

## Employers Guidance Notes

### 1. Introduction

- 1.1 Please note that the following applies to disciplinary matters in England and Wales. It does not apply to Northern Ireland.
- 1.2 Both employees and employers should be informed of the relevant disciplinary procedures and the Company should provide a copy of the Disciplinary Policy and Procedures to all employees at the beginning of their employment. These Guidance Notes explain how to use the documents provided in the Disciplinary sub-folder. It should be noted that this does not constitute legal advice and, if any queries arise, legal advice should be sought.

Having a disciplinary policy available means that:

  - 1.2.1 Employees know what is expected of them, and the consequences of failing to meet the required standard of performance or conduct.
  - 1.2.2 Individuals who are facing obstacles can be identified, and appropriate action can be taken to help those individuals meet the required standard.
  - 1.2.3 Goals and improvement timescales can be agreed between the employer and employee.
  - 1.2.4 Should a complaint reach an employment tribunal, the procedure followed will act as a point of reference to help establish whether the employer acted fairly and reasonably.
- 1.3 An employer should ensure that:
  - 1.3.1 No disciplinary action is taken until the case has been fully investigated.
  - 1.3.2 Employees are aware they have the right to be accompanied at all stages of the procedure.
  - 1.3.3 Employees are aware of their right to appeal against any discipline imposed.
  - 1.3.4 No employee is dismissed for a first breach except where there has been gross misconduct and even here the employer must be acting fairly and reasonably in taking such action.
- 1.4 Suspension should only be imposed after careful consideration. In instances where suspension with pay is necessary, e.g. while investigations for gross misconduct are being carried out, it should be made clear that such suspension is not considered a disciplinary sanction nor is there a presumption of guilt.
- 1.5 ***At the end of each disciplinary stage below we have linked a selection of letters which, depending on the outcome of the stage, may be appropriate. Please review the letters at each stage and amend as necessary. If none are applicable please seek legal advice for your particular situation.***

### 2. **Stage 1 – Informal Discussion**

- 2.1 If a matter can be resolved informally it is beneficial for both the employer and employee to do so. Sometimes a simple discussion as to the employee's shortcomings can help improve their conduct and performance and avoid any formal procedure. Therefore the first stage is to arrange an informal meeting with the employee concerned.
- 2.2 Where an informal discussion took place a letter such as *Informal Discussion Letter (EMP.DISC.04)* could be used to record what was discussed and what actions have been agreed.
- 2.3 Where an informal discussion has taken place and improvement is shown thereafter, an acknowledgment of the improvement should be provided in a letter such as *Improvement Letter following Informal Discussion (EMP.DISC.05)*.
- 2.4 Where an informal discussion is not appropriate or does not provide a solution to the problem, the formal procedure should be followed as below.

### 3. **Stage 2 – Written notice of intended disciplinary meeting**

- 3.1 Once an employer has decided to begin the formal disciplinary procedure, a letter must be sent to the employee advising them that it is the first stage of the formal disciplinary procedure (if appropriate) and outlining the reason for this e.g. poor conduct or performance.
- 3.2 Depending on the circumstances of an individual disciplinary procedure it may be appropriate to use the following letter to give written notice of an intended disciplinary meeting: *First Disciplinary Meeting Letter following Informal Discussion (EMP.DISC.06)*.
- 3.3 The employee should be informed of the procedure that is to be followed by using the above letter and you also may wish to attach an additional copy of the Disciplinary Procedure for the employee's reference.
- 3.4 The meeting should be held without unreasonable delay whilst allowing the employee a reasonable time to prepare their case.
- 3.5 Employers, employees and companions should make every effort to attend the meeting and, where practicable, a reasonable alternative time and date should be offered to ensure the attendance of all parties. The employee may suggest a reasonable alternative time within five days of the original date if their chosen companion cannot attend.
- 3.6 Advance notice should be provided of any intention to call witnesses.
- 3.7 Document *Guidance Notes for Disciplinary Meetings (EMP.DGG.03)* is a useful Checklist for preparing for the meeting.

### 4. Stage 3 – Meeting

- 4.1 At the disciplinary meeting, the employer must explain the complaint and go through any relevant evidence.
- 4.2 The employee must be given the opportunity to present his or her own evidence and call witnesses.
- 4.3 The employee may be accompanied at the meeting and the employer should be aware that the companion:
  - 4.3.1 May address the meeting to sum up the employee's case.
  - 4.3.2 May confer with the employee during the meeting.
  - 4.3.3 May not answer questions on the employee's behalf.
  - 4.3.4 May not address the meeting if the employee does not wish them to.
  - 4.3.5 May not prevent the employer from explaining their case.

