

DISCIPLINARY AT WORK

An employer-employee relationship is not always plain sailing and occasionally there are times when an employee may find themselves subject to disciplinary action.

Employers and employees should try to resolve these matters within the workplace. Where this is not possible, your employer may consider using an independent third-party to help resolve the issue, such as Acas.

Regardless of how the dispute is mediated, your employer must follow the Acas Disciplinary and Grievance Code, also known simply as the Code. Following the Code is a minimum requirement which your employer may have enhanced as part of their policies. You should find more information regarding this in your staff handbook.

Where an employer behaves unreasonably and does not follow the Acas Code, an Employment Tribunal can increase any award by up to 25 per cent. It can also reduce it by up to 25 per cent if the failure to follow the procedure is yours.

The disciplinary procedure

Before any formal procedure is adopted, your employer should try to engage you in informal discussions to try to resolve the issues. This is particularly relevant where the issues are minor, or if you have a clean disciplinary record. If the issues are serious, or if there have been further incidents after the informal conversations have taken place, a more formal approach may need to be adopted.

A standard formal procedure will require your employer to do the following:

1. Carry out an appropriate investigation of the facts. Depending on the circumstances, there may need to be more than one investigatory meeting with a number of different people.
2. Where your employer wishes to discipline you, they must invite you, in writing, to a disciplinary hearing, stating the time, date and place of the hearing. The letter should also:
 - include copies of any statements from witnesses. If there are concerns about confidentiality or data protection, or there are other reasons your employer does not want to send copies of witness statements, it may be appropriate to allow you to access these in the workplace only
 - include copies of any staff handbooks/policies/procedures that may be relevant
 - advise you of your right to be accompanied by a trade union representative - even if your employer does not recognise the union - or a work colleague
 - give an indication as to the range of outcomes and to specify if the matter is considered to be one of gross misconduct/misconduct
3. Hold the meeting and take full consideration of what you have to say. Your employer may need to conduct further investigations after the meeting depending on what comes to light.
4. Advise you of the outcome after the meeting and the reason for any decision in writing.
5. Notify you of your right to appeal the decision.

It is important that your employer thinks carefully about who will conduct any disciplinary, investigation and appeal meetings. In ideal circumstances, the investigatory and disciplinary meetings should be held by different people. The appeal meeting should always be held by someone who is higher in the organisation than the person who held the disciplinary meeting. For example, a deputy manager could do the investigation, a manager could hold the disciplinary meeting and a director could hold the appeal meeting.

The right to be accompanied

There is no right to be accompanied to informal meetings, fact-finding investigatory meetings or mediation, unless you have been given that right in your employer's workplace policies. However, you do have a statutory right to be accompanied at disciplinary meetings where the meeting could result in:

- a formal warning being issued that will go on the worker's record
- the taking of some other disciplinary action, such as sanction, demotion or dismissal
- a hearing where a warning or some other disciplinary action is confirmed, such as an appeal hearing

The companion can be a:

- colleague
- trade union representative who is not employed by the union but has been certified in writing by it as competent
- employed official of a trade union

The union does not have to be recognised by your employer and you do not have to be a member of it. You can check the list of certified trade unions [here](#).

The role of the companion

As an employee, you must make a 'reasonable request' first, saying who you want your companion to be. This can be given orally.

An employer can consider whether your request is reasonable or not and refuse to allow them

to be present. For example, if the companion's presence would prejudice the hearing, or they are from a remote geographical location even though someone on site is suitable and willing to act. Check your staff handbook as there may be other guidelines that give employees the right to bring other companions. A legal representative or family member is generally not allowed.

The Acas Code recommends a companion be allowed to participate as fully as possible in the hearing – to confer with the employee, address the hearing to put and sum up the worker's case, to respond on behalf of the worker to any views expressed at the meeting and to ask questions of witnesses. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it, or prevent the employer from explaining their case. Furthermore, your companion must conduct themselves appropriately at all times.

