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INFORMATION NOTE NO. 2

REVISED SEPTEMBER 2007

DISCIPLINARY MATTERS

This Information Note provides guidance on general principles in relation to discipline. It is not a substitute for the Agency's Code of Practice on Disciplinary and Grievance Procedures. The Code should be considered in full prior to carrying out any disciplinary action. This can be downloaded from the Publications section of the Agency's website

Current legislation stipulates that an employer must provide their employee with a written statement of particulars of employment within two months of commencing employment. This statement should also include a note specifying any disciplinary rules applicable to the employee and who they should address any appeals to if they are dissatisfied with a disciplinary/dismissal decision. The note should also specify who the employee should raise any grievances with. This information can be provided in a separate document as long as this is reasonably accessible to the employee. Many employers opt to provide these documents by way of written procedures that are simply appended to the written statement.

→See Department of Employment and Learning Employment Rights Booklet er 2 *Written statement of employment particulars*

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/written-statement-of-employment-particulars.htm>

Why have disciplinary rules and procedures?

Disciplinary rules and procedures help to promote better employment relations as well as fairness and consistency in the treatment of employees. Compliance with disciplinary procedures is also a legal requirement in certain circumstances.

Disciplinary rules tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called misconduct.

Employers use disciplinary procedures and actions to deal with situations where employees break or allegedly break disciplinary rules.

Disciplinary procedures may also be used where an employees work performance or attitude is unsatisfactory. When addressing unsatisfactory performance, employers should consider whether this is due to lack of ability to perform a job (incapability) to the standard required or misconduct, e.g. lack of effort on the employee's behalf. Where it is due to incapability it may be more appropriate for the employer to consider whether further training is necessary and further advice should be sought on this matter. Employers must also be careful not to discriminate on the grounds of gender, race (including colour, nationality and ethnic or national origins), disability, age, sexual orientation, political opinion or religion. Where employers conclude that unsatisfactory performance is due to a lack of ability which is due to a disability, they should take account of the provisions of the Disability Discrimination Act 1995 and, in particular, the statutory provisions regarding making reasonable adjustments under that Act.

→ Further advice on Disability Discrimination can be sought from the Equality Commission for Northern Ireland, www.equalityni.org.uk

When dealing with disciplinary cases, employers need to be aware of both the law on unfair dismissal and the Statutory Dispute Resolution Procedures contained in the Employment (Northern Ireland) Order 2003 for dismissing or taking disciplinary action against an employee. The law on unfair dismissal also requires employers to act *reasonably* when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for the Industrial Tribunals to decide. Drawing up and referring to a procedure can help employers deal with disciplinary issues in a fair and consistent manner.

The Statutory Dispute Resolution Procedures

Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty other than suspension on full pay or a warning. The statutory procedure applies to most dismissals and failure of the employer to follow the procedure could result in a finding of automatic unfair dismissal by the Industrial Tribunal. Generally an employee must have one year's service to pursue a claim for unfair dismissal, though there are exceptions. The statutory procedure is a minimum requirement and even where the relevant statutory procedure is followed the dismissal may still be unfair if the employer has not acted reasonably in all the circumstances.

→ See Department of Employment and Learning Employment Rights Booklet *13 Unfairly Dismissed?* at <http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/unfairly-dismissed.htm>

Ensure that, as a minimum, the procedure for dismissal – or action short of dismissal – complies with the statutory procedures. These procedures have the following three steps:

Step 1

The employer must set out in writing the reasons why dismissal or disciplinary action against the employee is being contemplated. This statement or a copy of it must be sent to the employee and the employee must be invited to attend a meeting to discuss the matter.

Step 2

The meeting must take place before action is taken. The meeting must not take place unless –

- (a) The employer has explained to the employee the basis of the statement given under Step 1.
- (b) The employee has had a reasonable opportunity to consider his or her response to that information.

The employee must take all reasonable steps to attend the meeting.

After the meeting, the employer must inform the employee of the decision and notify the employees of the right to appeal against the decision.

Step 3

If the employee wishes to appeal, he or she must inform the employer.

The employer must then invite the employee to another meeting which the employee must take all reasonable steps to attend. The appeal meeting need not take place before the dismissal or disciplinary action takes effect.