### 5. Stage 4 – Outcome of Meeting

- 5.1 When deciding on the disciplinary penalty to be issued, employers should have regard to:
  - 5.1.1 The employee's disciplinary and work record.
  - 5.1.2 Any penalties imposed for similar cases in the past.
  - 5.1.3 Whether the standard of other employees are acceptable to ensure this particular employee is not being singled out.
  - 5.1.4 Whether the penalty imposed would be reasonable considering all circumstances.
  - 5.1.5 Whether any additional support or training are necessary.
  - 5.1.6 Whether the rules of the organisation indicate a particular penalty.
  - 5.1.7 Any special circumstances that would make it appropriate to adjust the severity of the penalty.
- 5.2 At this stage of the disciplinary procedure, depending on the circumstances of the individual case, the employer may decide to:
  - 5.2.1 Take no further action i.e. if there is no disciplinary case to answer – see *No further action letter (EMP.DISC.18)*.
  - 5.2.2 Give the employee an improvement letter – see *Improvement Letter following Warning or Disciplinary Meeting (EMP.DISC.09)*.
  - 5.2.3 Give the employee a formal warning – see *First Formal Warning (EMP.DISC.07)*.
  - 5.2.4 Where the disciplinary is sufficiently serious it may be appropriate to go straight to a final warning – see *Final Formal Warning (EMP.DISC.08)*. **However, this decision should be taken after careful consideration, and must be fair and reasonable.**

- 5.3 The employer has a responsibility to put in writing the outcome of any disciplinary meeting. This must be done regardless of whether misconduct/poor performance was or was not found.

### 6. Stage 5 – Appeal

- 6.1 Employees have the right to appeal against formal disciplinary action. They must set out the grounds for their appeal in writing and the employer should usually hear the appeal within 14 days of the employee's request, and without unreasonable delay.
- 6.2 The appeal should be handled impartially and where possible a manager not previously involved in the case should hear the appeal.
- 6.3 As in any other disciplinary meeting, the employee is entitled to be accompanied (refer to clause 4.3).
- 6.4 Document *Guidance Notes for Appeal Meetings (EMP.DGG.05)* may come in useful here.
- 6.5 Once the appeal has been heard the employee must be notified as to the outcome in writing and that the decision is final. Note, however, that should employees wish to take the matter further they can go to the employment tribunal and/or other court of law. The following letters may be relevant depending on the outcome of the meeting:
- 6.5.1 *Appeal Meeting Letter against First or Final Warning (EMP.DISC.10)*
- 6.5.2 *Appeal Decision Letter for First or Final Warning (EMP.DISC.11)*

### 7. **Stages 1 to 5 cover the disciplinary process where a first disciplinary meeting and first/final formal warnings are issued. Where it is necessary to call a second disciplinary meeting or issue a further warning stages 2 through to 5 should be followed again. In this sense the process is cyclical. The following letters may be appropriate for such occasions:**

- 7.1 *Second Disciplinary Meeting Letter (EMP.DISC.12)* – Stage 2
- 7.2 *Second Disciplinary Meeting Response (EMP.DISC.13)* – Stage 4
- 7.3 *Dismissal / Demotion Letter (EMP.DISC.19)*
- 7.4 *Appeal Meeting Letter against Dismissal or Other Action (EMP.DISC.14)* – Stage 5
- 7.5 *Appeal Decision Letter for Dismissal or Other Action (EMP.DISC.15)* – Stage 5

**NB/ There must be two formal warnings (including a final warning) before an employer can consider dismissing an employee. A fair and reasonable approach should always be taken.**

### 8. Special Cases

- 8.1 There will be cases where the standard disciplinary procedure should not be followed, for example, extra consultation at an early stage is recommended where disciplinary action is being considered against

an employee who is also a trade union representative.

- 8.2 In cases where the complaint against the employee is one of **gross misconduct**, it may be unreasonable to follow the normal disciplinary procedure. However, such deviation should be taken with caution to ensure that the procedure carried out is still fair and reasonable. If in doubt as to the procedure to follow please seek legal advice.
- 8.3 Employers should note that where the disciplinary matter / charges are so serious that, if proven, the employee may be unable to work in the future, the employee has a free-standing right to legal representation at internal disciplinary hearings.

### 9. External Proceedings

- 9.1 Once the internal procedure has been exhausted, if the matter is still not resolved, it may progress to an external body. This is usually an employment tribunal.
- 9.2 If an employee makes a tribunal claim, he or she must now notify ACAS first and use the early conciliation service in order to try and settle the dispute.

For specific disciplinary matters, please see the following subfolders: Qualification Dispute and Sickness & Absence.

#### **This policy has been approved & authorised by:**

**Name:** Dan Carlin  
**Position:** Business Director  
**Date:** 18<sup>th</sup> December 2017  
**Signature:**