

# Disciplinary Process for Employees

A disciplinary process can be used in conduct, absence and performance situations. If you are unable to resolve a situation informally it may be necessary to carry out a disciplinary hearing. There are several steps you should take to ensure the process is fair, transparent and complies with UK employment law.

This document makes reference to the ACAS Code of Practice for Disciplinary and Grievance. A failure to follow the Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

Please ensure that you review your own internal disciplinary procedure which should be contained within your employee handbook and preferably not your employment contracts.

## **Investigation**

You may be required to carry out a full investigation to establish all the facts so that you can decide whether a disciplinary hearing is, in fact, required. Any witness statements should be obtained and signed and written notes should be taken as these will be used as part of the disciplinary proceedings. You may also investigate other avenues such as patient complaints or computer audits.

It is usual practice for the employee to remain at work during the investigation phase. Suspension should only be used in exceptional circumstances, for example when there is a specific concern about the employee remaining at work during this phase, and is paid.

The investigation should be carried out where possible by someone else who is not involved in the disciplinary hearing to ensure objectivity.

## **Disciplinary hearing**

### Inviting the employee

If the matter is serious enough to justify a disciplinary hearing, ensure that you invite the employee to the hearing in writing, stating:

- where and when the hearing will take place
- what it is in relation to
- in cases of potential gross misconduct, what the outcome may be.

Enclose any documentation, including any investigation notes, to be referred to at the disciplinary hearing.

Ensure that sufficient notice is provided to allow the employee time to prepare for the hearing. We suggest a minimum of 48 hours unless agreed otherwise with the employee.

### Choosing a venue

Ensure the hearing area is as confidential as possible. It is advisable to appoint another person as a note taker.

Due to the Covid-19 pandemic, it may be more appropriate to conduct the hearing remotely. ACAS has [further guidance](#) on this.

### Right to be accompanied

The employee has the right to be accompanied at the hearing. This may be a work colleague or trade union representative. It would not be appropriate for a friend, family member or solicitor to be present, other than in exceptional cases (e.g. a vulnerable adult). The companion may take notes, confer with the employee and address the hearing but cannot answer on the employee's behalf. It is best practice to brief the companion on their role.

Make sure that you have thoroughly prepared prior to the hearing with the facts and a list of questions you want to ask the employee. Ensure the employee is given sufficient opportunity to have their say during the hearing.

### During the hearing

At the hearing you should discuss the issues with the employee, focusing on the behaviours or actions that you are concerned about, providing them with clear facts and examples. Create a further opportunity for the employee to inform you if they feel that they require any further support or training or if there are any obstacles to their performance improving or the reasons for their unacceptable behaviour.

Once the hearing has concluded, you should adjourn the hearing to give yourself sufficient time to make a decision. In some cases, you may need to adjourn until the next day and this would be the recommendation if considering a dismissal.

If the case involves a registered nurse, you may need to take further advice from MDDUS as to whether the situation is serious enough to warrant involvement of the NMC.

### **Next steps**

Following a disciplinary hearing, there are a number of potential outcomes:

1. no sanction awarded
2. verbal warning (in some procedures)
3. first written warning
4. final written warning
5. dismissal – notice and outstanding holiday pay will be paid
6. gross misconduct – no notice is payable but outstanding holiday pay will be due.

You should confirm the outcome of the hearing in writing to the employee. It is usual to keep written warnings on file for 12 months but this can be varied. Warnings should be removed from the employee's file after they have expired to ensure data protection compliance.

### Supporting improvement

Going forward, the employee should be advised what behaviours/performance objectives are expected in the future and define a reasonable time period for the improvement to take place. Feedback should be provided on a regular basis, with one option being to arrange a review hearing halfway through the time period. Be clear that if there is no improvement within the defined time period, the next stage of disciplinary action may be taken.

While the usual process is to proceed through the disciplinary stages in turn, there may be a situation where a more severe sanction can be issued at the outset if the situation warrants it but advice should be taken from MDDUS before making any final decisions. Ensure that processes are consistently applied for all employees to ensure fairness.

Where possible, different managers or partners should conduct the different levels of disciplinary hearings to ensure the process is fair and impartial, although this is not always possible in small practices.

### **Appeal**

After every formal stage, the employee should be given the right to appeal the outcome of the hearing. Employees should advise the basis of their appeal in writing. Appeal meetings should be heard within the timescale stated in the internal policy or if not stated within a reasonable timescale. The employee has the same rights to be accompanied at such a hearing and someone impartial, where possible, should conduct the hearing. The result of the appeal should be confirmed to the employee in writing.

### **Key points**

The main issues to remember in every disciplinary case are to:

- invite the employee to the hearing in writing
- provide them with the Terms of Reference
- give them the right to be accompanied
- confirm the outcome of the hearing in writing
- give the right of appeal.

### **Further information**

- For hearing templates or a sample disciplinary policy, please contact our employment law advisers at [employmentlaw@mddus.com](mailto:employmentlaw@mddus.com)
- [ACAS Code of Practice on disciplinary and grievance procedures](#)