

# 33. Discipline Procedure

## 1 OVERVIEW

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It's important to have a disciplinary procedure setting out clear rules about the way your employees should behave and the standards you expect of them. It will also set out the process that you will follow in the event that an employee does not comply with the standards that are expected of them.

Disciplinary procedures are often used in instances of misconduct but can also be used in instances of capability.

All employees must have a written statement of terms and conditions of employment which should contain disciplinary rules and procedures or refer the employee to another document containing those procedures.

## 2 THE ACAS CODE OF PRACTICE

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The ACAS Code of Practice on Disciplinary and Grievance Procedures provides practical guidance to employers and employees and sets out principles for handling disciplinary situations in the workplace.

It is advisable that written disciplinary procedures, and disciplinary proceedings, comply with the code.

Although a failure to follow the ACAS code does not make an employer liable in itself, it is a respected document and employment tribunals will take the code into account when considering cases.

Many disciplinary issues can be resolved informally with a quiet word. However, where informal resolution is not possible, then a disciplinary procedure will set out the appropriate way to deal with the issue.

Most disciplinary procedures allow for verbal, written and final warnings before dismissal is considered. However, it may also specify that certain conduct is so serious that it will be considered as gross misconduct and will justify summary dismissal.

Before holding a disciplinary hearing and deciding on the appropriate sanction in any given case, the facts of the case must be properly investigated. The more serious the matter is, the more extensive those investigations should be.

No disciplinary action should be taken until the employee has had an opportunity to give his or her version of events.

An employee who is disciplined should always be given the right to appeal against that decision.

Central to the Code of Practice is a three step procedure, which as a minimum should be followed:

- Write to the employee setting out the alleged offence.
- Hold a meeting with the employee to discuss the offence.
- Allow the employee to appeal against any disciplinary sanction that is imposed.

## 3 LEVELS OF MISCONDUCT

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**Ordinary misconduct** - Ordinary misconduct should not result in summary dismissal. But failure by an employee to improve his or her 'ordinary' misconduct after warnings (normally a minimum of two) may result in dismissal with notice.

Examples of acts constituting ordinary misconduct include:

- poor timekeeping.
- unauthorised absence.
- misuse of employer property.

### Gross Misconduct

Examples of acts constituting gross misconduct include:

- theft of property.
- fraud or other dishonest conduct.
- deliberate damage to or unauthorised use of the employer's property.
- a serious breach of the employer's rules (including health and safety rules).
- gross negligence.
- violent, abusive, dangerous, bullying or intimidating conduct.
- downloading inappropriate material from the internet.
- being under the influence of alcohol or illegal drugs whilst at work.
- serious sexual, racial or other harassment.

## 4 KEY STAGES

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**Dealing with the matter informally.** Many first or minor instances of misconduct and most cases of unsatisfactory performance can be effectively dealt with by the employee's immediate line manager informally. In many cases, improvement in conduct or performance can be achieved through the provision of advice or coaching.

**Dealing with the matter formally.** Formal disciplinary matters should be dealt with promptly and without unreasonable delay.

**Investigations.** You should carry out all necessary investigations in order to establish the facts of the case.

**Disciplinary hearing.** The employee should, without unreasonable delay, be invited to a disciplinary hearing, having been given reasonable notice, and told that the hearing is to be held under the employer's disciplinary procedure.

**Suspension.** The employer may suspend an employee on full pay pending completion of investigations. Suspension should only be used if it is necessary to enable the employer to investigate a matter properly.

**The right to be accompanied.** All workers have a right to be accompanied by a fellow worker or trade union official where they are required to attend a formal disciplinary or grievance hearing.

**Sanctions.** Generally, the sanctions imposed following a breach of the disciplinary rules will be either a warning or dismissal. However, some disciplinary procedures do provide for alternative sanctions.

### Key Principles where the outcome is dismissal

- Where the employee is dismissed, he or she should be informed as soon as possible after the disciplinary meeting that the employment is to be terminated, the reason for the dismissal, the notice period and the date of termination.
- Employees should be permitted to appeal against any formal disciplinary action taken against them.
- Appeals should be dealt with impartially by (where possible) a manager who has had no involvement in the case so far.
- The outcome of the appeal should be communicated to the employee in writing as soon as possible.

## Key principles where the outcome is a warning

Where the outcome of disciplinary action is a warning, the warning should state:

- whether it is a verbal, written or final written warning.
- the nature of the employee's misconduct (or unsatisfactory performance).
- the change or improvement required.
- the timescale for improvement.
- what the outcome will be if there is further misconduct (or no improvement in performance), for example, further disciplinary action or dismissal.
- the right for the employee to appeal against the warning.

Clear rules help employees to understand what is expected of them and set out your standards. They also help you to act fairly and consistently.

## 5 NEXT STEPS

- Create a disciplinary procedure for your business, ensuring that it take account of the ACAS Code of Practice.
- Check that your employment contracts refer to your disciplinary procedure.
- Communicate disciplinary procedure to your employees.

## 6 FACTSHEETS TO HELP

- Managing Grievance

## 7 FOR MORE ADVICE AND INFORMATION

**ACAS** - (Advisory, Conciliation and Arbitration Service) free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. [www.acas.org.uk](http://www.acas.org.uk)

**Achieve in Bath & North East Somerset** - free recruitment support, advice and help. Matching job seekers, employers and course providers to help employers recruit, train and retain employees. [www.achieveinbathnes.co.uk](http://www.achieveinbathnes.co.uk)

**Future Bright** - free help & support for businesses and employees to realise their full potential. Provide access to training and development, workshops and networking. HR support to promote career progression and best practice to attract and retain staff. [www.futurebright.org.uk](http://www.futurebright.org.uk)

**Bibliography** - this fact sheet was produced by Rathbone HR Solutions in association with Cool Ventures Ltd in December 2018 with content sourced from; HR Inform ([www.hr-inform.co.uk](http://www.hr-inform.co.uk)), ACAS ([www.acas.org.uk](http://www.acas.org.uk)), CIPD ([www.cipd.co.uk](http://www.cipd.co.uk)), the pensions regulator ([www.thepensionsregulator.gov.uk/en/employers](http://www.thepensionsregulator.gov.uk/en/employers)), HMRC([www.gov.uk/government/organisations/hm-revenue-customs](http://www.gov.uk/government/organisations/hm-revenue-customs)), the Information Commissioner's Officer website ([www.ico.org.uk](http://www.ico.org.uk))



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