



Ashdown Human Resources

Disciplinary hearings and appeals – the importance of a fair procedure



Disciplinaries – the importance of a fair procedure

The Golden Rule

If you need to take disciplinary action against an employee, you must always follow a fair procedure or you could face a costly Employment Tribunal claim. This means that you should follow the ACAS code of practice, which although not law, tribunals expect it to be closely followed by employers. A failure to do so could make an otherwise fair dismissal unfair. In addition, if either party has unreasonably failed to comply with the code, a tribunal has discretion to adjust any award by up to 25%, depending on which party was at fault. Currently employees with two years' service have the right to claim unfair dismissal but special arrangements exist for in situations where someone is dismissed for certain reasons with special protections, for example a dismissal on health and safety grounds or for whistleblowing.

The disciplinary procedure is not just about imposing sanctions, but should also be seen as a way of helping and encouraging improvement where employee performance or conduct is unsatisfactory.

Warnings procedure

Apart from where gross misconduct is involved, the normal pattern of warnings has the following stages:

- First written warning
- Final written warning
- Dismissal.

In some cases all three stages will be applied, but where the situation is particularly serious a First Written Warning can be the first sanction, followed by dismissal.

In other cases informal action may be more appropriate, for example coaching or additional training.



General principles of the ACAS code

The following general rules should be followed:

- Issues should be raised and dealt with promptly - meetings and decisions should not be unreasonably delayed
- Employers should act consistently
- If necessary an investigation should take place by someone other than the person chairing the disciplinary hearing
- Employees should be informed of all the concerns about their conduct or performance with evidence as appropriate, and be given the opportunity to state their case
- Employees have the normal right of accompaniment at all formal meetings
- Employees should be given the right to appeal against any disciplinary warning.

Investigations

Sometimes the situation may be complex and a manager should be appointed to establish the facts promptly before recollections fade. Wherever possible the person carrying out the investigation should not be connected to the employee or the facts giving rise to the investigation.

The investigation may involve obtaining statements from witnesses. The witnesses statements should be written up and checked and signed by each witness. In some cases it may be necessary for the witness statements to be given on an anonymous basis, and the employee themselves may also be asked to give their own account of events before the decision is made to hold a formal disciplinary hearing. There is no right of accompaniment at this stage.

Other forms of evidence should be gathered, eg call recordings, CCTV, timesheets, door entry reports, expenses claims, customer complaints etc.

The investigating manager should produce a report, consisting of all the evidence available which should be passed to another manager who will decide whether a formal disciplinary meeting should be held.



Suspension

Where there are serious concerns, for example a reasonable belief of gross misconduct, consideration should be given to a brief period of paid suspension while the case is investigated. It should be made clear to the employee that suspension is not considered to be a disciplinary sanction.

KEY STAGES OF THE DISCIPLINARY PROCEDURE

The following are the key stages of the procedure itself.

- **Provide the employee with full details of the allegations made**

This should include the investigation report, all forms of evidence, witness statements etc

- Invitation to attend a disciplinary hearing - the letter should contain details of the time and place of the hearing, the employee's right of accompaniment (a fellow employee or trade union representative) and the name of the person chairing the hearing. At least 48 hours' notice should be given. If the employee is off sick, then the meeting should be delayed until they return to work.
- No decision should be made until the hearing has taken place
- At the hearing the employee should be given the opportunity to state their case
- Another member of staff should be present to take notes.
- The person chairing the meeting should hold the meeting in good faith, keeping an open mind and fairly consider any explanations put forward by the employee.
- After the hearing has taken place the notes should be written up and checked, and only then should a decision be made. Factors to take into account when deciding whether a warning should be given include the employee's previous record, length of service and any mitigating circumstances applying in the particular case.

Disciplinary warnings

If a formal warning is deemed appropriate, then this should be confirmed in writing, including the right of appeal and also stating the length of time for the warning to remain in force, for example for 12 months.



Next steps

If further misconduct or poor performance is evident during the period of the warning, then the process should be repeated and a further disciplinary hearing held. This could result, for example, in the employee moving from a First Written Warning to a Final Written Warning. Similarly, dismissal could follow.

A reasonable period of time should be allowed for the employee to improve where poor performance is the issue. Where conduct is the issue it is usually easier for the employee to make an immediate improvement.

Appeal

The employee should be given the right to appeal against each stage of the disciplinary warning process. Appeals should be held without delay, and by a different manager. Employees should be asked to put the grounds for their appeal in writing, not just the fact that they are appealing.

Special cases

If an employee is charged with or convicted of a criminal offence that in itself would not normally be a fair reason for disciplinary action. Consideration should be given to what effect the charge or conviction has on the employee's suitability to do their job and their relationship with the employee, colleagues and customers/clients.