

MANAGERS GUIDE

Disciplinary

Having a Company Disciplinary is a legal requirement. It also gives a clear process with stages which is fair and consistent.

A disciplinary is a management tool to improve employees' performance or behaviours. The procedure should be used as a way of addressing problems but should not be used as a punishment. It is a way of helping and encouraging an improvement of conduct (behaviour) or capability (performance) through structured and consistent procedures. Again, a more effective way of dealing with any issues is to alleviate them before they need to be formally addressed. The easiest way of doing this is to communicate openly, regularly and honestly with your team about your expectations of them, give them regular constructive feedback on their work performance, spend time inducting new staff so they are clear on what is expected, talk and listen to your team members, train and support your staff if they are taking on new tasks and deal with any situations promptly before they get formal.

This chapter is meant as a reference guide only

These guidance notes have been prepared to assist managers through the disciplinary process. These notes support the Disciplinary Policy and must not be used in isolation, if you have any queries or concerns over a disciplinary or contact Go HR.

The Disciplinary Procedure is used to address unsatisfactory conduct. Performance challenges are managed through the separate Capability procedure.

There is a statutory obligation to follow a 3 step process when handling a formal disciplinary. These are:

- Step 1 – Invite to a Disciplinary Hearing
- Step 2 – Conduct a Disciplinary Hearing
- Step 3 – Right to Appeal

BREACH OF THE COMPANY'S STANDARDS OR RULES

Any occurrence of this kind may result in disciplinary action. Breaches of rules are normally regarded as "misconduct" offences. There is an obligation on the Company to ensure that rules are clear, that employees are aware and have access to them. It is an obligation on each employee to ensure that they learn the rules that apply to that job, conform to the rules and ask if they have problems in understanding or applying them. General rules on conduct are outlined in sections below, but rules and procedures specific to job roles and working practices will normally be in operating manuals or standard operating procedures.

Where disciplinary action is taken outcomes may include:

- i) Formal warning – written
Formal warning - final written.
- ii) Transfer or demotion.

- iii) Suspension **without pay** (in exceptional circumstances).
- iv) Termination of employment - with appropriate notice.
Termination of employment - with pay in lieu of notice.
- v) In the case of gross misconduct, termination of employment without notice and without payment in lieu of notice. This is called a summary dismissal.

WARNING: Any dismissal undertaken will automatically be deemed as unfair should this process not be followed.

EXAMPLES OF GENERAL BREACHES OF DISCIPLINE (MISCONDUCT)

These would normally warrant a warning appropriate to the circumstances, but could lead to dismissal if repeated or are committed with other conduct offences.

- i) Poor timekeeping (lateness, leaving early) and attendance.
- ii) Poor standards of work, negligence or inadequate attention to work.
- iii) Refusal to obey a reasonable instruction.
- iv) Unauthorised absence from the place of work without satisfactory explanation.
- v) Contravention of Company safety and hygiene regulations including working /protective clothing regulations e.g. wearing of hats in required areas.
- vi) Smoking in prohibited places or at prohibited times. Smoking in areas where there is a health and safety risk
- vii) Behaviour that is against the company values and expected levels of behaviour with peers, managers and clients
- viii) Betting, collecting money for betting or for pools, lottery syndicates, competitions, sweepstakes, except with prior approval from the Company.
- ix) Breach of rules governing the way you perform your work e.g. operations procedures, uniform standards.

EXAMPLES OF GROSS BREACHES OF DISCIPLINE (GROSS MISCONDUCT)

These would normally warrant dismissal or, exceptionally, action just short of dismissal.

- i) Falsification of records e.g. timekeeping records, accounts, stock sheets, expense claims, sales paperwork - for yourself or others.
- ii) Theft or unauthorised possession of company property.

- iii) Negligence in carrying out record procedures or cash procedures leading to loss of stock/money and wasted staff time in correction.
- iv) Flagrant disregard for safety/hygiene precautions likely to endanger the individual concerned or other people, or to cause a breach of statutory regulations.
- v) Unauthorised appropriation/possession of Company, other employees, customer or other persons property.
- vi) Misuse of Company property likely to cause serious damage or danger or bring the company into disrepute.
- vii) Physical assault on other persons in the course of the Company's business and/or intimidation by aggressive behaviour or language.
- viii) Conduct rendering the employee unsuitable for continued employment e.g. conviction of certain criminal offences.
- ix) Breach of procedures relating to control of cash or stocks including the staff purchase procedure.
- x) Sleeping on duty.
- xi) Rudeness to customers.
- xii) Unacceptable behaviour arising from the influence of drugs or alcohol.
- xiii) Unauthorised consumption or possession of alcohol or drugs on the Company premises.
- xiv) Breaches of the equal opportunities policy and harassment arising from any form of discrimination, or other legislation which seriously prejudices or directly affects business operations.

