

# DISCIPLINARY & DISMISSAL PROCEDURES

Under the Unfair Dismissals Act 1977 – 2007 the onus is on the employer to prove that the employee was fairly dismissed from employment. If the employee does not have a contract of employment/statement of terms the difficulty is that there is no documented proof that the employee is aware of a disciplinary procedure, or has his/her behaviour, duties or standards in relation to work outlined. Ensure that the employee rights are adhered to in all stages of a disciplinary procedure, and that the employee is aware of the problem and how this can be improved. Encourage the employee as they make progress and compliment them. Should the employee slip away from improvement determine the reasons why and take appropriate action.

At all times in the disciplinary procedure **natural justice** must prevail. A disciplinary procedure should be used as a corrective method with the hope of a positive result for the employee.

## **Counselling Interview - Informal**

Before commencing into a formal disciplinary procedure it would be advisable to hold a **Counselling Interview** (which is informal) with the employee and advise the employee of the nature of the problem, and ensure that the employee understands where the standard of performance has fallen below the expected standard. Outline to the employee how this may be improved and set out a time frame for which this improvement must be shown. During the time given for improvement it may be advisable at a half way stage to re-evaluate the performance. Also advise the employee during the informal meeting that if the performance does not improve a disciplinary process will be implemented. Ensure the employee has a copy of the disciplinary procedure. The disciplinary process may be built up of 3 or 4 stages, which are 1<sup>st</sup> verbal warning, 2<sup>nd</sup> verbal warning (if a 4 stage procedure), written warning and final written warning, suspension and dismissal.

**If there is no improvement, you may progress to Stage 1 of the disciplinary procedure.**

## **Stage 1 - Verbal Warning**

### **Step 1.**

Full investigation. The employer must hold a full investigation involving evidence and witnesses. This must take place before any disciplinary action is implemented. The decision to take action and the nature of the sanction taken will depend on the seriousness of the case, the employees past performance record and any mitigating circumstances that might exist.

**Step 2.**

A formal meeting is held with the employee, at this stage the employee must be aware of the following:

- The case taken against him/her.
- The right to reply.
- The right to due consideration.
- The right to representation – this can be a colleague, friend, trade union representative or other individual acceptable to the company. The onus is on the employee to arrange for his or her own representation but the employer should ensure the employee is aware of this right. If the employee rejects representation this should be noted, recorded and kept on file.
- The right to appeal through the grievance procedure.

**Step 3.**

A time scale should be devised for improvement including an evaluation date. These improvements should be outlined. Also advise the employee of consequences, if no improvement occurs.

**Step 4.**

The employee is then given a verbal warning and advised this will be held active for 6 months. However, should at any stage during the period of improvement, the employee's standards fall the employer has the right to instigate Stage 2 of the disciplinary procedure. A written record of verbal warning is placed on the employee's file.

**Stage 2 - Formal Written Warning****Step 1.**

Full investigation. The employer must hold a full investigation involving evidence and witnesses must take place before any disciplinary action is implemented. The decision to take action and the nature of the sanction taken will depend on the seriousness of the case, the employee's past performance record and any mitigating circumstances that might exist.

**Step 2.**

A formal meeting is held with the employee; at this stage the employee must be aware of the following:

- The case taken against him/her. The employee has made no improvements, etc. and that this is the second stage of the disciplinary procedure.
- The right to reply.
- The right to due consideration.
- The right to representation - this can be a colleague, friend, trade union representative or other individual acceptable to the company. The onus is on the employee to arrange for his or her own representation but the employer should ensure the employee is aware of this right. If the employee rejects representation this should be noted, recorded and kept on file.
- The right to appeal.

**Step 3.**

A time scale should be devised for improvement including an evaluation date. These improvements should be outlined. Also advise the employee of the consequences. If no improvement occurs during this period, action may result in suspension without pay, demotion or dismissal.

**Step 4.**

The employee is given a written warning and advised that this will be held active for 1 year. However, should at any stage during the period of improvement the employee's standards fall, the employer has the right to instigate Stage 3/4 of the disciplinary procedure.

