



## **Self help guide**

**Preparing a disciplinary procedure (to address issues of misconduct) and a general dismissal procedure (addressing dismissals relating to capability, redundancy, expiry/non renewal of a fixed term contract).**

*The sample wording in this document is for guidance only. The wording must reflect your current contractual arrangements. Any errors or omissions cannot be held to be the responsibility of the Agency. It is also important to review and maintain your document to ensure compliance with changes in statutory obligations.*

September 2009

# Self help guide - Preparing a disciplinary procedure

This guide gives practical advice on how to prepare a disciplinary procedure and how to operate it effectively.

The information given in this guide is not an authoritative interpretation of the law. Such an interpretation can be given only by the employment tribunals and by the courts.

The Agency offers assistance in producing and reviewing employment documents and you are strongly advised to forward your draft disciplinary procedure for review.

Before implementing your finalised disciplinary procedure you should consult directly with your employees and their representatives.

If you would like to have your document reviewed you can email, fax, or post your documents to the Agency.

✉ [alan.wilson@lra.org.uk](mailto:alan.wilson@lra.org.uk) Phone 028 9033 7424

☎ For the attention of Advisory Services 028 90 330 827

📄 Labour Relations Agency, 2-8 Gordon Street, Belfast, BT1 2LG.

The Agency also runs Advisory Workshops to assist employers in drawing up the written statement of the main terms and conditions of employment and disciplinary and grievance procedures.

Workshops are held on the Agency premises in either Belfast or Londonderry on specified dates. There is no charge for attendance at these workshops. For more details on workshops and to book online visit the Agency's website at [www.lra.org.uk](http://www.lra.org.uk) or contact us at the telephone number above.

Once you have set up a procedure, you will need to know how to operate it and deal with any problems that might arise.

The Labour Relations Agency's Advisory guide **Advice on handling discipline and grievances at work** and the Labour Relations Agency's **Code of Practice - Disciplinary and grievance procedures** give advice about dealing with disciplinary issues. These publications can be downloaded from [www.lra.org.uk](http://www.lra.org.uk)

## What is the legal position?

### The three-step discipline and dismissal procedure

New statutory discipline and dismissal and grievance procedures were introduced on 3 April 2005.

### How does the three-step discipline and dismissal procedure operate?

**Step one** - You must give a written statement to the employee setting out why you have decided to take disciplinary action.

**Step two** - You must meet the employee, who has the right to be accompanied by his or her colleague or union representative. You should state your case, let the employee respond and then, after the meeting, give the employee your decision. You should explain that the employee may appeal against your decision.

**Step three** - The employee may appeal against your decision and choose to be accompanied at the appeal meeting, which should ideally be heard by a different or more senior manager. You should inform the employee of the decision of the appeal. The employee must appeal to complete the statutory procedure.

### Has an employee the right to be accompanied at a disciplinary hearing?

If you ask your employees to attend a disciplinary hearing<sup>1</sup> they have a statutory right to be accompanied (if they request it) by a fellow worker or trade union official. This right applies irrespective of how many employees you employ. If you refuse a request from an employee to be represented at a disciplinary hearing the employee may make a complaint to an industrial tribunal.

### When should I follow the three-step discipline and dismissal procedure?

You should not use the statutory three-step discipline and dismissal procedure in the early stage of disciplinary action for alleged 'minor' offences. For example, if an employee is persistently late and you wish to initiate formal disciplinary action you should give the employee a first written warning. You should use the three-step procedure **only** when you are considering taking serious disciplinary action, such as dismissal, suspension without full pay, or demotion.

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<sup>1</sup> For the purposes of the right to be accompanied, disciplinary hearings are defined as meetings that could result in:

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

Therefore, you would use the three-step procedure if an employee's conduct or performance has failed to improve following a series of warnings, or if the employee has allegedly committed an act of gross misconduct.

### **What is the modified statutory discipline and dismissal procedure?**

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware **of the misconduct or immediately thereafter**
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice, and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:-

The modified statutory discipline and dismissal procedure is a two-step procedure.

**Step one** - You write to the employee setting out the reasons for dismissal and give the employee the right of appeal.

**Step two** - This will be set in motion if the employee wishes to meet you to appeal against the dismissal. The modified two-step procedure should be used only in a **very small number of gross misconduct cases** where the employee's conduct would justify summary dismissal.