The above examples of general and gross breaches are not to be taken as a comprehensive list, but are intended as guidelines to the distinction between them and their level of seriousness.

Each employee should ensure that he/she knows and abides by rules that apply to their own work e.g. rules specific to forecourts, cash handling, supervisory or managerial limits of authority. The above general rules are applicable to all employees at all levels, but there will be specific rules in addition.

Before we invoke this 3 step procedure we need to decide whether or not there is a case to be heard. This is decided at the Investigatory stage.

The Investigatory Stage

It is essential to thoroughly and fairly investigate all incidents of alleged misconduct as this will determine if disciplinary action is appropriate. The manager initiating the disciplinary action has a duty of care both to the company and to the employee. The investigation must be conducted objectively with the aim of ensuring that the eventual decision is based on fact and sound assumptions. In normal circumstances the person conducting the investigation will not conduct the disciplinary hearing.

Investigatory meetings are informal discussions between the manager and the employee to understand more about the alleged misconduct and circumstances. There is no need to offer a witness as the investigatory meeting does not form part of the formal disciplinary procedure. The investigation should identify all relevant documentation and witnesses/statements.

Do

- Gather all facts promptly before memories fade.

Don't

- Change the meeting from an investigatory meeting to a disciplinary hearing. End the investigatory meeting and schedule a separate Disciplinary hearing if it is appropriate to do so.

It may also be relevant to suspend the employee dependent on the nature of the allegations.

Suspension

In exceptional circumstances it may be necessary to suspend the employee from work to ensure that an unhindered investigation is carried out, or it may be in the interests of the employee's own safety to remain at home during the investigation or any subsequent disciplinary process. Any suspension must be on sound grounds and due to a potential risk to the business or on safety grounds. Reasons for suspension should be explained to the employee and confirmed in writing within 3 days.

It is important to confirm the reasons for the suspension in writing to the employee and to confirm that the period of suspension is paid. Any suspension should not normally exceed five working days. Always contact Go HR as we can support you with the correct wording to use and letter to be issued to the individual.

Do

- Explain to the employee that suspension is not a disciplinary action and does not involve any pre-judgment
- Review the period of suspension and keep the employee informed of any required extension, e.g. if some witnesses are unavailable
- Remember that the employee should be allowed access to their chosen representative.

Don't

- Automatically suspend an employee who faces an allegation of misconduct, only suspend if there is a good reason to do so. Consult with Go HR if you are unsure.

Stage 1 – Invite to Disciplinary

Please note that it should not be the same person conducting the investigation and the disciplinary. A separate manager should conduct the disciplinary hearing.

The Invitation to a Disciplinary Hearing represents Step 1 in the Statutory Disciplinary Procedure.

If there is a disciplinary case to answer, the Manager should formally invite the employee to attend a disciplinary hearing in writing.

Where reasonably practicable, a employee should be given at least 24 hours notice of the hearing to allow sufficient time to prepare. It is essential to include all relevant documentation with the invite letter. This should include witness statements and any other information pertinent to the disciplinary hearing.

Do

- Postpone the hearing should the employee not have received all the relevant documentation in advance of the hearing and rearrange for another time (suggested within 48 hours)
- Postpone for up to 5 days if the representative is unable to attend the hearing

- Remember that some witnesses may request to remain anonymous. Should this be the case, then remove their names and any information which may indicate who the statement is from. Please check with Go HR if you are unsure
- Include all the relevant documentation prior to the disciplinary hearing.

Representation / Witness

Where formal disciplinary action is contemplated by the Company the individual concerned may be accompanied by a witness, this is a legal right. They may choose to either accept or decline this opportunity. At all disciplinary interviews it is advisable that the employee should have someone with them to act as adviser or as a witness.

A witness/representative should be either a work employee or trade union official, not a family member at any interview, including any appeal, connected therewith. A trade union official must provide written documentation from the trade union certifying their competence to act as companion. A witness/representative may address the hearing in order to do any or all of the following:

- put forward the employees case
- sum up that case
- respond on the worker's behalf to any views expressed at the hearing
- confer with the employee during the hearing.

