

Top tips when dealing with disciplinary procedures

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Top tips when dealing with disciplinary procedures

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When dealing with a disciplinary matter it is important that you comply with both the school's internal disciplinary policy and the 'Acas code of practice on disciplinary and grievance procedures'. Unreasonable failure to follow the Acas code may increase any award of compensation made by the employment tribunal by up to 25%.

We have detailed below some tips to keep in mind when conducting a disciplinary process, which will help ensure that you follow a fair procedure and comply with the Acas code.

1. **Clearly inform the employee of the allegations against them**

It is important that you inform the employee of the allegations against them from the outset. If, during the investigation new allegations come to light it is important that these are notified to the employee in writing.

Disciplinary action should only be taken and a sanction imposed in respect of allegations that have been properly investigated and brought to the employee's attention during the disciplinary process. It would be unfair to discipline an employee for an allegation which they have not had the opportunity to put forward their case. The allegations in the letter inviting an employee to the disciplinary hearing should mirror those in the invite letter for the investigatory meeting (or other previous correspondence). Consistency is key!

2. **Offer the employee the right to be accompanied**

The Acas code details that employers should allow an employee the right to be accompanied to a disciplinary hearing. The employee has a statutory right to be accompanied where disciplinary action or the confirmation of disciplinary action (i.e. on appeal) is likely to result. The Acas code states that an employee, who is invited by his or her employer to attend a disciplinary or grievance hearing, must make a reasonable request for a companion to attend the hearing. However, it is best practice for an employer to offer this right and state as such in any correspondence to the employee.

The Acas code only mentions disciplinary/grievance hearings and not investigation meetings; however, it is common practice within schools disciplinary policies to offer employees this right at investigatory meetings.

3. **Warn the employee at the outset of the possible consequences**

It is important that you warn employees of the possible consequences of the disciplinary process. In the letter inviting the employee to an investigatory meeting you should set out the allegation(s) against the employee and we would recommend that you state whether the allegation(s) is/are that of 'misconduct' or 'gross misconduct. If the misconduct is sufficiently serious and could potentially amount to gross misconduct then state as such, as that will ensure that the employee is put on notice from the earliest opportunity that it is an allegation that could result in their summary dismissal (dismissal without notice). It is vital that the possibility of dismissal does not come as a surprise to an employee.

4. **Provide the employee with all relevant information**

All information and evidence relevant to the allegation should be provided to the employee before the disciplinary hearing. Employees should receive copies of all documents and/or information sent to the disciplinary officer or panel. The employee should not be on the back foot and have evidence sprung on them at the disciplinary hearing.

Copies of the information and evidence should be provided to the employee far enough in advance of the disciplinary hearing so they have time to adequately prepare their case.

5. Do not delay

In schools, disciplinary processes can often be delayed due to school holidays or Governor availability, however, it is important that there is not an unreasonable delay in the process. It is accepted that some investigations take longer than others due to the complexity of the issues but it is important that the length of time taken to conduct the process is proportionate to the issue being investigated.

Any unreasonable delay will not strengthen the schools position in the event of an employment tribunal claim. A long and drawn out process can be a very stressful and worrying time for an employee and therefore if there is a delay because of availability etc, it is important that the employee is kept updated of this so their expectations are managed.

This is of particular importance where the employee has been suspended pending an investigation/disciplinary hearing, as a period of suspension should be as short as possible and the suspension decision should be kept under regular review. Where there is an unreasonable delay or the employee is suspended for an excessive period of time then the school could be exposed to a claim for constructive unfair dismissal.

6. Make sure the sanction imposed is reasonable

Sometimes misconduct committed by an employee will be so serious that summary dismissal will be appropriate even where there are no previous warnings on the employee's file and it is their first misconduct offence. However, in cases of minor misconduct a verbal or first written warning may be appropriate. It is important that the sanction is reasonable in the circumstances and for minor misconduct a series of warnings are used.

7. Make sure the appropriate people deal with each stage of the disciplinary process

The school's disciplinary process will most likely set out who is responsible for each stage of the process. Usually, this is the Head Teacher (or another member of the Senior Leadership Team) for the investigations and then a panel of Governors for the disciplinary hearing. However, if the Head Teacher is involved in the allegation (for example they witnessed the act of misconduct) then it would not be appropriate for the Head Teacher to be the investigating officer.

It is important that a different person deals with each stage of the process, and remember to leave the Chair of Governors (or another Governor) to deal with any appeal that may arise.

8. Offer the right to appeal

The right of appeal is fundamental and this should always be offered when the disciplinary outcome is communicated.

9. Keep a clear record of the process

All meetings should ideally have a note taker present to take minutes of the meeting. Those minutes should then be distributed to those present and the employee asked to confirm they agree with them, or if not to provide their comments.

By doing so could potentially help strengthen the school's defence to an employment tribunal claim as all written records can be provided as evidence to the employment tribunal and should help demonstrate that a thorough fair procedure was followed.



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