**Stage 3 - 2<sup>nd</sup> Formal Written Warning  
(optional if 4 stage process, if not continue to Stage 4)****Step 1.**

Full investigation. The employer must hold a full investigation involving evidence and witnesses which must take place before any disciplinary action is implemented. The decision to take action and the nature of the sanction taken will depend on the seriousness of the case, the employees past performance record and any mitigating circumstances that might exist.

**Step 2.**

A formal meeting is held with the employee and at this stage the employee must be aware of the following

- The case taken against him/her. The employee has made no improvements and that this is the second stage of the disciplinary procedure.
- The right to reply
- The right to due consideration
- The right to representation – this can be a colleague, friend, trade union representation or other individual acceptable to the company. The onus is on the employee to arrange for his or her own representation but the employer should ensure the employee is aware of this right. If the employee rejects representation this should be noted, recorded and kept on file.
- The right to appeal through the grievance procedure.

**Step 3.**

A time scale should be devised for improvement including an evaluation date. These improvements should be outlined. Also advise the employee of consequences, if no improvement occurs during this period, action may result in suspension without pay, demotion or dismissal.

**Step 4.**

The employee is given a written warning and advised this will be held active for 1 year. However, should at any stage during the period of improvement the employees standards fall, the employer has the right to instigate Stage 4 of the disciplinary procedure.

## **Stage 4 – Suspension or Demotion or Dismissal.**

### **Step 1.**

Full investigation. The employer must hold a full investigation involving evidence and witnesses must take place before any disciplinary action is implemented. The decision to take action and the nature of the sanction taken will depend on the seriousness of the case, the employees past performance record and any mitigating circumstances that might exist.

### **Step 2.**

A formal meeting is held with the employee, at this stage the employee must be aware of the following:

- The case taken against him/her. The employee has made no improvements, etc
- The right to reply.
- The right to due consideration
- The right to representation – this can be a colleague, friend, trade union representation or other individual acceptable to the company. The onus is on the employee to arrange for his or her own representation. If the employee rejects representation this should be noted, recorded and kept on file.
- The right to appeal.

### **Step 3.**

The employer advises the employee that he/she has been given all the support and possibility to improve but has not. At this time the employer may choose to suspend the employee with pay (an employee can only be suspended without pay if stated in the contract of employment and disciplinary procedure) or demotion or dismissal.

The option chosen will be given to the employee in writing, stating the nature of the problem and the reason for the suspension/demotion/dismissal.

The integrity of the Disciplinary Procedure is dependent on its consistent application in all cases that warrant action.

Ensure that all-disciplinary warnings and actions are recorded (including verbal warnings). A copy of warning/action should be given to the individual concerned.

## **Gross Misconduct**

In the event of Gross Misconduct this relates to gross breaches of standards of behaviour and/or gross breach of rules and regulations. Where an employee has been involved in gross misconduct, they may be dismissed, without notice. In such a case, before reaching this decision the employer will have:

- Conducted a full investigation.
- Allowed the employee the opportunities to representation and full response to all allegations.
- The employer will have fully investigated any additional matters raised.
- Based on all information and witness statements make a decision.
- During such an investigation an employee may be suspended on pay.

Where an employee is involved in Gross Misconduct, the Company may determine that the employee should be dismissed without reference to any of the Stages of the Disciplinary Procedure. Before such a determination, however, the Company will have conducted a full investigation into the matter and the employee may be suspended - with pay - pending the conclusion of such an investigation. Acts of Gross Misconduct are construed as being deliberate acts by the employee, or the negligent failure by the employee to act, to the detriment of the Company.

Examples of Gross Misconduct are as follows:

- Gross Incompetence/Negligence;
- Physical violence or threatening behaviour;
- Deliberate failure to carry out instructions;
- Deliberate misrepresentation;
- Bullying / Intimidation / Harassment / Discrimination;
- Deliberate damage to Company property;
- Falsifying Company documentation;
- Deliberately poor work performance;
- Sexual Harassment;
- Consuming or being under the influence of alcohol, drugs, or other abusive substances whilst at work;
- Sleeping whilst on Duty;
- The taking of Company property without authorisation;
- Willful/deliberate absence from duty;
- Breach of Confidentiality;
- Flagrant/Deliberate disregard of Safety/Health/Hygiene precautions/procedures likely to endanger any person.

