

DISCIPLINARY AND GRIEVANCE ISSUES

Procedures

It is highly advisable that a business maintains written dismissal, disciplinary and grievance rules and procedures. Failure to have and follow the requisite procedures, increases risks in various contexts, including in particular, in the area of unfair dismissals.

An employer is legally obliged to inform each employee of its disciplinary rules, the disciplinary/dismissal procedures and the name of the person to whom they should apply if they are unhappy about a disciplinary or dismissal decision or if they seek redress for a grievance. It may be included in the employee's written statement of terms of employment or it may be referred to in the staff handbook.

The procedures must meet the minimum requirements of the statutory procedures laid down by law. An employer can choose either to follow the statutory procedures or add extra rules and steps so as to create its own procedures. An employer's failure to follow procedures may result in an increase of compensation up to 50% on a successful unfair dismissal claim.

The statutory procedures would not normally form part of an employment contract. It is however possible that they could be incorporated so as to become part of the contract. In this event a failure to follow the procedures could leave an employer liable for breach of contract.

An employer should set out rules, standards of conduct and performance required. This should be communicated to the work force, preferably in a staff handbook. This will not be expected to contain everything. It would normally cover such matters as absence, discrimination, bullying, harassment, health and safety, appearance, prohibited activities, smoking, workplace standards, time keeping, use of facilities and equipment.

The rules should also set out behaviour which will be treated as gross misconduct i.e. misconduct that is so serious that it could lead to dismissal without notice. It is important to give examples of what counts as gross misconduct e.g. bullying, drunkenness, fighting, fraud, gross negligence, serious breach of health safety, theft, wilful damage etc. What will constitute gross misconduct will vary and will depend on the workplace and the nature of the business.

Disciplinary action should have an informal as well as formal aspect. An informal discussion is more likely to reach a satisfactory solution. However, if poor conduct or performance continues, it may be necessary to take formal disciplinary action. The rules should allow for a meeting to explain the procedure and give reasons. A further written warning or final warning should generally be given.

After giving a warning, an employer must allow the employee time to improve behaviour. The employer can only move on to the next stage if the previous warning can be shown to have no effect. In the case of very serious misconduct, it may be permissible to by pass this stage in order to deal with the matter immediately.

The employee has the right to be accompanied at any meeting by a colleague or union representative. Copies must be given of any evidence that may be used at the meeting.

The Statutory Dismissal and Disciplinary Procedure (SDDP) mentioned above or the employer's own enhanced procedures will apply. There are two SDDPs; the standard SDDP and the modified SDDP.

Standard SDDP

This has three stages. The employee is to be informed in writing why it is contemplated that dismissal or disciplinary action is to be taken. The employee is to be invited to a meeting and given sufficient time to prepare.

The meeting must be held and a decision made after the meeting. The employee must be notified of the right to appeal. If the employee wishes to appeal against a disciplinary action that has been decided, the employee must be invited to a further meeting. See below regarding appeal.

Modified SDDP

This will only apply in rare cases of very serious misconduct where immediate dismissal is warranted. The procedure has two stages namely a written statement setting out the conduct that has resulted in the dismissal and informing the employee of the right to appeal and an appeal meeting. If the employee wishes to appeal he must inform the employer and a meeting must be held. The employer must inform the employee of the decision following the meeting. The employee has the right to be accompanied by a colleague or union representative.

The above Codes (the ACAS Code) are important as they are taken into account by tribunals who deal with unfair dismissals. Failure to follow the appropriate codes can mean an increase in compensation of up to 50% if the employee's appeal is successful. A dismissal is more likely to be found unfair in the first place if fair procedures such as those in the Code are not followed.

Disciplinary investigations

When a disciplinary matter is involved employers should carry out a full investigation before taking any action. The alleged breach, the circumstances, consequences, the employee's job, length of experience, service and record must be considered. The evidence, recent changes, previous incidents, mitigating circumstances must be considered in full. Once the evidence is reviewed it should be decided whether there is a case to answer or whether it is serious enough for disciplinary measures. An informal solution may be appropriate as an alternative to disciplinary action.

For certain serious offences, suspension may take place. This should normally be on full pay. If it is intended to suspend without pay, this needs to be provided for in the employment contract terms.

A full investigation should be carried out of the relevant circumstances. All relevant facts and documents should be made available. The employee must be given details of the circumstances and allegations and he must be given the opportunity to prepare his case and consult representatives. He must be given details of the complaint, the procedures to be followed, the need for them to attend, the right to be accompanied, the right to delay the hearing if their chosen companion cannot attend and the text of any witness statements, if heavy reliance is to be placed on them. He must be given copies of documents that are intended to be relied on against the employees.

At a disciplinary hearing the nature of the complaint and the procedure should be explained to everyone involved. The employee is entitled to see any statements to be made by witnesses that he has not already seen and must be given a chance to state his case and respond to allegations. The person holding the tribunal must ascertain all facts in relation to the complaint and take notes of any special circumstances.

The employee is to be informed of the decision and it should be made clear as to what is to happen next. If there is a satisfactory explanation for the conduct or performance the hearing should be stopped and no further disciplinary action should be taken.

If any penalty is proposed, it should specify the reason behind the decision. Depending on the circumstances it should be stated what specific improvement is required, if any, how long a warning may be in force, the likely consequences of repetition of this conduct and that there is the right of appeal.

After a disciplinary hearing the employer may elect whether to take any action or not. If a disciplinary penalty is taken, it should be based on the full circumstances and any special circumstances applicable to the employee. A penalty short of dismissal could include transfer to another job, non payment of bonuses or suspension without pay.

Dismissal

The most severe sanction is dismissal. Normally, dismissal should only take place only following the conclusion of the process. Generally warnings should have issued and it should have been made clear that if the conduct or performance did not improve dismissal could follow. It is usually necessary at the very least to have followed the standard dismissal and disciplinary procedures. Failure to do so would make any dismissal automatically unfair.

In the case of gross misconduct, it may be possible to dismiss immediately without giving notice or pay in lieu of notice. However, summary dismissal is generally not recommended. It is better to investigate the incident fully, suspend the employee on full pay and follow standard dismissal and disciplinary procedures.

Grievance procedures

There should be a written grievance procedure, complying at the very least with the standard statutory grievance procedure (SGP). In relation to employee complaints and grievances there are two SGPs the "standard" and "modified". Generally the standard procedure will apply.

Under the standard SGP, the following three stages should be followed:-

- The employee must set out the grievance in writing. It should be given to the person specified in the grievance procedure unless that person is the person complained about;
- A meeting must be held and the employer must inform the employee of the outcome. The employee must be invited to the meeting as soon as possible afterwards to be informed of the decision and informed of the right to appeal.
- An appeal meeting is held if requested. If the employee wishes to appeal against the decision following the grievance, the employer must invite the employee to a

further meeting. If reasonably practical a more senior manager who has not been involved, should deal with the appeal. After the meeting the employee should be informed of the decision taken. The employee has the right to be accompanied by a colleague or union representative.

The modified SGP will apply in relation to a grievance if the employee no longer works for the employer, if it is agreed in writing that it is applied or if the employee has raised the grievance before but the standard procedure was not completed or the employee did not raise it until after he left employment.

In the modified SGP there are two stages namely a written statement of grievance by the employer followed by a written response by the employee. As with the other procedures a tribunal will take account of whether the grievance procedure has been followed in any subsequent complaint.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.