



The employee should be advised of the sanction, the reasons for imposing it and the fact that they have a right to submit a written appeal.”



Disciplinary Checklist^o

How to conduct a fair disciplinary hearing

Go further



Disciplinary rules set standards and make it clear what conduct is, and is not, acceptable in the workplace. Below is a summary of the areas which employers should consider when dealing with disciplinary issues

Overleaf we detail the key steps, as set out in the Acas Code of Practice on Disciplinary and Grievance Procedures.

Preliminary issues

It is vitally important that employers follow a fair and transparent procedure in dealing with disciplinary matters. Implementing good procedures will enable employers to deal with disciplinary issues consistently, fairly and without delay.

Identify in which areas you need rules

Common areas covered include, attitude, attendance, disregard for health and safety, theft, fraud, discrimination and harassment, and inappropriate behaviour.

Identify which rules, if breached, could be gross misconduct

It is important that employees understand what constitutes gross misconduct. Most employers categorise offences as minor, more serious and gross misconduct.

Communicate the rules to your employees

Make sure that your employees know what the rules are and where they can find them e.g. a staff handbook.

There is little point in having a comprehensive disciplinary policy if your managers are unable to implement it effectively. Ensure you provide them with effective training on how to deal with disciplinary issues.

Dealing with issues informally where possible

Some disciplinary issues can be dealt with informally without having to instigate the formal disciplinary process. Minor breaches may be dealt with by an informal discussion, where shortcomings can be identified and improvement encouraged.

Conducting a disciplinary hearing

Where an issue cannot be dealt with informally the employer may have to hold a disciplinary hearing. Some key points to consider are:-

- The hearing should be held in a private meeting room during the employee's normal working hours;
- The disciplinary hearing should ideally be conducted by a single manager, or a panel with a Chair, who has not been involved in the investigation;
- There should be someone present to make notes of the hearing;
- The employee should be taken carefully through the allegations made and all relevant evidence;



Mark Hammerton Head of Employment
Direct Dial: +44 (0)121 572 8510
mark.hammerton@dwf.co.uk

- The employee should be given the opportunity to make any representations, ask questions and produce or discuss documentary evidence in reply;
- The employee should be allowed to call relevant witnesses;
- When all parties have presented their case, the hearing should then be adjourned.

Apply the correct sanction

Consider other alternatives to dismissal, such as demotion, redeployment or a final written warning, which may be more appropriate. The Acas Code provides guidance on when a written warning, final written warning, paid suspension and dismissal may be appropriate. Written warnings should set out:

- The nature of the misconduct or poor performance;
- The improvement required;
- The timescale for improvement;
- How long the warning will remain current;
- The consequences of further misconduct or failure to improve.

The employee should be advised of the sanction, the reasons for imposing it and the fact that they have a right to submit a written appeal.

Hearing the appeal

Any appeal should be heard or chaired by someone who has not been previously involved. The manager conducting the appeal should have access to the evidence compiled during the investigation and the notes from the disciplinary meeting. There is no set format for the appeal, provided the employee is allowed adequate opportunity to present their arguments.

Employees have the same right to be accompanied at an appeal hearing as at a disciplinary hearing.

The Disciplinary Process under the Acas Code

Carry out a reasonable investigation of the circumstances from which the **allegations of misconduct** or poor performance against the employee arise. This may involve investigatory meetings

with the employee or the collation of other evidence. An investigatory meeting should not result in **disciplinary action without a separate disciplinary hearing.**

If it is necessary to **suspend the employee** during the investigation, the **period of suspension should be kept as short as possible** and it should be

communicated to the employee that the suspension is not in itself a form of disciplinary action.

If the investigation identifies a case to answer, the employee should be notified in writing of the **allegations against them and the potential consequences** (including, where appropriate, dismissal.)

The employee should be invited to a **disciplinary hearing and should be provided with any written evidence** prior to this. The notification of the hearing should set out the time and location of the

The disciplinary hearing should be held without unreasonable delay, whilst ensuring the employee has sufficient time to prepare their response. The employee has the right to be **accompanied to the hearing by either a colleague or a trade**

union representative. The parties should make every effort to attend the hearing. Where the employee is persistently unable or unwilling to attend without good cause, **the employer should make the decision based on the available evidence.**

At the hearing, explain the allegations and go through the evidence. The employee should be allowed to set out their case and answer the allegations. The employee

should also have a reasonable opportunity to ask questions, present evidence, call relevant witnesses and raise points about any information provided by witnesses.

Following the hearing, send the decision to the employee in writing without unreasonable delay. If misconduct or poor performance is established, a dismissal would usually only be appropriate if there

has been a written warning and a final written warning. Gross misconduct can justify dismissal for a first offence, but not without following the disciplinary procedure.

Written warnings should set out the nature of the misconduct or poor performance, the improvement required, and the timescale for improvement. They should

also specify how long they will remain current, and the consequences of further misconduct (or failure to improve) within that period.

The employee has the right to appeal and they should be told to do so in writing, specifying the grounds of their appeal. If the employee brings a tribunal claim without appealing, this is likely to reduce any compensation they may be awarded. The appeal hearing should be heard

without delay and should be held, where practicable, by a more senior manager than the person who held the first meeting. The employee has the right to be accompanied to the appeal hearing by a colleague or trade union representative.