**(This list is not exhaustive)**

**Note: As part of a comprehensive disciplinary procedure employees at each stage of the process should be afforded the right to appeal any disciplinary action sanctioned by the employer. The employee should make the appeal in writing within 10 working days of the final decision and have that appeal heard without prejudice. The person or persons hearing the appeal may consider the earlier investigation and decide that no further action is necessary on their part. They may decide to carry out additional investigations themselves and may, as a result, overturn the decision to dismiss.**

## **SPECIMEN DISCIPLINARY PROCEDURE**

Infringement of a term of Contract of Employment, or of established Company rules, can lead - depending on the gravity of the breach - to disciplinary action being taken by the Company. Where the Company is considering disciplinary action, the employee will be advised in advance of the nature of the meeting, advised they will be given every opportunity to respond to any charges being made and may be accompanied by a work colleague/representative at any disciplinary meeting.

The following specimen procedure is given solely for the purpose of demonstrating the steps which would be taken by the employer prior to dismissal. The details in this case, concerning absenteeism, are hypothetical. **As every case of dismissal is unique, the employer is urged to obtain professional advice when contemplating dismissal.**

### **First Meeting with Employee – Counselling**

The employer arranges a meeting with the employee. A witness can be present. The complaint or omission is explained to the employee, (in this instance an unacceptable absenteeism record), also, how the complaint or omission falls short of the standard expected by the company is explained. The employer checks that the employee has understood what has been said and allows him/her the opportunity to respond. Any assistance, which the employee needs, or could benefit from, is offered. When the meeting ends, the details of the conversation, including the date are recorded.

### **Second Meeting with Employee - Verbal Warning**

Assuming the first conversation has had no effect, a second meeting is held at which the procedure for the first meeting is repeated. The employer should advise the employee that they have the option, if s/he wishes to have a colleague or union representative present. The employer advises the employee that the first conversation has had no effect and issues a verbal warning to the effect that the situation cannot be allowed to continue. Details of the conversation, including the date are recorded. (NOTE: the reasons for another meeting need not be the same). The Manager will inform the employee concerned that this is an Official Warning, a written confirmation of which will be retained on their Personnel File and will remain effective for a period of 6 months. After this period whilst it will remain on file as a matter of record, it should not be used as the basis for going to the next stage.

### **Third Meeting with the Employee - Written Warning**

The procedure for meeting with the employee is repeated. The employer must advise the employee of their right to have a colleague/representative present. The employer refers to the previous meetings and the verbal warning and advises that these have not had the desired effect. The employee is again given the opportunity to state his/her case. If the reason/explanation given by the employee remains unsatisfactory, a written warning is issued.

The details of the conversation are again recorded and a copy of the written warning retained. The warning letter should state that further disciplinary procedures will follow if no improvement is forthcoming. This warning will remain effective for a period of 12 months. After this period it will remain on file as a matter of record, it should not be used as the basis for going to the next stage.

### **First Written Warning**

Dear

Following our meeting on \_\_\_\_\_ held in the presence of your colleague/representative, I am writing to advise you that I remain concerned (at your very poor level of attendance).

On the two previous occasions when we met, (date) and (date), you explained that your absences were, on all occasions, due to illness. However, as I stated to you this morning, your failure to produce any medical certificates, despite committing yourself to do so at each of our meetings, makes this explanation unacceptable.

As there has been no improvement in your level of attendance since the issue was first raised, I must now advise you that, unless your attendance returns to an acceptable level, the company will have no choice but to consider a more serious course of action. It is, however, my hope that this will prove unnecessary.

Yours sincerely,

Signed  
Senior Manager

### **Fourth Meeting with Employee - Final Written Warning & Suspension**

The procedure for earlier meetings is repeated. The employer explains again to the employee why his/her behaviour falls short of the standards expected by the company and affords the employee an opportunity to respond. If the explanation remains unacceptable, the employee can be suspended without pay for a specific period, and a final warning is issued and it must be made clear to the employee that dismissal is the next stage if there is no improvement. All details of the conversation are recorded and a copy of the letter retained.

### **Final Written Warning**

Dear

Following our meeting on \_\_\_\_\_ held in the presence of your colleague/representative, I am writing to advise you that your attendance remains at a level, which is unacceptable to the company. I advised you of this in writing on (date) and verbally on (dates) in the hope that an improvement in your attendance would result.

