

# Discipline and grievance issues



**It is absolutely vital that you follow the correct procedures in disciplinary and grievance matters. If you fail to do so, you could find yourself judged to have dismissed someone unfairly.**

Good procedures will enable you to stay on the right side of the law and enable you to deal with disciplinary and grievance issues consistently and fairly, with a view to sorting them out before they become serious.

This briefing covers:

- The legal requirements.
- When the procedures apply.
- Drawing up disciplinary rules.

## 1 Establishing the principles

The procedural requirements set out the rules that you and your employees must follow when dealing with disciplinary issues and grievances.

**1.1** Make sure employees can **find out** about your disciplinary rules.

- Inform employees where they can see the rules. For example, in a handbook or displayed on a staff noticeboard. You cannot reasonably complain if someone breaks a rule they did not know existed.

**1.2** Your rules must be **reasonable**.

- The seriousness of the offence should be assessed according to the damage done.
- Ensure your rules are not discriminatory. For example, by requiring more formal dress from men than women.

**1.3** Your rules must be **applied** fairly, reasonably and consistently.

- Investigate thoroughly before you lay any disciplinary charges.
- Give the employee time to consider his or her response and the opportunity to make representations (or to have representations made on their behalf).
- Take time to consider your findings and carry out a follow-up investigation if required.
- Any appeal should, if possible, be heard by someone senior, who was not involved in the first hearing.
- In deciding on penalties, it is important to be consistent and reasonable — you can take mitigating circumstances into account. If you treat people differently for the same offence, you must be able to explain why.

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**1.4** You must use specific disciplinary and grievance **procedures**.

- Your procedures must be as good as, or better, than the minimum three-stage procedure required by law for most disciplinary and grievance issues.
- Failure to use the required procedures could be very expensive (see the box on page 3).
- Put your procedures down in writing and give all employees access to a copy.

**2 Setting the rules**

**2.1** Identify the **areas** in which you need disciplinary rules. Typically these will be:

- Work performance.
- Attitude and attendance issues such as poor timekeeping and absenteeism, negligence or reckless disregard for safety or hygiene regulations.
- Theft, including pilfering and fraud.
- Offensive behaviour, including abuse, harassment, discrimination and violence.
- Inappropriate behaviour such as drinking, gambling, smoking in prohibited areas or, misuse of company facilities.
- Breaches of your communication policy.

For example, accessing and downloading inappropriate material.

**2.2** Decide how you are going to **classify** different offences. In many small companies, this will involve using three categories:

- Minor offences.
- More serious misconduct.
- Gross misconduct.

**2.3** Determine what constitutes **misconduct** — ie behaviour that is unacceptable to you or unacceptable in the context of work.

- You may want to spell out rules completely banning gambling, cash collections and the distribution of political literature, or enforcing a 'clear desk' policy.
- But many rules will be matters of degree.

**2.4** Define what acts are so serious that they constitute **gross misconduct** — entitling you to proceed to the final stage of your procedure at which the employee risks dismissal without notice (after proper investigation, an opportunity to explain, and the application of other fair procedures).

**Note:** 'gross misconduct' is not defined in law, but generally speaking must be an act that fundamentally breaches the relationship of trust between the employer and the employee.

- Typical offences are dishonesty, theft, gross insubordination, falsifying company documents, fighting, drug abuse, using someone else's password, introducing computer viruses, downloading inappropriate material, sending malicious emails, and racial or sexual harassment.
- Particular companies will have their own sacking offences. For example, breaking hygiene rules in a food factory.
- Beware of jumping to conclusions. You cannot sack an employee charged with theft or other criminal acts committed outside work without your own investigation. The fact that an offence is listed in your handbook as gross misconduct is not conclusive. A tribunal will decide for itself whether the offence was 'gross' and if the employer's response was reasonable.

➤ Employment law is complex and is changing rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any relevant rules have changed.

**Dealing with grievances**

**A** You are **required** to have grievance as well as disciplinary procedures.

- As with the disciplinary procedures, a three-step process is required.
- The employee must explain what the grievance is, in writing.
- You must arrange a face-to-face meeting to discuss it.
- If the employee is not happy with the outcome, he or she can appeal.

