

There have been many changes to employment law and regulations in the last few years. A key area is the freedom or lack of freedom to dismiss an employee.

An employee's employment can be terminated at any time but unless the dismissal is fair the employer may be found guilty of unfair dismissal by an Employment Tribunal.

We set out below the main principles involved concerning the dismissal of employees including some common mistakes that employers make. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

abacus have drafted the following disciplinary process for our employees and their staff. We also advise that you seek professional advice should be sought before any action is taken. Your local **abacus** accountant can and will help you.

Disciplinary Procedure

The Company believes that the maintenance of high standards of behaviour, attendance and performance is necessary for the efficient operation of the organisation. The following procedure should be followed in dealing with matters of internal Company discipline.

Whilst minor faults will be dealt with informally, i.e. between the employee and his/her immediate manager, where matters are more serious employees will be the subject of disciplinary action taken in accordance with the procedures and principles laid down below.

Scope

All employees of the Company are covered by this procedure, the aim of which is to ensure consistent and fair treatment for all.

All employees are expected to be aware of their terms and conditions of employment and the accepted standards of conduct within the Company. The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

Types of Offences

Disciplinary offences have been categorised into three types for the purpose the policy.

These are:

- Unsatisfactory Conduct
- Misconduct
- Gross Misconduct.

Offences committed under these categories will be dealt with in accordance with the procedures laid down below, and may result in a verbal warning, a written warning, a final written warning, or dismissal with or without notice, depending upon the circumstances of the case. Discipline will be imposed in accordance with the provisions of the disciplinary procedure as set out in the schedule below, except that the Company reserves the right to go into the procedure at any state if the nature of allegations warrant such action. The warning will lapse and be removed from the employee's file as detailed.

Offence	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Unsatisfactory Conduct	Verbal warning (6 months)	Written warning (6 months)	Final written Warning (12 months)	Dismissal
Misconduct	Written warning (6 months)	Final written warning (12 months)	Dismissal	
Gross Misconduct	Dismissal			

General Principles

- No disciplinary action will be taken against an employee until the case has been fully investigated.
- At every stage of the procedure the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any disciplinary action is taken.
- The employee has the right to be accompanied by a work colleague or a trade union official or lay official during any disciplinary interview.
- Normally no employee will be dismissed for a first offence except in the case of gross misconduct or serious negligence when the penalty may be dismissal without notice and without payment in lieu of notice.
- An employee will have the right to appeal against any disciplinary penalty imposed.
- With a view to ensuring consistent and fair treatment for employees, no disciplinary action will be taken against an employee until the disciplinary action has been sanctioned by the Board of Directors.

Suspension

If an employee is accused of a disciplinary offence the Company reserves the right to suspend the employee on full pay, normally for no longer than five working days, while the Company investigates the alleged offence. Suspension can be for the purpose of carrying out the investigation and/or as an alternative to dismissal.

Explanation of Terms

The terms "conduct" and "misconduct" refer to breaches of Company rules, conditions of employment, unsatisfactory attendance, behaviour/attitude, or unsatisfactory performance of any nature that are not more particularly covered by the term "gross misconduct" defined in the appropriate section of this policy. Where the company believes that the employee has acted in such a way that requires disciplinary action to be taken, the procedure to be adopted will be as follows:

Stage 1

Level of management involved: employee's immediate manager

If a first offence of a relatively minor nature has been committed or if conduct and/or performance does not meet the standard acceptable to the Company, the employee's immediate manager will bring the matter to the attention of the employee. He may issue a verbal warning identifying the problem, suggesting ways in which the employee's conduct or performance may be improved and the timescale, if any, for improvement. The manager will make a written note that a verbal warning has been given specifying the date and nature of the problem. The note will warn that further, more severe disciplinary action will be taken if there is further misconduct, substandard performance and/or failure to improve and it will advise the right of appeal. The verbal warning will be removed from the employee's record after 6 months service subject to satisfactory conduct and/or performance.

Stage 2

Level of management involved: employee's immediate manager/Director

If the offence is serious, if a further offence occurs, or if conduct and/or performance does not meet the standard acceptable to the Company, the immediate manager shall interview the employee and will detail the nature of the problem. The employee will be invited to give an explanation of the matter. An investigation will take place and once evidence has been collected and examined, the employee may receive a written warning which will be recorded on his/her personal file specifying the nature of the offence and the date on which the warning was given, together with appropriate comments as to the need for improvement.

The written warning will also state that failure to improve, within a certain timescale, may result in stage 3 proceedings and will advise the employee of his/her right of appeal. The first written warning will be removed from the employee's record after 6 months subject to satisfactory conduct and/or performance.

Stage 3

Level of management involved: employee's immediate manager/Director

If, following a first written warning, there is still a failure to improve and conduct and/or performance is still unsatisfactory, or if the matter is sufficiently serious, the matter will be dealt with in accordance with stage 2 but may result in a final written warning. The final written warning will provide details of the complaint, the improvement required and the timescale, if any, for improvement. It will also state that the consequences of unsatisfactory improvement will be dismissal and it will advise the employee of his/her right of appeal. The final written warning will be removed from the employee's personal record after 12 months subject to satisfactory conduct and/or performance, but exceptionally, the period kept on the personal file may be longer.

Stage 4

Level of management involved: employee's immediate manager/Director

If, following a final written warning, there is failure to improve, further misconduct and/or substandard performance, or if the misconduct and/or substandard performance is sufficiently serious enough to justify dismissal, then dismissal will be the penalty. The employee will, within five working days of dismissal, be provided with a letter from the Company containing the following information:

- The reason for dismissal
- Confirmation of the date of dismissal
- The fact that the employee has the right of appeal.