A witness/representative may not

- answer questions on behalf of the employee
- address the hearing if the employee indicates that he/she does not wish for their companion to do so
- try and prevent the Chair of the meeting from explaining his/her case or prevent any other person at the hearing from making his/her contribution to it.

Stage 2 – Conducting a Disciplinary Hearing

The Disciplinary Hearing represents Step 2 in the Statutory Disciplinary Procedure.

Please ensure that you are fully prepared to conduct the disciplinary hearing. Prepare your questions in advance and consider all documentation and witness statements. To support them meeting use the How to guide for formal meetings. It is summarised below

Please follow the following steps when conducting the hearing:

1. Open the hearing by introducing everyone present, including the note taker.
2. If the employee does not have representation, confirm they understood their right to be accompanied and confirm if they wish to continue.
3. Explain the reasons for the hearing and possible outcomes e.g. if the allegations could constitute Gross Misconduct, then explain it could potentially lead to their dismissal without notice.
4. Set out the facts of the matter as you understand them on the basis of the evidence and the witness statements.
5. Invite the employee to state their case, give explanations and offer any possible mitigating circumstances, introduce their own witnesses and raise questions on the witness statements.
6. After the facts have been discussed, summarise your view of what has come out of the hearing and invite the employee to give their comments and version of events. Any variances should be noted and may require further investigation.
7. If you believe you have all the evidence available to make a decision, inform the employee that you will be adjourning the hearing to consider what has been said. Never say how long the adjournment will be as it will be as long as you need to consider all the evidence and facts discussed and presented.

8. During the adjournment, you will need to consider if you have enough evidence to make a decision. If you don't then inform the employee that you will require further information and rearrange to complete the hearing when you have done further investigation.
9. You may decide during the adjournment that no disciplinary action is necessary. This may, for example, be due to new information coming to light or mitigating circumstances. The reasons for this should be explained to the employee and they should be told that no further action will be taken but that records of the hearing will be held on file for 12 months.
10. After reconvening the hearing, summarise the key facts and issues and inform the employee of the outcome.
11. If a sanction is to be imposed then explain your reasons why to the employee, tell them how long it will be held on their record and inform them of the consequences of a reoccurrence or failure to improve. It is essential that you inform them of their right to appeal and the appeal procedure. It is best to take advice from your Go HR if you are unsure which sanction to impose.
12. After the employee has left, ensure you have a full compliment of all the documentation referred to in the hearing, such as witness statements and notes recording the hearing.
13. The outcome of the hearing should be confirmed to the employee in writing as soon as is reasonable practicable. Contact Go HR and we will draft an outcome letter for you.

Remember: When deciding the outcome of a disciplinary hearing, your obligation as Chair of the meeting is to make a reasonable and justified decision based on the information and evidence available. If you are unsure at any stage, please contact Go HR

Do

- Use a combination of open and closed questions
- Use open questions at the beginning of the hearing to encourage the employee to give their version of events. (Tell me about ... what happened when....what were your reasons for)
- Use of closed questions (Those which require a Yes or No answer) should be used to clarify facts or follow up on points from the open questions
- Remain polite, formal and aware of the employee's right to a fair hearing throughout.

Don't

- Allow the hearing to get out of hand. Should emotions get out of hand, call an adjournment and resume the hearing after the break
- Be afraid to adjourn the hearing pending further information or clarification should you need to
- Prejudge or rush the disciplinary, remember everyone has the right to a fair hearing.

Taking Notes during a Disciplinary Hearing

A note taker should be present at every disciplinary hearing. Notes provide a permanent record of exactly what has been said and decided, as well as evidence of the events of the hearing for later reference. It is important that the notes are as accurate and comprehensive as can be, using verbatim quotes wherever possible. A copy of the notes should be given to the employee at the earliest opportunity in order that they can clarify anything they feel is inaccurate.

Before the proceedings start, the manager should advise everyone that a record of the hearing is being made and that it would be helpful to speak clearly and slowly. The notes should also record the date of the hearing, the start and finish time and everyone present at the hearing, their position/role and when they entered and left the room.

A copy of the notes should be enclosed with the outcome letter.

Do

- Remember to bring an adequate supply of lined paper, a number of pens and an accurate watch
- Ask for the name and position of all visitors to the meeting.