**B** A **'two-step procedure'** is available where the employee has already left.

- You do not have to arrange a face-to-face meeting. But you must respond to the grievance in writing.

**C** Employees who fail to use the grievance procedure will have any claim for constructive dismissal **disallowed**.

- But you must respond to any grievance within 28 days, or they can go ahead.
- The idea is to force employers and employees to talk, rather than resorting to the courts.

“Phone calls are becoming a tricky issue. Rules regarding phone calls must be reasonable and take into account the employee's personal circumstances, such as the need to be contactable by a carer for an elderly relative or by a childminder.”

**Alexandra Davidson, Berwin Leighton Paisner solicitors**

**3 Handling disciplinary issues**

**3.1** Do not give untrained managers the power to make **major disciplinary decisions**.

- Many cases are lost because managers

- depart from accepted procedures.
- Anyone launching disciplinary action should read the Acas handbook, Discipline at Work (0870 242 9090) [www.acas.org.uk](http://www.acas.org.uk).

**3.2 Investigate** thoroughly before deciding on disciplinary action.

- Ask witnesses for their view of events and take a written statement if possible.
- In gross misconduct cases, that if substantiated are likely to result in summary

**Ignoring statutory procedures**

**A** If you fail to use the **correct disciplinary procedures** in dismissing anyone who could claim unfair dismissal, the dismissal will automatically be judged unfair (if they take it to a tribunal), whether it was justified or not.

- To claim unfair dismissal, employees must usually have at least one year's service. But there is no minimum service requirement for people who are claiming unfair dismissal on the grounds of discrimination.
- Nor is there any minimum service requirement where people are claiming they have been unfairly dismissed for one of the 'inadmissible' reasons, such as being pregnant, belonging to a trade union, pointing out imminent risks to health and safety, or attempting to assert a statutory right. Employment tribunals can make **compensatory awards** in unfair dismissal cases of up to £63,000.

**B** If you fail to use the **minimum statutory grievance procedures**, and the employee claims constructive dismissal (ie that you made a fundamental breach of the employment relationship), the dismissal may be judged to be unfair.

- Constructive dismissal claims can no longer be brought unless the employee in question has first tried to sort the problem out by raising a grievance.

**C** If you fail to use the correct procedures, you may be required to pay an **increased compensation award**. Tribunals will consider whether an increased award is appropriate regardless of whether the claimant has referred to it in the claim.

Equally, an employee may receive a reduced award if they have failed to follow the correct procedures.

dismissal, employees should be suspended on full pay for a brief period while you investigate. Review the suspension regularly to assess whether it is still appropriate. Make it clear that suspension does not constitute disciplinary action or indicate you think the employee is guilty.

**3.3 Grade** the sanctions you are considering according to the seriousness of the offence.

- For example, some offences might merit a verbal warning, some a written warning and some a final written warning.
- Serious offences might merit dismissal or some other action such as a short period of unpaid suspension or demotion.
- A minor offence might become more serious if it was repeated, despite earlier warnings.

**3.4 Minor issues** (eg occasional lateness) can often be tackled **informally**, without triggering the disciplinary procedure.

- Discuss the problem, giving the employee a chance to tell his or her side of the issue.
- Explain that this is not a warning, but that you will keep a record of the conversation. Such meetings could be recorded in a diary so that records of warnings are not lost. Appraisals offer a chance to deal with minor disciplinary problems and defuse grievances.

**3.5** For serious or repeated offences, follow the **formal procedure**.

**3.6** If an employee's behaviour or performance fails to improve after appropriate warnings, there may be no alternative to **dismissal**.

- Give appropriate notice, in line with statutory rights or the employee's contract.
- Whenever you dismiss an employee, give the reasons in writing, explain the right of appeal and the process that should be followed. Enclose copies of any supporting evidence. This will often deter the employee from bringing a claim.

**3.7** Keep a **detailed log** of all disciplinary action and full records of steps taken to investigate and address the causes of the problem.

