy. However there is no obligation to do this.

Any disciplinary or dismissal procedure will comply with the requirements of any applicable statutory dismissal and disciplinary procedures, details of which are set out in the schedule to this policy.

1. Standard disciplinary procedure

- 1.1 The employer will investigate the misconduct and will establish the facts as necessary, taking into account any statements from any available witnesses.**
- 1.2 The employer will set out in writing the alleged conduct or other circumstances which lead the employer to contemplate dismissing you or taking disciplinary action, and the basis for the allegation, and will send you a copy of that statement inviting you to attend a disciplinary meeting to discuss the matter. You will be provided with a reasonable opportunity to consider your response to the information provided in the statement before attending the meeting. You must take all reasonable steps to attend the meeting.**
- 1.3 Disciplinary meetings will normally be convened within 5 working days of your employer sending you the written statement referred to in 1.2 above. You may be accompanied to any disciplinary meeting by a fellow employee or by a representative of a trade union.**
- 1.4 If the time or date proposed for the meeting is inconvenient you may ask to postpone the meeting by up to no more than 5 working days.**

- 1.5** The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the manager responsible for conducting the proceedings time to consider their decision.
- 1.6** After the meeting you will be informed of the decision and any applicable sanction within 5 working days. Your employers' decision will be confirmed to you in writing.
- 1.7** You have the right to appeal against any decision by your employer and that must be done in writing within 5 days of receiving notice of the decision.
- 1.8** If you notify your employer that you wish to appeal you will be invited to attend a disciplinary appeal meeting. You must take all reasonable steps to attend that disciplinary appeal meeting. You have the right to be accompanied to a disciplinary appeal meeting by a representative of a trade union.
- 1.9** A disciplinary appeal meeting will normally be convened within 7 working days of you employer receiving notice from you that you wish to appeal as per 1.7 above.

Any new evidence that you wish to put forward will be considered and the original disciplinary penalty will be reviewed. The disciplinary sanction originally imposed cannot be increased upon appeal. If your appeal is against dismissal and your appeal is successful you will be reinstated and continuity of employment will be preserved.

- 1.10** After the disciplinary appeal meeting you will be informed of your employers' final decision within 5 working days. The decision will be confirmed to you in writing.
- 2. Modified dismissal procedure for use in cases of gross misconduct**
- 2.1** Your employer will investigate the matter and establish the facts surrounding your conduct. As part of that investigation you may be interviewed.
 - 2.2** If your employer believes that you are guilty of gross misconduct your employment will be terminated similarly without notice or paying lieu of notice.

- 2.3 Your employer will send you a statement, setting out the allegations of misconduct that led to your dismissal and your employer's basis for thinking that you are guilty of that misconduct. The date on which your employment terminated will be confirmed and you may be reminded of any continued obligations that you may have following the termination of your employment. This statement will also explain your right to appeal the decision.**
- 2.4 If you wish to appeal against this then you must notify your employer in writing within 5 working days of receiving notice of the decision pursuant to 2.3 above.**
- 2.5 If you appeal your employer will invite you to attend a disciplinary appeal meeting. You must take all reasonable steps to attend the meeting. You have the right to be accompanied to a disciplinary appeal meeting by a representative of a trade union.**
- 2.6 Any disciplinary appeal meeting will normally be convened within 7 working days of your employer receiving notice from you that you wish to appeal pursuant to 2.4 above. Any new evidence that you may wish to put forward will be considered by your employer as will any new evidence from your employer. The original disciplinary penalty will be reviewed. The disciplinary sanction originally posed cannot be increased upon appeal. If your appeal is against dismissal and your appeal is successful you will be reinstated and continuity of employment will be preserved.**
- 2.7 After the disciplinary appeal meeting you will be informed of your employer's final decision within 5 working days. The decision will be confirmed to you in writing.**

3. Action under the disciplinary procedure

Verbal warnings

Verbal warnings are issued for most instances of general misconduct depending on the seriousness of the offence. If you are given a verbal warning you will be warned of the likely consequences of any further disciplinary offences or failure to improve your conduct to the satisfaction of your employer. A note confirming the verbal warning will be retained by your

employer. A verbal warning will normally remain in force for 6 months.

The verbal warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

First written warning

In the case of a serious offence or a repetition of an earlier minor offence you will normally be given a first written warning. A first written warning will set out:-

- **The nature of the offence and the improvement required (if appropriate) and over what period.**
- **The likely consequences of any further offence or a failure to improve your conduct to an acceptable standard.**
- **That further offences will result in more serious disciplinary action; and**
- **Your right to appeal.**

A first written warning will remain in force for 6 months.

