

Briefing Note: Disciplinary Procedure

An Introduction to the Briefing Note

This Briefing Note highlights the key issues your business should consider when conducting a disciplinary procedure connected with misconduct or poor performance. This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note
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**For detailed advice on all
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Why is it important to follow the ACAS Code?

It can avoid a potential claim

The ACAS Code of Practice on disciplinary and grievance procedures (ACAS Code) was introduced to help businesses and employees deal effectively with issues of alleged misconduct or poor performance. When deciding whether an employee has been unfairly dismissed for misconduct or poor performance, an employment tribunal will consider whether your business has followed a fair procedure.

It can affect the level of compensation

If an employee's claim is successful, but either your business or the employee has failed to follow the ACAS Code, the level of compensation awarded can be affected:

- If your business unreasonably failed to follow the Code, the employment tribunal may increase the employee's compensation by up to 25%.
- If the employee unreasonably failed to follow the Code, the employment tribunal may reduce their compensation by up to 25%.

How should misconduct or poor performance be handled?

You must investigate the issues

- Your business must carry out a reasonable investigation of the issue (for example, by conducting an investigatory meeting with the employee under investigation). Any investigatory meeting should not result in disciplinary action without a disciplinary hearing taking place first.
- If paid suspension is necessary during the investigation it should be as brief as possible and kept under review. You should clarify that this is not in itself a form of disciplinary action.

You should inform the employee of the issues in writing

- If there is a case to answer, your business should notify the employee in writing of the alleged misconduct or poor performance and its possible consequences in sufficient detail to enable them to respond at a disciplinary hearing. Any written evidence (for example, witness statements) should be provided to the employee.
- The disciplinary hearing should be held without unreasonable delay. However, you must ensure the employee has reasonable time to prepare their case.
- The notification should set out the:
 - time and place of the disciplinary hearing and

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- employee's right to bring a companion (a fellow worker or a trade union representative) to the hearing.

There must be a disciplinary meeting or hearing

- Your business should not make a decision to dismiss or take other disciplinary action without a disciplinary hearing or meeting taking place first.
 - If the employee is persistently unable or unwilling to attend, without good reason, you are entitled to hold the meeting or hearing in their absence and make a decision on the available evidence.
 - Either side should give advanced notice of any witnesses they intend to call.
 - At the hearing:
 - you should explain the allegations and go through the evidence
 - the employee should be allowed to set out their case and answer the allegations, and
 - the employee should have a reasonable opportunity to ask questions, present evidence, call relevant witnesses and raise points about any information provided by your witnesses.

You should inform the employee of the decision in writing

After the hearing, your decision should be sent to the employee in writing without unreasonable delay. Written warnings should include:

- the nature of the misconduct or poor performance
- the improvement required
- the timescale for improvement
- how long the warnings will remain current
- the consequences of further misconduct (or failure to improve) within that period
- the employee's right to appeal the decision and the procedure they need to follow to do so.

The employee has a right of appeal

- If the employee feels the disciplinary action against them is unjust, they should appeal in writing, specifying the grounds of their appeal.
- If they bring a tribunal claim without appealing, any compensation they are awarded may be reduced.

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Practical steps to help your business improve its disciplinary procedures

- Involve employees in developing workplace procedures, and make sure those procedures are transparent and accessible to employees.
- Encourage managers to manage conduct and performance issues quickly and informally before they get to a formal disciplinary stage.
- Investigate issues thoroughly. Even if the employee has attended an investigatory interview, always hold a disciplinary hearing once all the evidence is available, and allow the employee to put their side of the story before making any decision.
- Keep written records, including minutes of meetings.
- Communicate decisions effectively and promptly, setting out your reasons.

If you would like to know more about this topic or our other legal services, please contact Paul Maynard pcm@gabyhardwicke.co.uk

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