

Disciplinary Process for Employees

Introduction

If you are unable to resolve a situation informally it may be necessary to carry out a disciplinary process. This can be effective in managing conduct and performance situations. There are steps you should take however to ensure the process is fair, transparent and complies with UK employment law.

This document refers to the ACAS Code of Practice for Disciplinary and Grievance. A failure to follow the Code does not make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

Investigation

An informal investigation should take place prior to a formal disciplinary process commencing. The purpose of this process is to determine if there is evidence, or a reasonable belief of a conduct or performance issues.

There is no statutory right to be invited in writing, provided with notice, or be accompanied to this meeting unless this is for a reasonable adjustment under the Equality Act 2010.

At the meeting the employee should be made aware of the specific allegations against them with dates, times and details. The investigator should ask open ended questions to get detailed answers where possible. They should consider the allegation objectively without predetermined outcomes and establish the employee's version of events.

After this, the investigator should consider the allegations and evidence to determine if there are grounds for more formal steps.

Written notes should be taken as these will be used as part of the disciplinary proceedings. If there is not a notetaker to sign these along with the investigator, it is advised to ask the employee to read and sign the notes to confirm these are a true reflection of what was said.

Suspension

It is usual practice for the employee to remain at work during the investigation phase. Suspension should not be a knee jerk reaction and should be used in exceptional circumstances where there is no reasonable alternative. We recommend providing full pay and benefits during periods of suspension. The employee should be made aware that the suspension is not disciplinary action, and be offered support with their welfare if needed.

Disciplinary Hearing

If it is appropriate to invite the employee to a disciplinary hearing, then they should be invited in writing. The invite should include the date, time, place and details of the chair and notetaker along with the allegations and any evidence, which will be referred to at the hearing. The invite should also specify the potential outcomes. There should also be at least 24 hours' notice provided, unless the matter is complex in which case more notice may be reasonably required.

The employee has the right to be accompanied at the hearing by a work colleague or trade union representative. A friend or family member may also accompany the employee as a reasonable adjustment under the Equality Act 2010. The companion may take notes, confer with the employee, and address the hearing but cannot answer on the employee's behalf. It is best practice to brief the companion on their role. You should ensure the meeting area is as confidential as possible.

At the hearing you should introduce those present and the purpose of the hearing. Discuss the allegation with the employee, go through the evidence and allow the employee to provide a response, set out their case and ask any questions.

After the hearing has taken place, you should then adjourn to allow sufficient time to deliberate on the outcome. In some cases, you may need to adjourn until the next day, which is recommended if considering a dismissal. It is advised to verbally confirm the outcome to the employee initially and confirm in writing as soon as possible.

There can be several outcomes:

- 1) no sanction awarded
- 2) first written warning
- 3) final written warning
- 4) dismissal – notice and outstanding holiday pay will be paid
- 5) gross misconduct – no notice is payable but outstanding holiday pay will be due.

Warnings should be in line with the Practice disciplinary procedure. It is usual that a First Written Warning is kept on file for 6 months and for a Final Written warning to be kept for 12 months. Warnings should be removed from the employee's file after they have expired.

Going forward, the employee should be advised what behaviours/performance objectives are expected in the future. The stages of the warning process may be jumped in certain circumstances, but advice should be taken before making any final decisions.

Appeal

You are required to provide the employee with the right to appeal within a specified timeframe. Employees should advise the basis of their appeal in writing and appeal meetings should be heard within a reasonable timescale. The employee has the same right to be accompanied at such a meeting and someone impartial, where possible, should conduct the hearing. The result of the appeal should be confirmed to the employee in writing.

Impartiality

Each stage of the process (investigation, hearing, and appeal) should be carried out as impartially as possible. Ideally a different person should handle each stage of the process increasing in seniority within the company as it progresses. For example, a line manager investigates, a senior manager chairs the hearing, and a partner chairs the appeal. If this is not possible, there should be a valid justification.

Key points

The main issues to remember in every disciplinary case are to:

- carry out a thorough investigation
- invite the employee to the hearing in writing
- provide them with the evidence

- allow them the right to be accompanied
- confirm the outcome of the hearing in writing
- give the right to appeal.

Short service employees

The disciplinary process can be varied for employees under two years of service given they do not have the right to claim for unfair dismissal. You will need to ensure the reason for the dismissal is not linked to an automatically unfair reason such as pregnancy or whistleblowing and be mindful to not discriminate. There is also a risk of a breach of a contract claim for failure to follow a contractual disciplinary or performance management procedure.

If you are varying procedure, we recommend that you confirm the dismissal in writing and are mindful of statutory notice periods. These will apply when determining the length of service, even if you have paid the employee in lieu of notice.

Further information

If you have any questions, please contact our HR and Employment Advisors on 0333 043 4444 or at advice@mddus.com