The first written warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

Final written warning

If further misconduct occurs within the time period specified in a first written warning or if the misconduct is sufficiently serious you will be given a final written warning. A final written warning will set out:-

- **The nature of the offence and the improvement required (if appropriate) and over what period.**
- **The likely consequences of any further offence or a failure to improve your conduct to an acceptable standard.**
- **That further offences will result in more serious disciplinary action up to and including dismissal; and**
- **Your right to appeal.**

Final written warnings may also be issued in circumstances where the misconduct does not amount to gross misconduct but is sufficiently serious enough to warrant only one written warning.

A final written warning will remain in force for 12 months. In exceptional cases the period may be longer but the employee will be notified if this is the case.

Dismissal with notice

In the case of further misconduct within the time period specified in any final written warning, or if the misconduct is sufficiently serious and your employer deems it to be appropriate in all the circumstances, you will be dismissed with notice.

Dismissal without notice

In circumstances of gross misconduct you may be dismissed summarily without notice. In such circumstances the modified disciplinary procedure will apply.

You will be sent a statement detailing:-

- The allegations against you.
- The basis for your employer believing that you are guilty of the alleged gross misconduct.
- Your employer's decision to dismiss you, the date on which your employment will terminate and any continued obligations that you may have following the termination of your employment; and
- Your right to appeal

If you are accused of any gross misconduct you may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s).

Examples of misconduct

Gross misconduct

The following list provides examples of conduct that will normally be regarded by your employer as gross misconduct.

This list is not exhaustive. These are examples only:-

- Refusal or repeated failure to carry out your duties.
- A wilful or reckless failure to follow the safety rules of the employer.
- A serious act of insubordination.
- Theft, fraud, deliberate falsification of records, reports or expenses.
- Deliberate damage to property of your employer or of a third party.
- Being under the influence of illegal drugs or alcohol.
- Negligence which causes or could cause significant loss, damage or injury or other serious consequences.
- Harassment or discrimination on the grounds of sex, sexual orientation, race, religious or other beliefs, disability or age.
- Disclosure of confidential information.
- Fighting, assault or threats to your employer or another person.

Misconduct

The following list provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings. This list is not exhaustive. These are examples only:-

- Unsatisfactory time keeping.
- Failing to notify your employment in accordance with the sickness procedure.
- Absenteeism, including any absence from work during a working day without prior authorisation or instruction.
- Failure to comply with rules and regulations applicable to the job requirements including the requirements in regard to a driving licence.
- Insubordination.
- Smoking in a non-smoking area.

STANDARD PROCEDURE

Step 1: statement of grounds for action and invitation to meeting

1(1) The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him/her to contemplate dismissal or taking disciplinary action against the employee.

1(2) The employer must send the statement or copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2: the meeting

2(1) The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.

2(2) The meeting must not take place unless:

(a) the employer has informed the employee what the basis is for the ground or grounds for the action

(b) the employee has had a reasonable opportunity to consider his response to that information.

2(3) The employee must take all reasonable steps to attend the meeting.

2(4) After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

Step 3: the appeal

3(1) If the employee does wish to appeal, he/she must inform the employer.

3(2) If the employee informs the employer of his/her wish to appeal, the employer must invite him/her to attend a further meeting.

3(3) The employee must take all reasonable steps to attend the meeting.

3(4) The appeal meeting need not take place before the dismissal or disciplinary action takes effect.

3(5) After the appeal meeting, the employer must inform the employee of his final decision.

The important point is that if you fail to follow this basic minimum statutory procedure **any** dismissal will be automatically unfair and the tribunal will have the opportunity of increasing the compensation by between 10% and 50%. You will therefore understand why it is very important to follow the procedure correctly.

If as an employer you have procedures which are more detailed than minimum required procedures it really would be a very good idea to make sure that you have followed your own more detailed procedures.

Failure to follow them may not make the dismissal automatically unfair but please remember if these are contractual terms that an employee would have a claim for breach of contract should these procedures not be followed.

Breach of the ACAS Codes does not of itself render an employer liable to Tribunal proceedings, but the Codes will be taken into account within proceedings.

FAIR AND UNFAIR DISMISSALS

(1) HAS THERE BEEN A DISMISSAL?

A dismissal will have taken place if;

- an employee's contract of employment is terminated by you, with or without notice.
- an employee's fixed term contract is not renewed,
- an employee is forced to resign as a result of a fundamental breach of contract on your behalf.

(2) FAIR REASONS FOR DISMISSAL

There are six potentially fair reasons for dismissal:

- capability or qualifications of the employee,
- conduct of the employee,
- redundancy
 - retirement
- illegal behaviour

- some other substantial reason which justifies the dismissal, for example, a change in the funding for your care package or the dismissal of an employee taken on just to cover maternity leave.