Don't

- Include anything other than the events occurring and statements made, unless both parties agree that this should be the case for a particular reason which should also be stated in the record
- Display any bias when taking notes which could display the employee in either a good or bad light or in some ways justifies actions or sanctions. Notes should always be an impartial, plain statement of the facts of the hearing.

Determining Sanctions

It is ultimately the decision of the disciplining manager to make the final decision and determine the necessary sanction. Managers, however, must never issue a sanction without following the correct disciplinary process and taking advice from Go HR when appropriate, particularly for dismissals.

Except in the case of gross misconduct or any other serious offence, the following remedies shall normally apply after investigation and a formal hearing:

Informal warning or Improvement Action Plans as a preliminary to formal action: breaches of agreed rules or failure to meet behavioural standards may result in an informal warning. This need not be recorded in writing, but there may be benefit in doing so to ensure that problems, advice and remedies are clearly identified and understood - these may appear as a file note after discussion or as a letter of advice or instruction to the individual.

- i) **Formal Written Warning:** rule breaches or failure to meet standards shall result in a formal written warning being given.
- ii) **Final Written Warning:** the more serious, or repeated breaches or failures shall result in a final written warning being given.
- iv) **Remedies just short of dismissal:** after a final written warning, or in cases where dismissal is normally effected, any constructive action which might include transfer, demotion or suspension without pay should be considered. Factors such as risk to the Company's assets or employees, likelihood of recurrence, past disciplinary record and employee response to the disciplinary action will be taken into account. Dismissal will be the usual remedy. These alternatives will be applied in exceptional cases only where circumstances warrant it.
- v) **Dismissal** – acts of gross misconduct and repeated failures are examples of offences which may result in dismissal.

Any disciplinary sanction issued must all be confirmed in writing.

Do

- Seek advice from Go HR on each case

- Consider every case on its merits, taking into account all the circumstances, including the employee's past conduct, workplace context and any extenuating or mitigating circumstances raised by the employee
- Be consistent in your approach, should you have two similar situations
- Consider any current disciplinary sanctions still on file.

Don't

- Ever issue a sanction without following the correct disciplinary procedure
- Refer to a previous disciplinary sanction if that sanction has expired.

Stage 3 – The Appeal

Appeals constitute Step 3 as required by the Statutory Disciplinary Procedure. **Failure to grant a right of appeal will therefore lead to a dismissal being automatically unfair if challenged.**

The Appeal procedure

An appeal procedure should:

- Wherever possible, the Appeal should be heard by a manager more senior than the manager who conducted the disciplinary
- Clarify the action which may be taken by those hearing the Appeal
- Provide that the employee has an opportunity to comment on any new evidence arising during the Appeal before any decision is taken (even evidence coming to light after an appeal hearing)
- The appeal can be conducted as a re-hearing, which involves considering all the evidence afresh, holding an interview with the employee and interviewing the original witnesses
- Alternatively there may be occasions when an appeal may only focus on one or two key aspects, therefore a re-hearing may not be appropriate. It is best to understand the reasons for the appeal and consider the course of action then.

How should an Appeal hearing be conducted?

Prior to the Appeal, inform the employee of the arrangements for the Appeal Hearing in writing detailing their rights under the Appeal procedure. Following a review of the existing documentation from the disciplinary, it may be necessary to carry out a further investigation. All new evidence must be provided to the employee prior to the appeal hearing.

The Appeal Hearing

1. Open the hearing by introducing everyone present, including the note taker
2. If the employee does not have representation, confirm they understood their right to be accompanied and confirm if they wish to continue
3. Explain the purpose of the hearing, how it will be conducted and what option the Appeal manager has
4. Clarify the grounds on which the employee is appealing against the disciplinary sanction
5. Pay particular attention to any new evidence that has been introduced and ensure the employee has the opportunity to comment on it
6. Once all the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider what decision to come to
7. Inform the employee of the results of the Appeal and the reasons for the decision and confirm it in writing. Make it clear, if it is the case, that the appeal decision is final.

Resignation during the Disciplinary Process

There may be occasions when an employee will decide to resign either during the investigation or disciplinary stages. Confirm that no conclusions have been reached and no decisions made and offer them the opportunity to withdraw their resignation. It is also important to explain that should they decide to withdraw their resignation then the investigation or disciplinary will continue as before.

If an employee expresses their intention to resign, ask him/her to confirm their decision in writing and explain that the procedure will continue if they wish to work their notice. They may request to resign with immediate effect, which will be considered on an individual basis and if the business needs allow.