

## 6. Employing and managing people

### 6.18 Disciplinary policy

To ensure that everyone is treated fairly it is important to have a set of guidelines and procedures to follow in order to deal effectively with performance and conduct issues.

Disciplinary rules tells employees what behaviour is expected from them. If the employee breaks specific rules, this is often called misconduct. Employers use disciplinary procedures and actions to deal with situations where employees allegedly break disciplinary rules. Disciplinary procedures can also be used where employees don't meet their employer's expectations in the way they do their job, i.e. unsatisfactory performance, or capability.

When dismissing or taking disciplinary action against an employee, employers must follow the statutory minimum procedure contained in the Employment Act 2002. It is worth noting that even where the relevant procedure is followed, if an employee is dismissed, the dismissal may be unfair if the employer had not acted reasonably in all the circumstances. Employers should also be careful not to discriminate on the grounds of gender, race (including colour, nationality and ethnic or national origin), disability, age, sexual orientation or religion.

The following is an example of a disciplinary policy, which should be adapted to suit your own organisation. It is provided for guidance only and should not be regarded as an authoritative statement of the law.

### **Example disciplinary policy**

#### **1. Introduction**

<Name of organisation's> disciplinary policy is designed to help promote orderly employment relations as well as fairness and consistency in the treatment of individuals.

The emphasis of <Name of organisation's> approach is to:

- establish the full facts quickly
- deal with the individual and facts consistently and fairly
- encourage improvement through informal procedures
- supporting an under-performing individual to become effective
- avoid making hasty decisions
- provide an opportunity for appeal against the outcome of a formal disciplinary meeting

## **2. Procedure**

### **2.1 Informal approach**

It is expected that most performance issues will be resolved through informal discussions between the line manager and the employee, which are designed to highlight the shortfall in the employee's performance, and to agree a course of action. A brief note of the discussion should be held with the manager.

The line manager will take formal action if:

- informal does not result in an improvement
- the unsatisfactory performance is considered too serious to be classed as minor
- it is a case of misconduct

### **2.2 Formal approach**

Where after a full investigation of the facts an employee's conduct or performance warrants being dealt with through a formal disciplinary procedure, the following 3 step process will take place:

#### **Step 1 – Statement of grounds for action and invitation to meeting**

The employee's alleged conduct or characteristics, or other circumstances which has led to disciplinary action being contemplated will be set out in writing and given/sent to the employee. The employee will be invited to attend a meeting to discuss the matter. (NB you may wish to include further details in here in regards to time scales, please see Step 2 for further guidance).

#### **Step 2 – The meeting**

The meeting must take place before any action is taken (except in the case where the disciplinary action consists of suspension), and can only take place once the employee has:

- been informed on what basis the disciplinary action is being contemplated (as at Step 1), and
- had a reasonable opportunity to consider their response to that information.

The employee must take all reasonable steps to attend the meeting. The employee has the legal right to be accompanied at the meeting by a fellow worker or a certified official employed by a trade union. Following the meeting the employee will be informed in writing of the decision and be notified of their right to appeal against the decision. The disciplinary action may take place before the appeal is heard.

Outcomes of a disciplinary meeting may include:

- verbal warning
- written warning
- final written warning

- dismissal with notice
- dismissal without notice. This should only be considered in cases of gross misconduct or where the organisation considers the situation to be so serious that any further working relationship and trust between the company and employee is impossible and therefore the contract between employer and employee is effectively destroyed. Examples of gross misconduct may include, but is not restricted to:
  - theft or fraud
  - physical violence or bullying
  - deliberate and serious damage to property
  - serious misuse of organisation's property or name
  - deliberately accessing internet sites containing pornographic, offensive or obscene material
  - serious insubordination
  - unlawful discrimination or harassment
  - bringing the organisation into serious disrepute
  - serious incapability at work brought on by alcohol or illegal drugs
  - causing loss, damage or injury through serious negligence
  - serious breach of health and safety rules
  - serious breach of confidence.

### **Step 3 – Appeal**

The employee must inform the employer if they wish to appeal against the outcome of a disciplinary meeting (NB you should state how they should appeal e.g. in writing and provide timescales). The employee will be invited to attend a further meeting, to which the employee must take all reasonable steps to attend. The employee has the legal right to be accompanied at the meeting by a fellow worker or a certified official employed by a trade union. Following the appeal meeting, the employee will be informed in writing of the final decision.

**Note:** It is in the interest of both the employers and employees to keep written records during the disciplinary process, which should be treated as confidential. It may be worth including in your procedure what records are kept, and where. Under the Data Protection Act 1998 employees have the right to request and have access to certain personal data. This information should be treated as confidential and be kept no longer than necessary in accordance with the Act.

## Further information

ACAS

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Wales TUC Cymru

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### Disclaimer

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For further information contact

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