In order to avoid a successful claim for unfair dismissal, you must not only establish a fair reason for dismissal but also show that it was reasonable in all the circumstances to dismiss and that a fair procedure was followed.

DISCIPLINARY PROCEDURES - A BRIEF SUMMARY

(1) FORMAL VERBAL WARNINGS

These should be used for minor offences, such as poor time keeping or poor performance, and should be confirmed in writing. It should always state the offence, steps necessary to remedy it and a time limit in which the employee must improve.

The employee should also be warned that another offence would lead to further disciplinary action.

(2) WRITTEN WARNINGS

A disciplinary hearing must be held before a written warning is given. The employee has to be given an opportunity to put forward his/her side of the case. After the meeting, you should adjourn to consider all evidence before arriving at a decision.

Following a final written warning, the employee should be made aware that any further offence of a similar nature may result in dismissal.

(3) SUMMARY (Immediate) DISMISSAL

This is usually imposed in the case of gross misconduct and must be preceded by a disciplinary hearing. Summary dismissal is usually imposed in the most severe cases of misconduct, for example theft, damage to property, fighting, drugs or alcohol use at work, or bringing the employer into disrepute.

(4) RIGHT OF APPEAL

A right of appeal should be given at every stage of the disciplinary procedure Do **not forget** this right.

NOTE Appeals must wherever possible be heard by someone who has no influence or part in the investigation or conduct of the hearing.

Non Contractual Grievance Procedure

Introduction

This grievance policy and procedure aims to promote satisfactory resolution of disputes at work.

The grievance policy and the procedure set out below do *not* form part of your contract of employment and are not contractually binding upon you or your employer. This policy indicates the procedures that will normally be followed in the event of you raising a grievance. The employer reserves the right to amend the policy from time to time, to omit stages of the procedure or to apply such grievance procedures as are appropriate in the circumstances.

Any grievance procedure will comply with the requirements of any applicable statutory grievance procedures.

Informal Grievance Procedure

In the interests of maintaining good working relations you are encouraged to first discuss any grievance with a view to resolving the matter informally if appropriate. If you feel that this is not appropriate or you wish to pursue a formal grievance you should follow the procedure detailed below.

Formal Grievance Procedure

1. Standard Grievance Procedure.

- 1.1. You must set out your grievance in writing or a recordable format ("statement of grievance") and provide a copy to your employer.
- 1.2. Once your employer has had a reasonable opportunity to consider a response to the information provided in your statement of grievance you will be invited to attend a grievance meeting to discuss the matter:-
 - You must take all reasonable steps to attend the meeting.

- Grievance meetings will normally be held within 14 days of receipt of your statement of grievance. If not you will be informed in writing why.
 - You have the right to be accompanied to the grievance meeting by a trade union representative if applicable.
 - If the meeting time is inconvenient you have the right to postpone the meeting by up to 5 working days.
- 1.3. A grievance meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford your employer time to consider the decision.
 - 1.4. After the meeting you will be informed by your employer of the decision normally within 5 working days. If more time is needed to consider the grievance, you will be informed of the revised timescale. The decision will be confirmed to you in writing and you will be informed in writing of your right to appeal against the decision.
 - 1.5. If you wish to exercise your right to appeal the decision you must do so in writing within 5 working days of receiving the decision.
 - 1.6. Your employer will arrange a grievance appeal meeting upon receipt of any notice of appeal. You must take all reasonable steps to attend that meeting. You have the right to be accompanied by a trade union representative if applicable.
 - 1.7. A grievance appeal meeting will normally be convened within 7 working days of your employer receiving notice that you wish to appeal pursuant to 1.5 above. If the meeting time is inconvenient you may ask to postpone the meeting by up to 5 working days.

- 1.8. After the grievance appeal meeting you will be informed of your employer's final decision normally within 5 working days. If more time is needed to consider the grievance appeal, you will be informed of the revised timescale. The decision will be confirmed to you in writing.

2. Modified Grievance Procedure (for former employees)

- 2.1 If you wish to raise a grievance in circumstances where your employment with your employer has terminated you must set out your grievances and the basis for that grievance in writing and give a copy to your employer.

- 2.2. Following receipt of a statement of grievance pursuant to 2.1 above your employer will either write to you inviting you to attend a meeting to discuss the grievance or to ask for your agreement to responding to the grievance in writing:-

- If you do not agree to the matter being dealt with in correspondence within 7 working days of your employer writing to you steps 1.2 to 1.4 of the standard grievance procedure will be followed.
- If you do agree to the matter being dealt with in correspondence your employer will consider your grievance and respond to you in writing within 14 days of the receipt of your confirmation setting out the basis for your employer's decision.