

HOW TO GUIDE

DISCIPLINARY PROCESS







INTRODUCTION

This document is a guide on how to conduct a disciplinary process. It should be used where an employee acts in a manner that goes against the rules or expectations of the business.

We recommend that you take advice when considering whether to discipline an employee to ensure that:

- a) You have a potential fair reason to discipline;**
- b) You understand how to properly carry out an investigation;**
- c) You understand what rights the employee has and what your obligations to them are;**
- d) You follow a fair procedure and come to a reasonable outcome.**

Please note that the content of this How To Guide does not constitute legal advice, it is only a guide and should not be construed as legal advice; if that is what you want or need please email us and we will respond to you personally with not only the best advice but the most robust advice too.

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We'd love to hear
from you

✉ E-mail: enquiries@elslegal.co.uk

☎ Telephone: 01270 781006



IF YOU SEE...

! **RED FLAG** -

We have identified specific areas of concern when disciplining an employee, please take advice at that stage. An unfair disciplinary process (even where it does not result in you ending their employment) can cost employers up to 12 months salary if the employee pursues a constructive unfair dismissal claim.



INVESTIGATE THE MISCONDUCT

The investigation is the basis for whether or not a disciplinary is fair and/or reasonable. It is the most important step. You should aim to establish the facts of what happened and what should have happened.

Investigations will vary from one situation to another, the key is that they must be reasonable.



Reasonableness is an ever changing test. To help establish that your investigation is reasonable you could include:

Witness Statements;

Documentary evidence;

Photographs;

CCTV Recordings.

It may be necessary to hold an investigation meeting with the employee, although this is not always necessary. Where you wish to do so, you do not need to formally invite the employee in, you can simply call them to a private room and discuss the meeting with them.

The whole purpose of an investigation meeting is to establish the facts. You should ask: who, what, when, where, how, and why in relation to each issue.

RED FLAG

Reasonableness is a key test in the fairness of a disciplinary. **Please seek advice** if you are unsure how to proceed.



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For example, in the case of an employee having sworn at her manager, ask everyone involved questions as specific as:

What day did it happen on?

What time did it happen?

Who was on shift that day?

Who was in the room?

Who said it?

Can you remember exactly what was said?

Where were you stood when this happened?

How certain are you about what was said?

What was the employee's demeanour at the time?

Did you have a good view?

Finally, it may be necessary to consider suspending the employee. There are limited circumstances in which you should suspend an employee. A suspension should never be a knee-jerk reaction, it must be considered and reasonable.

An employee should only be suspended where their presence at work may jeopardise the integrity of an investigation or where their behaviour was so poor they cannot possibly continue (such as violence). Any suspension is usually on full pay.

RED FLAG

! If you are considering suspending an employee **please seek advice** as you will need to issue a suspension letter.



INVITATION TO DISCIPLINARY HEARING



Once you have gathered all of the investigation details, send the formal letter opposite inviting the employee to the formal disciplinary hearing.

The letter should include copies of all the investigation documents you have gathered and the rules which you allege have been broken. If you are relying on CCTV evidence which you cannot send to the employee, you should allow them time to watch it in advance of the disciplinary hearing.

The letter must be received by the employee at least 2 days before the meeting. It must also provide the right to be accompanied by a colleague or a Trade Union Representative even if your business does not formally recognise one or the employee is not a member of one. It must include a copy of all of the evidence that you wish to rely on in the hearing. Finally, it must inform the employee that s/he may be dismissed.

Please note that where possible the person chairing the disciplinary hearing, the Disciplinary Officer, should not be the Investigation Officer.

RED FLAG



The allegations need to be 'properly framed'. They should state what has alleged to have happened and when, it does not have to state which rule is alleged to have been breached. Should you be unsure how to frame your allegations **please seek advice**.



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[BY HAND/EMAIL/First Class Post]

PRIVATE & CONFIDENTIAL

[Name]

[ADDRESS]

[Date]

Dear [Name]

Invitation to Disciplinary Hearing

Further to the investigation meeting of yesterday you are required to attend a disciplinary hearing on [date] at [time] at [location].

[Name] will be conducting the hearing and [name] will be present to take notes.

The purpose of the hearing is to consider the following allegation[s] and whether or not a disciplinary sanction should be issued:

1. Example: On 2 January 2022 you were aggressive to your manager when you shouted "if you don't give me the day off on annual leave, I'll smash this bloody door in your face"

2. [Allegation 2]

The Company considers that the above allegations may potentially amount to [gross/ misconduct on your part]. If these allegations are upheld one of the outcomes of this hearing may be your [written warning / final written warning / dismissal].

The documents I will be referring to at the meeting are enclosed, they are:

• [List all documents]

Should you wish to rely on any other documentation, please provide copies to me in advance of the hearing in order that I can properly consider them.

You are entitled to be accompanied at the hearing by a work colleague or an accredited Trade Union Representative. That person can either act as your representative and address the meeting or merely attend as your companion. It is your responsibility to make the arrangements for your companion's attendance unless you have been suspended from work then I will arrange the attendance for you.

If you are unable to attend the disciplinary hearing please inform me by [date] explaining your reasons. If you cannot attend, you may wish to provide written submissions for my consideration.

If you fail to attend without good reason or prior notification, the hearing may take place in your absences and a decision made on the evidence in my possession. As this meeting may result in your dismissal, I would urge you to attend.