An example of a Statutory modified dismissal and disciplinary procedure is set out on page 15.

### **Would a dismissal be fair if I used the statutory three-step discipline and dismissal procedure?**

Not necessarily. You should take disciplinary action which is appropriate for the alleged offence. For example, if the offence required a final written warning and you used the three-step procedure to dismiss the employee, then the dismissal could be judged by an employment tribunal to be unfair.

The three-step discipline and dismissal procedure is not intended to replace established disciplinary procedures. You should set up your own procedures by following the guidelines set out in this guide and in the Agency's Code of Practice - Disciplinary and grievance procedures

## **Would I have to change my existing disciplinary procedures to bring them in line with the statutory discipline and dismissal procedures?**

Dismissals will probably be unfair if you do not go through the three steps outlined in the statutory procedure before you dismiss an employee. This guide shows you how you can set up a disciplinary procedure which satisfies the three-step discipline procedure.

## **What happens if I don't complete the statutory dismissal or disciplinary procedure?**

The employee may be able to claim automatic unfair dismissal. However, if the failure to complete the procedure is the employee's fault his or her compensation may be reduced.

## **Are there any exemptions from the statutory dismissal or disciplinary procedures?**

The Regulations do not apply where:

- in the case of collective redundancies (20 or more employees being made redundant), there is a duty to consult representatives
- strike action is taking place
- the business suddenly ceases to function
- factors beyond the control of either party make it impossible to go through the procedure in the foreseeable future, such as long-term illness
- the employee cannot legally continue working, such as where a driver has lost his or her licence
- a designated dismissal procedures agreement applies (such as between TU and an employers' association)
- the employee claims interim relief before the procedure is completed
- either party adopts violent or abusive behaviour
- one party has been subject to harassment (defined as violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment) and has reasonable grounds to believe that using the procedure would result in further harassment
- either party fails to attend the meeting. Where the meeting fails to take place due to either party being unable to attend, the employer, taking account of employee's right to be accompanied and any suggested dates, is required to rearrange the meeting, but only once. If the second meeting falls through
- neither party is under any further obligation to complete procedures. This is likely to cause problems and hence enquiries and claims
- national security is an issue.

## What happens if I get it wrong?

The lack of procedures can be expensive, leading to:

- low morale and resistance to change
- lowered efficiency
- successful claims for unfair dismissal

You can help avoid these problems by writing down company rules and drawing up workable procedures.

## Rules

Before drawing up a disciplinary procedure, you will need to consider what standards the procedure will be used to maintain. Rules set standards of conduct at work. **They should be fair, reflect the needs of the organisation and written in a way that everyone understands.**

## Why have them?

If people know and accept the rules, they will be less likely to break them. Rules help ensure a consistency of management action and can improve efficiency.

## What should rules cover?

It depends upon the nature of your organisation but rules can cover:

- gross misconduct
- timekeeping
- absence
- holidays
- health and safety
- standards of work
- personal appearance
- use of organisation facilities
- smoking

Don't have too many written rules. Be realistic. Consult with employees and their representatives, and be careful to avoid rules that are unjustifiable and unlawful.

## What is a disciplinary procedure?

Rules set out standards and the disciplinary procedure helps employers deal fairly and consistently with employees who fail to maintain those standards.

## Why have one?

Most disciplinary problems can be solved by informal discussions or counselling. However, if this fails to resolve the problem you will need a more formal approach.

A disciplinary procedure will:

- encourage employees to achieve and maintain standards of behaviour
- provide a fair and consistent method of dealing with alleged failures
- remind managers and supervisors how disciplinary matters should be handled
- minimise disagreements about disciplinary matters
- reduce the need for dismissals.

## What form should it take?

The procedure should be tailored to your own needs, but it should:

- be put in writing;
- say to whom they apply;
- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- 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;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- 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.

**A sample for disciplinary rules and procedure for misconduct is set out on page 9.**

## Operating the disciplinary procedure

Once the procedure has been written, you need to be sure that all employees are familiar with it and have access to a copy. You also need to be certain that all managers and supervisors are fully trained in its operation.

In brief, before taking disciplinary action using the procedure, you will need to be certain that:

- the matter cannot be resolved through informal counselling
- you have investigated the matter fully
- the individual is told that he or she will be interviewed by the appropriate manager/supervisor and has the right to be accompanied by a fellow worker or a trade union official of their choice.