**4 The Code of Practice**

The Acas Code of Practice is your guide to disciplinary procedures. Tribunals must refer to it in all disciplinary dismissal cases and at any other time when it appears relevant. To comply with the Code of Practice, you should:

➤ There are three Acas Codes of Practice available from the Stationery Office at £2.95 each (0870 600 5522) or through Acas (0870 242 9090).

“Even letters received post termination and outside of contractual time limits may constitute a 'stage 1 grievance letter'.”  
**Jim Givens,**  
**HR Management Solutions**

- 4.1 Put your disciplinary **procedure** in writing. Ensure it is at least as good as the statutory minimum (see 5).
- 4.2 Say what disciplinary **actions** may be taken and provide for issues to be resolved.
- 4.3 Say who has the **authority** to take action.
- 4.4 Make it clear that employees will not be dismissed for a **first breach** of discipline, unless there has been gross misconduct.

See the Acas code at [www.acas.org.uk/media/pdf/l/p/CP01\\_1.pdf](http://www.acas.org.uk/media/pdf/l/p/CP01_1.pdf).

## 5 Statutory procedures

Statutory procedures must be used for any disciplinary sanction (other than warnings or suspension on full pay).

- 5.1 For these offences, your disciplinary procedures must incorporate the **'three-step' minimum**.
- Explain to the employee what the problem is, in writing, including the details on which the allegations are based.
  - You must then have a face-to-face meeting to discuss the matter. The employee has the right to be accompanied at any disciplinary meeting.
  - Following the meeting you must decide what action, if any, will be taken. Inform the employee in writing and give the employee the opportunity to appeal.
- 5.2 There are **exceptions** to which the 'three-step' requirement does not apply.
- Where factors beyond the control of the parties make it impracticable to complete the procedure. For example, when one of the parties has gone to live abroad.
  - Where all employees have been dismissed, and offered re-engagement on new terms.
  - Where there are collective redundancies.
  - Where someone is unfairly dismissed for official (protected) industrial action.
  - Where the business suddenly closes down.
  - Where either party has reasonable grounds for fearing violence or harassment, or damage to property.
  - In certain cases, where someone has been dismissed using the two-stage 'modified' procedure (see 5.3).
- 5.3 The **'modified procedure'** can be used only in very exceptional circumstances.

- The modified procedure involves two steps. The employee is first dismissed. The employer then writes to the employee to set out the reason for the dismissal and why they believe him or her to be guilty and to explain the employee's right of appeal.

## 6 The disciplinary hearing

- 6.1 Employees should be given sufficient **notice** to prepare for a formal hearing. Hearings should not normally be held on the same day as notification.
- 6.2 Respect the employee's **rights**. For example, their right to give their side of the story and to be accompanied if they wish.
- 6.3 Make clear the **consequences** if there is no improvement (eg penalties or dismissal).
- 6.4 Compose any **written warning** after the hearing, not before.
- Verbal warnings are usually valid for three to six months, while final warnings may remain in force for 12 months or more.
  - Where an improvement is required, state what improvement is required, how it will be measured and the possible consequences of not making the improvements.
  - State the duration of any written warning in the warning letter.

## 7 Going for improvement

Aim to improve behaviour or performance, not to punish the employee.

- 7.1 Be **constructive** and positive.
- Give a first warning. Accompany it with the offer of training.
  - Consider counselling if family or social difficulties underlie the problems.
- 7.2 Stress that it is the **behaviour** you are attacking, and not the person.
- 7.3 Devise an **action plan** for improvement to tackle ongoing problems.
- 7.4 Set the **timescale** for improvement.
- Leave a stated amount of time for improvement between warnings.
  - Tribunals insist that the time allowed and improvement demanded must be reasonable. This will depend upon the circumstances.

### Expert contributors

Thanks to **Jim Givens** (HR Management Solutions, 01695 421980, [www.humanresourcesclick.net](http://www.humanresourcesclick.net)); **Alexandra Davidson** (Berwin Leighton Paisner solicitors, 020 7760 1000).

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