Yours sincerely

[name]

[position]

**If you would like assistance with writing
this letter, please get in touch**





HOLD THE DISCIPLINARY HEARING

03



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If you have set policy guidelines on how a disciplinary hearing should be conducted, please follow them. The guidelines should adhere to the [ACAS Code of Practice on Disciplinary](#) and we can help with that.

We can also provide guidance questions to demonstrate what to ask and how to do so **please seek advice.**

You should confirm that the employee received the invitation and that they received the evidence. If the employee has chosen to be unaccompanied you should check that they are happy to proceed. If they have chosen to be accompanied, you should remind the companion that they must not answer questions on the employee's behalf.

The purpose of the disciplinary hearing is to challenge the employee's version of events. You should try to get to the bottom of what happened based on reviewing all the evidence.

You should ask the employee specific questions in relation to each allegation in turn. You should refer to each piece of evidence in turn and use it to challenge the employee. You should not deal with anything that is not included within the allegations or the evidence.

At the end of the hearing you should allow the employee or their companion to make points and summarise their case.

After the hearing it may be necessary to undertake additional investigation, this could take a variety of forms but it would help to ensure that the investigation is as reasonable as possible.

Please do not give an outcome in the meeting.



OUTCOME



A disciplinary hearing can lead to a variety of sanctions, you could decide to take no further action, or in the alternative you could issue:

A letter of concern
(formal words of advice)

A written warning

A final written warning

Dismissal on notice

Summary Dismissal

RED FLAG



You must ensure that you apply disciplinary sanctions fairly, you need to make sure that employees are treated like for like. **Please seek advice** to ensure that sanctions are fairly applied.

Send the formal letter detailing the allegations that you have upheld and your reasoning as to why you have upheld each allegation or not. You need to detail what sanction you have applied and any time limit that may be attached to it. You must also give the employee the right to appeal.



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[BY HAND/EMAIL/First Class Post]

PRIVATE & CONFIDENTIAL

[Name]

[ADDRESS]

[Date]

Dear [Name]

Disciplinary Outcome

Further to the disciplinary meeting which you attended on [date/today] I confirm that you have been given a [detail sanction].

You were advised of your right to be accompanied in advance of the hearing and chose to be accompanied by [Name] OR and chose not to be accompanied. I attended as Chair and [Name] was the minute taker, a copy of the minutes are available upon request.

At the start of the disciplinary hearing, you confirmed that you understood the allegations. They were:

[copy allegations as per the invitation letter]

In relation to allegation 1, [brief overview of the discussion and evidence recap]

I therefore make a further finding that allegation 1 is [upheld OR not upheld.]

Repeat for each allegation if necessary.

My decision, therefore, in relation to allegation[s] [numbers], is to issue you with a [detail sanction]. The warning will remain on your file for a period of 12 months.

You have a right of appeal against my decision and must do so within 7 days of the date of this letter. Please address your appeal directly to myself and I will arrange an appeal officer.

Yours sincerely

[name]

[position]

**If you would like assistance with writing
this letter, please get in touch**





APPEAL

Where an employee appeals against a disciplinary outcome they should provide you with written details of the appeal.

You must appoint an Appeal Officer, where possible this person should not have been involved in the disciplinary process so far. You can use the formal letter opposite to invite the employee to the appeal hearing. Please ensure that you provide at least 2 days notice of the hearing and you allow the employee to be accompanied by either a Trade Union Representative or a work colleague.

You can either chair the appeal as a review of the decision that was made or a full rehearing, essentially a re-run of the disciplinary hearing.

During the meeting allow the employee to state why they think the outcome is wrong. You should ask the employee questions to extract as much detail as to why they think the outcome is wrong.

Do not give an outcome in the meeting. You may need to carry out some additional investigation depending upon what the grounds of the appeal are.

RED FLAG

! If you are unsure how to run an appeal or what type of appeal to carry out **please seek advice.**



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PRIVATE & CONFIDENTIAL

[Name]

[ADDRESS]

[Date]

Dear [Name]

Appeal

I confirm receipt of your [EITHER letter/email] dated [date], in which you have appealed against the decision to [EITHER dismiss you or issue you with a [final] written warning].

You are invited to attend an appeal hearing on [day/date] at [time] in/at [location]. I will be conducting the meeting and [name] will be in attendance to take notes.

You are entitled to be accompanied at the hearing by a work colleague or an accredited Trade Union Representative. That person can either act as your representative and address the meeting, or merely attend as your witness. It is your responsibility to make the arrangements for your companion, [but as you have been suspended, please let me know the name of your work colleague and I will make the arrangements on your behalf.]

Yours sincerely

[name]

[position]

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APPEAL OUTCOME



There are a wide range of appeal outcomes, you could reduce the sanction to a lesser sanction, for example from a final written warning to a written warning; or you could reduce the length of time for which it will remain valid; finally, you could remove the sanction or take no action. Lastly, you could dismiss the appeal and leave the original sanction in place.

Please use the formal letter opposite to give the outcome to the appeal.



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[BY HAND/EMAIL/First Class Post]

PRIVATE & CONFIDENTIAL

[Name]

[ADDRESS]

[Date]

Dear [Name]

Disciplinary Appeal Outcome

Further to the appeal meeting which you attended on [date]
I listened carefully to everything that you had to say.

In summary you appealed on the grounds that [summary of
the appeal grounds].

In relation to the first ground of appeal I found [detail
your findings].

Your [disciplinary outcome] will [detail what action is
being taken].

You have now exhausted your rights under our disciplinary
procedure and we now consider the matter closed.

Yours sincerely

[name]

[position]

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