



Disciplinary *and* dismissal

There should be a recognised procedure from your employer in dealing with disciplinary and dismissals.

A disciplinary and dismissal procedure should normally be referred to in your contract of employment or staff handbook. You must read your employer's procedure where it is available. Below we have outlined a good practice guide on how employers should deal with disciplinary issues.

Minor faults or shortcomings in performance or attendance should normally be dealt with informally by your line manager with a view to reaching agreement on the improvement required. Informal warnings should not form part of the formal disciplinary procedure and the formal procedure would not be followed before an informal warning is given. If, however, the problem persists or if the matter is more serious, action under the formal disciplinary procedure outlined below should normally be taken.

A disciplinary procedure should be intended to provide a formal framework to deal with the situation where your conduct, performance or attendance, falls below acceptable standards and to ensure fair and consistent treatment of all employees in such circumstances.

The procedure we have outlined below is a good practice guide on how employers should deal with disciplinary issues. It can also be applicable where an employee may be dismissed for reasons unrelated to conduct, capability or attendance, for example, on redundancy.

Good practice procedure your employer should follow:

Invitation to a meeting

Your employer should set out in writing to you, your alleged conduct, performance or other circumstances which have led them to contemplate formal action or dismissal and you should be invited to a meeting to discuss the matter.

Disciplinary meeting

The meeting should take place before any action is taken (other than suspension on full pay to enable a full investigation to take place).

The meeting should not take place until (i) you have been informed of the basis for the grounds given in the original notice of formal action or dismissal and (ii) you have had a reasonable opportunity to consider your response to such information.

At the meeting your employer should explain the complaint against you and go through the evidence that has been gathered.

You must take all reasonable steps to attend the meeting.

After the meeting you should be informed in writing of your employer's decision and your right of appeal against such decision if you are not satisfied with it.

Appeal

If you wish to appeal you should inform usually your line manager in writing within five working days (the time frame will depend on the timescale your employer has provided – if you cannot comply you should ask for an extension or if missed you should raise the appeal in any event) of the date of the letter notifying you of the outcome.

You should set out specific reasons for the appeal.

Your employer should invite you to attend a further meeting.

You must take all reasonable steps to attend the meeting.

The appeal meeting may take place after the disciplinary action or dismissal takes effect.

After the appeal meeting you must be informed of your employer's final decision.

At any meeting under this conduct and performance procedure you have the right to be accompanied by a work colleague or trade union representative to act in a supporting capacity but such companion may not usually answer questions on your behalf.

You also have the right to call witnesses or ask questions of any witnesses called by your employer.

General principles for the operation of the disciplinary and dismissal procedure

- formal disciplinary action should not normally be taken until the matter has been investigated
- where an allegation of misconduct is made against you, you may be suspended from work while an investigation is carried out
- you should be paid your normal salary during any period of suspension unless your contract states otherwise. You should also be informed that suspension is a neutral act, that it is not a disciplinary penalty and does not imply guilt
- you should be advised of the allegations against you and have an opportunity to state your case before any formal disciplinary decision is made
- you should be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting
- at every stage of the formal disciplinary procedure, you will have a right to be accompanied at any disciplinary meeting by either a work colleague or a trade union official
- you should not be dismissed for a first breach of the disciplinary rules, except in the case of gross misconduct, when the penalty will normally be dismissal without notice or payment in lieu of notice
- you will have the right to appeal against any formal disciplinary penalty

- although the disciplinary penalties which may be imposed under this procedure will normally be imposed in the order set out below, the procedure may be commenced at any stage if the seriousness of the employee's alleged misconduct justifies this

Disciplinary sanctions

As part of any disciplinary procedure, where your employer considers it appropriate to do so, they may impose a disciplinary sanction, which is a penalty. These will generally take the form of some type of warning.

• Verbal warning/improvement notice

If conduct, attendance or performance does not meet acceptable standards, you may be given a formal verbal warning. This should set out the performance/conduct problem, confirmation of improvement required and time scale for improvement to be made, together with the assistance to be provided to meet the objectives.

A record of the verbal warning will be kept on your personnel file, but the warning will be disregarded after usually a six month period (the time frame is dependent on your employer's decision) provided conduct, attendance or performance has been satisfactory.

• Written warning

If the offence is more serious or if there is insufficient improvement after a verbal warning/improvement notice, or if a further broadly similar offence occurs whilst a verbal warning remains in force, a written warning may be given. This will set out the nature of the performance/conduct problem and confirmation of improvement required and time scale for improvement to be made, together with the assistance provided to meet the objectives.

The warning should also inform you that should your performance/conduct fail to improve or you commit any further disciplinary offence over the next six months, (the time frame is dependent on your employer) then you will be issued with a final written warning. The written warning will be kept on your personnel file, and you should be informed after what time period it will be disregarded providing your conduct, attendance or performance has been satisfactory.

• Final written warning

If there is still insufficient improvement after a verbal and/or written warning has been issued or if the misconduct is sufficiently serious to warrant only one written warning, a final written warning will be given. This will provide details of the complaint, the improvement required and the timescale for the improvement.

- It will also warn that a failure to improve or any further disciplinary offences over the next period referred by your employer may lead

to dismissal or some other action short of dismissal. The final written warning will be kept on your personnel file and you should be informed when the warning will be disregarded provided your conduct, attendance or performance has been satisfactory.

● **Dismissal or other sanction**

If there is still further misconduct or a failure to improve performance the final stage in the procedure may be dismissal or some action short of dismissal such as demotion, loss of seniority or transfer.

Examples of misconduct

Examples of misconduct which may lead to disciplinary action being taken include, but are not limited to:

- failure to obey a reasonable management instruction
- poor work performance, including inefficiency and/or carelessness and/or indifference to work
- breach of policies and practices
- poor timekeeping or attendance or attitude
- failure to follow sickness absence reporting procedures
- improper use of your employer's property or failure to report damage to their property as soon as possible.

Examples of gross misconduct

Your employers may consider some types of misconduct to be so serious that a disciplinary warning would be an insufficient penalty. Such offences are known as offences of gross misconduct.

Where the offence is one of gross misconduct the normal penalty will be dismissal without a prior warning being issued and without notice or a payment in lieu of notice (summary dismissal).

Dismissal for gross misconduct will not normally occur until a disciplinary meeting has taken place.

Matters which may justify summary dismissal include, but are not limited to:

- dishonesty, theft and fraud
- deception, for example making untrue statements in employment applications or in statements relating to qualifications; falsifying references, falsifying documents relating to sickness/absence; falsifying expenses, etc.
- vandalism or sabotage
- fighting, or seriously disruptive behaviour or offensive or abusive language
- insubordination such as failing to follow a lawful instruction
- serious misuse of computer, email and internet systems, including accessing pornographic, offensive or obscene websites or distributing emails of this nature
- misuse of financial or other confidential information
- acts of bullying, harassment or discrimination
- being at work under the influence of drinks, illegal drugs or other intoxicants
- misconduct which may bring us into disrepute with customers, suppliers or others
- indecent or immoral acts
- going off site without permission during normal working hours
- betting, gambling or touting on your employer's premises
- unauthorised absence
- serious breaches of policies and procedures
- deliberate or serious damage to property or causing loss, damage or injury through serious negligence
- serious breach of health and safety rules
- serious breach of confidentiality
- any criminal offence carried out during working hours or outside of working hours where such offence impacts or may impact upon the employee's employment

The above are examples of good practice that your employers should be following. If you require further information, please contact the Employment Team on **03700 86 86 86**.