At the **disciplinary interview**, make sure that:

- the employee concerned knows the details of the allegation
- he or she has the opportunity to put his or her side of the matter
- any disciplinary measure is appropriate to the circumstances.

If a **warning** is given, it should tell the employee:

- the level of improvement required
- the date by which it is to be achieved
- what will happen if it is not
- how to appeal.

## **Disciplinary Rules and Procedures for Misconduct**

### **Objective**

The objective of this procedure is to give employees the opportunity to improve their conduct or performance. It identifies who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

### **Informal Action**

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

### **General Principles for the Formal Disciplinary Procedures**

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident.
2. The employee has the right to receive, prior to disciplinary hearings,
  - A written statement of the alleged misconduct, and
  - Particulars on the basis for the allegation
3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses to the information provided on the allegation.
4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official (who 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).
5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.

6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.
7. The employer will endeavour to ensure that:-
  - All steps under the procedure are taken without unreasonable delay
  - The timing and location of all hearings are reasonable
  - Hearings are conducted in a manner which enables employees to explain their cases
  - Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed. This does not apply where the most senior manager attended the disciplinary hearing at which the decision was taken to take the disciplinary action being appealed.
8. Once warnings have expired they will be erased from the employee's personal record.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.
12. **Precautionary Suspension:** In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension with **full** pay whilst unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to a temporary transfer to other duties or another work station without loss

of pay or the taking of annual holidays to which the employee is entitled. Any action taken will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.

## Types of misconduct

The following list shows examples of the type of rules/offences which the employer has categorised for each level of misconduct. This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised: **(The following examples are provided for guidance purposes only and should be amended to suit your organisation. You should therefore delete any which are not applicable to your organisation).**

### A MINOR MISCONDUCT

- Absenteeism
- Lateness
- Failure to comply with Absence Notification and Certification Procedure
- Careless work and poor effort at work
- Minor breach of safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Misuse of telephone
- Excessive time away from the job
- Failure to wear any protective clothing/equipment provided
- Failure to complete time/stock or work sheets as instructed

### B MAJOR MISCONDUCT

- Dangerous physical horseplay
- Neglect causing damage to or loss of Employer's, customer's or other employee's property/ equipment/tools
- Serious neglect of safety/hygiene/security rules
- Smoking in the workplace
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- Entry into any unauthorised areas
- Wilful or excessive wastage of material
- Unsatisfactory attitude to customers
- Use of foul language

- Gambling on the premises
- Insubordination

## C GROSS MISCONDUCT

- Theft
- Physically violent behaviour
- Leaving the premises or site without permission
- Refusal to carry out a reasonable work instruction
- Deliberately ignoring safety/hygiene/security rules and thereby endangering one's own or another's physical well-being or safety
- Obscene behaviour
- Intoxication induced by alcohol or drugs
- Fraud
- Disclosing confidential business information to a third party
- Wilful damage to or gross negligence of Employer's, customer's or other employee's property/equipment/tools
- Undertaking work in competition with own employer
- Falsification of records
- Unauthorised use of Employer vehicle
- Clocking offences
- Gross misuse of organisation's Internet /e mail system

### NOTE: -

**Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure. The disciplinary response will depend upon the nature and seriousness of the incident; and in extreme cases will result in summary dismissal.**

### Formal Procedure

When taking formal disciplinary action, the employer will comply with the Statutory Procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

### **Step 1 Statement of grounds for action and invitation to meeting.**

The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will invite the employee to a hearing to discuss the issue.

### **Step 2 Meeting**

Prior to the hearing the employer will supply the basis of the allegation. After the meeting the employer will inform the employee of the decision and offer the right to appeal.

### **Step 3 Appeal**

If the employee wishes to appeal he or she will inform the employer within 5 working days. The employer will invite the employee to a further hearing to discuss the appeal. The final decision will be communicated to the employee.

### **Minor Misconduct**

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

Stage 1 You will be given a **verbal warning**. It will be recorded and retained on file for a period of 6 months.

Stage 2 If the same or similar offence is repeated within 6 months you will be given a **first written warning**. It will be recorded and retained on file for a period of 12 months.

Stage 3 If the same or similar offence is repeated within 12 months you will be given a **final written warning**. This will contain a clear notice that a repeat of the offence within 12 months will result in dismissal.

