

Disciplinary and Grievance Procedures: ACAS Code of Practice

Introduction

Section 3 of the Employment Rights Act 1996 says that an employee's statement of initial employment particulars shall include a note specifying any disciplinary rules or disciplinary grievance procedures applicable to the employee. Those rules and procedures must be reasonably accessible to the employee. It is essential therefore, that employers have their own disciplinary and grievance procedures. The ACAS Code of Practice provides basic practical guidance for both employers and employees for handling disciplinary and grievance situations in the work place. The procedures set out in the Code of Practice should be treated as the minimum standard.

Code of Practice – Disciplinary Procedures

The Code of Practice applies to misconduct and/or poor performance issues. It does not apply to redundancy dismissals or non-renewal of fixed term contracts on their expiry.

There are five key steps:

1. Investigation – A necessary investigation for potential disciplinary matters should be carried out without unreasonable delay to establish the facts of the case. This may involve holding an investigatory meeting with the employee concerned. It may be appropriate to suspend the employee whilst the investigation is ongoing. Suspension should be as brief as possible and kept under review. If suspension is considered necessary, it should be with full pay and be made clear to the employee that it is not itself a disciplinary action.
2. Informing the Employee – If, following investigation there is a disciplinary case to answer, the employee should be notified of this in writing. Notification should contain sufficient information about the

alleged misconduct or poor performance and its possible consequences, to enable the employee to prepare to answer the case at a disciplinary meeting. This normally includes providing copies of any evidence which has been collated as part of the investigation. The notification should advise the time and venue for the disciplinary meeting and inform the employee of their right to be accompanied at the meeting by a Trade Union representative or work place colleague.

3. Disciplinary – A meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. The employer should explain at the meeting the complaint against the employee and run through the evidence that has been gathered. The employer should give the employee adequate opportunity to set out their case and answer the allegations that have been made. The employee should also be allowed to ask questions, present evidence and call any relevant witnesses. The employee has the right to be accompanied at the

disciplinary meeting by a Trade Union representative or work place colleague, provided the employee has made a reasonable request for accompaniment. The companion's role is limited to addressing the hearing, to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the meeting itself, but the companion must not answer questions on the worker's behalf.

4. Decision – Following the meeting, the employer must decide what action is justified and inform the employee accordingly in writing. There are four levels of sanction:
 - a. Oral warning;
 - b. First Written Warning;
 - c. Final Written Warning;
 - d. Dismissal.

If the employee has been guilty of gross misconduct, then dismissal may be justified, even for a first offence. Otherwise, the employer should impose such sanction as befits the proven misconduct, taking into account previous sanctions.

A warning will normally only stay on file for a period of one year, after which point it cannot be taken into account in relation to later disciplinary action.

5. Appeal – When confirming the decision, the employer should set out the procedure for appealing the decision. The employee should let the employer know the grounds for their appeal in writing and a meeting should be arranged to hear this. The employee has a right to be accompanied at the hearing by a Trade Union representative or work place colleague.

complaint about a duty owed by the employee to the worker, then the employer should let the employee know that they have the right to be accompanied by a Trade Union representative or work place colleague at the meeting. This applies, for example, if the employer is not honouring the worker's contract or is in breach of legislation.

4. Meeting – The employee should be allowed to explain their grievance and how they think it should be resolved. The meeting could be adjourned to enable further investigation to be carried out.

5. Decision – After the meeting the employer must decide what action, if any, to take. The employer's decision should be communicated to the employee, in writing, without unreasonable delay and should set out what action the employer intends to take to resolve the grievance.

6. When notifying the employee of the outcome of the grievance, the employer should also inform the employee that they can appeal if they are not content with the action taken. If the employee wants to appeal, they must send written grounds of appeal to the employer without unreasonable delay. An appeal meeting will then be called without unreasonable delay, at a time and place notified to the employee in advance. The employee has the right

to be accompanied at any such appeal hearing by a Trade Union representative or work place colleague. The outcome of the appeal should be communicated to the employee, in writing, without unreasonable delay after the appeal meeting has concluded.

Failure to Comply with Code of Practice

If an employer dismisses an employee for misconduct or poor performance reasons and the Code of Practice as a minimum standard has not been complied with, the dismissal will almost certainly be unfair.

Furthermore, the Employment Tribunal has the discretion, if it considers it just and equitable, to increase any award it makes to an employee by up to 25% if it appears to the Tribunal that the employer has unreasonably failed to comply with the relevant Code of Practice.

Our Employment Team can draft or assist you in the drafting of suitable disciplinary and grievance procedures, advise you through a disciplinary and grievance procedure (including drafting appropriate letters) and represent you at an Employment Tribunal in connection with claims arising following disciplinary or grievance procedures. We can provide specialist advice in all employment matters.

Please call either Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625 for more information, or email them at dct@hallettandco.co.uk.

Code of Practice – Grievance Procedure

A grievance is any complaint an employee has regarding their employment. The key procedural steps are as follows:

1. Informal Resolution – The employer should attempt to resolve the grievance informally where at all possible.
2. Making a Formal Grievance – If it is not possible to resolve a grievance informally, the employee should raise their grievance formally and without unreasonable delay with a manager, in writing, setting out in full the nature of the grievance.
3. Meeting – Upon receipt of a formal grievance, the employer should arrange a formal meeting to be held without unreasonable delay after a grievance is received. If the grievance relates to a