Gross Misconduct

Level of management involved: employee's immediate manager/Director

Gross misconduct may render an employee liable to instant dismissal without notice. Examples of the sorts of offence considered to be gross misconduct are:

- Falsification of records
- Disregard of safety rules or precautions
- Fraud
- Theft, attempted theft or other dishonest behaviour
- Abuse
- Assault
- Fighting
- Being under the influence of alcohol or solvents or of illegal drugs whilst at work
- Gross insubordination or refusal to carry out a reasonable instruction
- Continued unauthorised absence from work
- Acts of harassment
- Use of or threatened violence
- Serious breaches of health and safety requirements
- Wilful neglect or damage to the employer's property
- Serious disruptive or abusive behaviour

- Become a patient as defined in the Mental Health Act 1983 or an order be made in respect of his/her property under that Act
- Commit an act or so conduct himself/herself in a manner which might or does bring the reputation of the employer into question or disrepute.

The above list is not an exhaustive or an exclusive list. Where an offence of this nature has been committed, the employee concerned will be interviewed by a senior member of management and the circumstances of the case will be fully discussed.

Right to be accompanied during disciplinary hearings

The employee has a statutory right if a reasonable request is made to the company to be accompanied at a disciplinary hearing (as defined in the Employee Relations Act 1999) by a fellow worker, a full time official employed by a trade union, or a lay trade union official.

The employee's chosen companion has a statutory right to address the hearing and to confer with the employee, but no statutory right to answer or ask questions on the employee's behalf.

If an employee's chosen companion cannot attend on the date proposed, the employee can offer an alternative time and date as long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the date proposed by the employer.

When proposing an alternative date the employee should have regard to the availability of the relevant manager.

The location and timing of any alternative hearing should be convenient to the company and the employee.

Outcome

If the Company is satisfied that the employee has committed gross misconduct, having heard evidence from all relevant parties, disciplinary action will be taken and dismissal without notice or pay in lieu of notice will normally be the penalty. The employee will then be provided with a letter in accordance with stage 4 of this procedure.

Appeal

In the event of an employee disputing any disciplinary action, it is open to them to appeal in accordance with the following procedure:

1st Appeal

The employee should apply in writing to the Board of Directors within two days of being notified of the outcome of the disciplinary hearing stating the reason he/she wishes to appeal. The appeal meeting will be arranged within five working days and the outcome given to the employee within two working days of the appeal hearing. The first appeal will be held by a Director.

2nd Appeal

If the employee is not satisfied with the outcome of the 1st appeal, the employee may appeal subsequently to the Managing Director (or his appointed Director nominee). To do this the employee should apply in writing to the Board of Directors within two days of being notified of the 1st appeal hearing stating the reasons that he/she wishes to appeal. The appeal meeting will be arranged within five working days and the outcome given to the employee within two working days of the appeal hearing. The decision at this stage will be final. In case of gross misconduct where dismissal has resulted, any appeal must be made immediately when notice of dismissal has been made known and will be heard by the Managing Director within five working days. The Managing Director's decision will be final.

Claims for unfair dismissal

After one year's service employees can make a claim to an Employment Tribunal for unfair dismissal within three months of the date of the dismissal and if an employee can prove that he/she has been pressured to resign by the employer he/she has the same right to claim unfair dismissal or constructive dismissal.

If the employee wins his/her case the Tribunal can choose one of three remedies which are:

- re-instatement which means getting back the old job on the old terms and conditions
- re-engagement which would mean a different job with the same employer
- compensation where the amount can be anything from a relatively small sum to an unlimited amount if the dismissal was due to some form of discrimination.

If the dismissal is demonstrated as being due to any of the following it will be deemed to be unfair regardless of the length of service:

- discrimination for sex, race, age or disability
- pregnancy, childbirth or maternity leave
- refusing to opt out of the Working Time Regulations
- disclosing certain kinds of wrong doing in the workplace
- health and safety reasons
- assertion of a statutory right.

Common mistakes that employers make

For many, the regulations have caused some confusion and practical difficulties. Some of the most common mistakes include:

- not applying the procedures to employees with less than one year's service. Whilst such employees are often unable to claim unfair dismissal (unless the reason for their dismissal is one of the automatically unfair reasons for which there is no qualifying period of employment such as pregnancy), they may be able to bring other claims such as discrimination with compensation increased accordingly
- failure to invite employees to disciplinary hearings in writing or supply adequate evidence before the disciplinary hearing. The standard procedure requires the employer to set out the 'basis of the allegations' prior to the hearing
- excluding dismissals other than disciplinary dismissals (e.g. ill-health terminations, retirement)
- not inviting employees to be accompanied
- not including a right of appeal
- not appreciating the statutory requirement to proceed with each stage of the procedure without undue delay
- failure to appreciate that an employee may have right to appeal even if it is requested verbally rather than in writing and is after a timescale set down by the employer
- not appreciating that paying an employee a lower bonus for performance related reasons could potentially amount to 'action short of dismissal' by the employer
- failure to treat as a grievance any written statement/letter (for example a letter of resignation) which raises issues which could form the basis of a tribunal claim to which statutory procedures apply. This means that the employer must be alert to issues being raised in writing even if there is no mention of the words grievance.

How **abacus** can help

The above procedure will help you avoid most of the common mistakes made by employees but if you speak to your local **abacus** accountant before commencing the disciplinary procedure they will be able to help you avoid all the mistakes.

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