Stage 4 If the same or similar offence is repeated within 12 months you will be **dismissed**.

### **Major Misconduct**

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred you will receive a **final written warning** which will contain clear notice that a repeat of the offence within 12 months will result in dismissal.

## Gross Misconduct

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred the employee will be **dismissed** summarily: i.e. without notice and without wages in lieu of notice.

## Appeals

Where an employee feels that action taken **at any stage** under this procedure is unjustified or unfair, there shall be the right of appeal. All appeals must be made in writing to **(Insert job title)** within 5 working days of being informed of the disciplinary sanction. Appeal hearings will be held within 5 working days of receiving the notification of appeal. The employee has the right to be accompanied at the appeal hearing.

The result of the appeal hearing will be notified to the employee within 5 working days in writing.

## Disciplinary Authority

In the event of a breach of employer rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows: -

Stage	Disciplinary Hearing	Appeal
Stage 1 (Recorded verbal)	<b>(Insert job title)</b>	<b>(Insert job title)</b>
Stage 2 (First written)	<b>(Insert job title)</b>	<b>(Insert job title)</b>
Stage 3 (Final written)	<b>(Insert job title)</b>	<b>(Insert job title)</b>
Stage 4 (Dismissal)	<b>(Insert job title)</b>	<b>(Insert job title)</b>

## **Statutory Modified Dismissal and Disciplinary Procedure**

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice, and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:-

### **Step 1 Statement of grounds for action**

The employer will provide the dismissed employee with:-

- a written statement of the alleged misconduct which led to the dismissal
- written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
- a written confirmation of his/her right of appeal against the dismissal.

### **Step 2 Appeal**

- If the employee wishes to appeal he/she must inform the employer within 5 working days
- All appeal requests must be made to **(Insert job title)**.
- Appeal hearing shall be heard within 5 working days of receipt of the request.
- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.
- The result of the appeal hearing shall be notified to the employee within 5 working days of the appeal hearing.

The procedure below **only** outlines the minimum steps which must be followed to ensure compliance with the Statutory Procedures. Following this procedure in a dismissal situation does not guarantee that an Industrial Tribunal will find the dismissal 'fair'. The employer, in addition to these steps should act fairly and reasonably in arriving at any decision to dismiss an employee. This will include for example, consultation with the employee and offering suitable alternative work, where appropriate.

### **Dismissal Procedure - General**

**This procedure applies where the employer is contemplating dismissing an employee. It does not apply in cases of misconduct for which there is a separate procedure. It will apply, for example, in cases of dismissal related to capability, redundancy, expiry/non renewal of a fixed term contract.**

#### **General Principles**

- The employer will endeavour to ensure that:-
  - Each step and action under the procedure is taken without unreasonable delay
  - Timing and locations of hearings are reasonable
  - Hearings are conducted in a manner that enables an employee to explain his/her case. .
  - Dismissal appeal hearings will be conducted as far as reasonably practicable by a more senior manager than the manager who took the action being appealed unless the most senior manager attended the hearing.
- The employee must take all reasonable steps to attend the hearings
- At dismissal and appeal hearings the employee may, where reasonably requested, be accompanied by a fellow worker from the employer or a trade union official (who 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).

## Procedure

### 1. **Step 1** Statement of grounds for action and invitation to meeting

(Insert job title) will inform the employee in writing of the alleged characteristics or other circumstances which have led to the contemplation of the dismissal of the employee (or action short of dismissal) and invite the employee to a hearing to discuss this.

### 2. **Step 2** Meeting

Prior to the hearing the employee will be provided with particulars on the basis for the grounds given in the statement in step 1. The employee will be given reasonable opportunity to consider his/her response to that information before any hearing takes place. The hearing will be conducted by (Insert job title). No action (other than suspension on full pay) will be taken before the hearing takes place. After the hearing the employee will be informed in writing of the decision and of his/her right of appeal against this if he/she is not satisfied with it.

### 3. **Step 3** Appeal

If an employee wishes to appeal he/she must inform the employer within 5 working days. Where an appeal is requested, the employee will be invited to an appeal hearing. The Appeal hearing will be conducted by (Insert job title) and shall be held within 5 working days of the request for an appeal. The employer may implement any decision taken at the first hearing before the appeal hearing is held. After the appeal hearing the employee will be informed in writing of the employer's final decision within 5 working days.