There has, however, been no apparent effort on your part to improve since the issue was first raised. I must now advise you that if your attendance remains at an unsatisfactory level, we will have no option but to terminate your employment.

It is my hope that such action will prove unnecessary.

Yours sincerely,

Signed  
Senior Manager

### **Final Meeting**

The final meeting, at which the employer advises the employee of his/her dismissal, must adhere to the procedure for previous meeting, i.e., having a senior manager present, allowing the employee to be accompanied by a colleague or representative, giving the employee an opportunity to state his/her case, etc. Additionally, the details of the final meeting are recorded. The meeting is closed and a decision regarding dismissal/suspension is then considered and communicated by letter.

Where an employee is dismissed because they have reached the final stage and the reason was not in itself gross misconduct, they would be entitled to minimum notice.

### **The Letter Confirming Dismissal:**

#### **Re: Termination of Employment**

Dear

Following our meeting yesterday evening, held in the presence of your colleague/representative, I am writing to advise of the decision to terminate your employment. Your continued failure to improve your attendance despite repeated opportunity and warnings issued to you on (dates) leaves the company with no alternative. The company cannot accept the explanation(s) offered. I enclose your P.45 and outstanding entitlements (holiday pay, wages for work performed that are due).

Yours sincerely,

Signed  
Senior Manager

**An employer reserves the right to miss certain stages of the disciplinary procedure where the circumstances involved necessitate more serious action being taken.**



# **GRIEVANCE PROCEDURE**

A grievance procedure is a formal expression of employee dissatisfaction. Employers should pay particular attention to effective grievance handling and its contribution to the promotion of good employee relations in the workplace. If a grievance is not dealt with speedily it tends to become deep-rooted. This can then lead to frustration that can filter through the company, causing an uneasy work environment and industrial unrest.

## **Sample Procedure & Policy**

### **STAGE 1**

- Grievances, which may arise from time to time, should be raised with your \_\_\_\_\_(supervisor/manager).
- You have the option to have a friend, colleague or representative present. The problem will be discussed and a prompt decision given. A summary of the meeting will be recorded and a copy given to those in attendance.
- The \_\_\_\_\_(supervisor/manager) has the responsibility of trying to resolve the matter within a \_\_\_\_\_(day's) period.

### **STAGE 2**

- Should the matter remain unresolved or the response not adequate the issue will be raised with the \_\_\_\_\_(Supervisors Superior/ Manager).
- You have the option to have a friend, colleague or representative present. The problem will be discussed and a prompt decision given. A summary of the meeting will be recorded and a copy given to those in attendance.
- The \_\_\_\_\_(Supervisors Super/ Manager) who, in conjunction with the parties concerned will attempt to resolve the matter within \_\_\_\_\_(days) period.

### **STAGE 3**

- Should the matter remain unresolved or the response not adequate the issue will be raised with the \_\_\_\_\_(MD /HR Manager).
- You have the option to have a friend, colleague or representative present. The problem will be discussed and a prompt decision given. A summary of the meeting will be recorded and copies given to those in attendance.
- The \_\_\_\_\_(MD/ HR Manager) who, in conjunction with the parties concerned will attempt to resolve the matter within a \_\_\_\_\_(day's) period.

Should the matter remain unresolved it shall be referred to a Rights Commissioner, the Labour Court, or an Employment Appeals Tribunal as appropriate.

Whilst a grievance is being pursued any lawful instruction given should be carried out, albeit under protest if necessary, until the matter has been dealt with under the above procedure.

Should a grievance arise from harassment, sexual or otherwise, you have a duty to inform the \_\_\_\_\_(manager) of the matter and of the person being complained about. The \_\_\_\_\_(manager) will deal with the matter in accordance with the Employers' Policy on Harassment.

**(See “Bullying” section 7 page 7 and “Sexual Harassment” section 7 page 8)**

**Note:** The timeframes for dealing with a grievance procedure must be realistic, in order to investigate the circumstances of the problem. However, the grievance must be dealt with effectively and efficiently without delay. Employer must ensure that the procedure is carried out with the utmost confidentiality.