

GUIDE TO MANAGING A DISCIPLINARY FORMAL PROCEDURE FOR MISCONDUCT

As an employer you may have concerns or a complaint about one of your employees and may decide to take disciplinary action against them. This might be due to his/her:

- behaviour at work
- absence from work
- standard of work
- behaviour outside work which affects the employment

This guide is designed to help employers deal with misconduct when informal discussions have not resolved matters.

THE INVESTIGATION

- It is important to investigate relevant information and not to jump to conclusions.
- An investigation may commence:
 - when complaint is made about an employee's behaviour
 - you determine that there are issues to be addressed and need to establish the size and scope of the problem
- Investigation will be different from case to case – balanced and proportionate
- It is about getting together all of the relevant facts to be considered
- If the investigation reveals that there are grounds to start disciplinary proceedings, invite the employee to a disciplinary meeting

DISCIPLINARY MEETING

This should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

Prepare for the interview by:

- Collecting relevant information including witness statements
- Ensuring all those involved are available to attend
- Preparing the questions you want to ask
- Ensure the venue is appropriate
- Ensure the employee has details of the time and place
- Ensure the employee is aware of his/her right to be accompanied
- Ensure the employee has copies of relevant papers including witness statements where appropriate.

Do not go into the interview assuming you know the outcome!

THE ROLE OF THE COMPANION/REPRESENTATIVE

An employee has the right to a companion (sometimes called a representative) at a disciplinary hearing which could result in:

- The issuing of a formal warning to a worker
- The taking of some other action in respect of a worker (suspension without pay, demotion, dismissal)
- The confirmation of a warning issued or other action taken

A companion:

- Can address the hearing
- Can ask questions to increase knowledge and understanding of the case
- Provides support to the worker
- Can confer with the worker in private

THE MEETING

- Open the meeting by making introductions and clarifying roles of those present
- Explain the purpose of the meeting and the allegations that are under consideration
- Describe and discuss the outcomes of the investigation
- Give the employee and their companion the opportunity to ask questions regarding witness statements or other evidence
- Interview witnesses if appropriate and give the employee an opportunity to ask them questions
- Give the employee the opportunity to present his/her side of the story (including witnesses if appropriate)
- Question the employee about this evidence
- Have further discussions if clarification of any points are required by you or the employee
- Give the employee the opportunity to present any mitigating evidence and to summarise his/her case
- Summarise the evidence
- Adjourn the meeting

TIP - DISCIPLINARY INTERVIEW

At any time during the interview either you or the employee may request an adjournment. Use this facility when:

- You need time to think
- Things are getting heated and the employee (or you!) would benefit from time to 'cool off'
- The discussion has started to go round in circles and you need to start afresh on a different point

DURING THE FINAL ADJOURNMENT

- Consider all that you have seen and heard
- Decide what action to take (assuming there is no further info/evidence required)

Factors which might be relevant to your decision:

- The extent to which standards or rules have been breached
- Any precedents which have been set
- The employee's general work record
- Length of service
- Training received or experience in the job
- Any special circumstances
- Any live warnings on file

Outcomes from the adjournment may include

- Longer adjournment to consider existing, or obtain further, information
- Decision to issue a warning or other disciplinary action
- Description of the required improvement
- Determination of any training, monitoring etc. required and relevant review period

DELIVERING YOUR DECISION

- Reconvene the meeting and announce your decision
- Ensure that you explain the right of appeal and the appeal process
- Explain that the decision will be confirmed in writing
- Explain that if improvements are not made then further action will be taken

FORMAL WARNINGS

- Written warning - should set out the nature of the misconduct and the change in behaviour required. It should normally be live only for a set period (e.g. six months).
- Final Written Warning - may be appropriate if a further offence occurs, or if the misconduct is very serious but does not justify dismissal. Again it should normally be live only for a set period (e.g. twelve months) and state that further misconduct or unsatisfactory performance may lead to dismissal.

AFTER THE DISCIPLINARY INTERVIEW

- Confirm decision and right to appeal in writing
- Provide the employee with copies of minutes of the meeting
- Keep all paperwork on file
- Maintain confidentiality of the outcome
- Follow up on any training, monitoring or supervision requirements and make sure it happens
- Return to normal working relationships ASAP.

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