After the appeal, the employer must inform the employee of the final decision.

The employer should inform the employees that written warnings will be recorded and will be reviewed within a set period with a view to 'wiping the slate clean' if behaviour or performance is satisfactory. The employer should also give the employee a copy of the notification of disciplinary penalty.

Drawing up disciplinary rules and procedures

When making or changing rules and procedures It is good practice to involve employees and, where appropriate, their representatives to ensure that everyone affected understands and, as far as is possible, accepts them.

Rules

When making rules the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations. It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:

- inappropriate behaviour, such as fighting or drunkenness;
- negligence in the performance of duties;
- harassment or victimisation;
- misuse of company facilities e.g. e-mail and internet;
- poor timekeeping;
- unauthorised absences or dissatisfactory level of attendance; and
- repeated or serious failure to follow reasonable work instructions.

Rules should be specific, clear and recorded in writing. They should also be readily available to employees, for instance on a notice board or, in larger organisations, in a Staff Handbook or on the Intranet. Management should do all they can to ensure that every employee knows and understands the rules, including those employees whose first language is not English or who have reading difficulties or visual impairments. This is often best carried out as part of an induction process.

Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples of acts of gross misconduct that will warrant summary dismissal. Acts which constitute gross misconduct are those resulting in a very serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. Such acts, whilst they may have occurred only once might be said to strike at the very root or heart of a contract of employment so as to destroy the essential bond of trust and confidence between the parties to the contract. Examples of gross misconduct might include:

- theft or fraud;
- physical violence or very serious incidents of bullying;
- deliberate and serious damage to property;
- serious misuse of an organisation's property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- serious insubordination;
- serious cases of unlawful discrimination or harassment;
- bringing the organisation into very serious disrepute;
- serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through very serious negligence;
- a serious breach of health and safety rules; and
- a serious breach of confidence.

Procedures

Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying.

⇒ For further information see guide to *Harassment and Bullying in the Workplace*, This can be downloaded from the Publications section of the Agency's website

When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that employees should be given the opportunity of a meeting with someone who has not been involved in the matter where possible. They should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right of appeal.

Good disciplinary procedures should:

- be put in writing;
- say to whom they apply;
- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- allow for information to be kept confidential;
- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take various forms of disciplinary action;
- give employees a chance to have their say before management reaches a decision;
- provide employees with the right to be accompanied;
- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
- require management to investigate fully before any disciplinary action is taken;
- ensure that employees are given an explanation for any sanction; and
- allow employees to appeal against a decision.

It is important to ensure that everyone in an organisation understands the disciplinary procedures including the statutory requirements. In small firms this is best done by making sure all employees have access to a copy of the full procedures, for instance on a notice board and by talking through the procedures with the employee. In large organisations formal training for those who use and operate the procedures may be appropriate.

It is sensible to keep rules and procedures under review to make sure they are always relevant and effective. New or additional rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.

The right to be accompanied

Employees have a statutory right to be accompanied at a disciplinary hearing by a companion. A companion may be a work colleague or a Trade Union official. The Trade Union Official may be either a full-time official employed by a Union or a lay Union official who has been reasonably certified in writing by his/her Union as having experience of, or as having received training in, acting as a worker's companion at disciplinary hearings.

For the purposes of this right, disciplinary hearings are defined as meetings that could result in:

- a formal warning being issued to a worker - a warning that will be placed on the worker's record and/or;
- the taking of some other action, e.g. suspension without pay, demotion or dismissal; or
- the confirmation of a warning issued or some other action taken such as an appeal hearing.

Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions.

Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker will have the right to be accompanied.

The worker's companion should be allowed to address the hearing in order to:

- put the worker's case;
- sum up the worker's case;
- respond on the worker's behalf to any view expressed at the hearing.

A worker's companion can also confer with the worker during the hearing. The companion has no right to answer questions on the worker's behalf or to address the hearing if the worker does not wish it. Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to a tribunal.

Guidance on drawing up Disciplinary Rules and Procedures tailored to suit the particular needs of your organisation is available free of charge from the Labour Relations Agency.

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