Your companion must be given a reasonable amount of paid time off to brief themselves on the case, attend the hearing and confer with you before and after it. If your first choice of companion cannot attend, you are allowed to suggest a reasonable alternative and/or postpone the hearing for up to five working days to allow your chosen companion to attend.

An employer should give special consideration to disabled workers, allowing them to bring a companion (such as a support worker) with knowledge of their disability and its impact in the workplace. If you are in this position, discuss the matter with your employer first.

Disciplinary consequences

If the disciplinary procedure finds you have failed to comply with your employment obligations, the following disciplinary consequences may be given:

First written warning

If the complaint is a serious one, or there is insufficient improvement following a previous discussion, you may be given a written warning. This must give details of the complaint, the improvement

after six months or earlier (although in exceptional cases the period may be longer) subject to satisfactory improvement in conduct and performance.

Final written warning

If the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, or if there is still a failure to improve conduct or performance after written warnings have been given, a final written warning can be given.

This should give details of the complaint, warn that dismissal will result if there is no satisfactory improvement and give the timescale for the improvement.

A copy of this final written warning must be kept on file and will normally be disregarded for disciplinary purposes after 12 months or earlier (although in exceptional cases the period may be longer) subject to satisfactory improvement in conduct or performance.

It is usual to indicate on the warning that if there is a repeat of the type of behaviour, or similar behaviour for which the warning was given, this may be taken into account in any future disciplinary action.

However, your employer cannot take previous written warnings into account if they are unrelated to the subsequent action. For example, if you have a written warning for a misconduct matter, such as being rude, it should not be taken into account for any future disciplinary action for performance-related matters.

Dismissal

If conduct or performance is still unsatisfactory, and you still fail to reach the prescribed standards, in certain circumstances you may be dismissed.

Any decision to dismiss must be proportionate to the facts and must be 'within the range of reasonable responses'. This means that the decision your employer makes must be a decision any reasonable employer could have made.

If the decision is to dismiss, you must be told the date on which employment will terminate and must be informed of the right of appeal. If you are dismissed with notice you will receive your salary until the day

your contract terminates. It is usual to dismiss on notice where the disciplinary takes place as a result of conduct which is in breach of a final written warning.

If you are being disciplined for a matter which is being classed as gross misconduct e.g. if it relates to drink or drugs in the workplace or abuse of a colleague, then any dismissal will be without notice and your employment will be terminated immediately when the outcome of the disciplinary is notified to you. Whether you are dismissed with or without notice, you will be entitled to receive pay for any holiday that remains unused.

What happens on appeal?

You may appeal if you feel the outcome of the disciplinary process is unfair, or that proper procedure was not followed. The timescale in which to do this is usually five working days and that time will be notified to you when the outcome of the disciplinary hearing is given.

The appeal should be heard without unreasonable delay and, if possible, an appeal should be conducted by a manager who has not previously been involved and who is more senior than the manager at the first hearing. You are entitled to be accompanied by a companion. The result of the appeal must be given, in writing, as soon as possible.

A suitable appeals procedure should:

- give a time limit within which an appeal must be lodged
- require the appeal to be decided quickly – particularly for more serious disciplinary action
- set out the right to be accompanied at any appeal meeting
- provide that you, or a companion, has an opportunity to comment on any new evidence arising during the appeal before any decision is taken
- ensure records of the previous hearing are available to all

If the original decision is overturned, your employer may consider additional training for managers. Where you had been dismissed as result of the original hear-

ing and then reinstated, any salary you would have received from the date of the dismissal to the date of the reinstatement must be paid. Generally, your employer cannot impose a harsher sanction at the appeal hearing.

You can find a copy of the Acas Code [here](#).

NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.

Copyright © 2024 by Law Express

All rights reserved. This article or any portion thereof may not be reproduced or used in any manner whatsoever without the express written permission of the publisher.