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Guide to disciplinary, grievance and unfair dismissal issues

Moving forward
together >



The last thing any employer wants is tensions within the workplace. However, disciplinary and grievance issues do occur and if you have a clear set of procedures for dealing with such a situation, this can help to sort out any issues early on. There would also be an opportunity to avoid an escalation to tribunal proceedings which can prove costly and time-consuming for the employer.

This guide highlights some of the key points surrounding disciplinary and grievance issues and unfair dismissal within the workplace and outlines some of the ways in which employers might address them. This is a complex area that requires careful thought and planning, so if you are or think you may be in a disciplinary, grievance or unfair dismissal situation, please read this guide and then contact us.



Disciplinary issues

For many employers, setting out expected standards of conduct and performance in the workplace for everyone to follow can help their business to operate more effectively. These are often found in written or online format within an employee handbook or the company rules.

What do disciplinary rules usually cover?

- Conduct
- Absence
- Timekeeping
- Health and Safety
- Internet, email and telephone usage

If minor incidents of misconduct or low performance are identified, these may be resolved informally in the first instance. However, in some cases, failure by employees to respect or adhere to these standards may result in formal disciplinary action being taken.

The type of action taken depends on the individual case but **employers should:**

- deal with issues promptly, fairly and consistently
- carry out any required investigations to gather the relevant facts of the case
- set out the facts and findings to the employee and
- allow the employee to put their response forward.

The employee has the right to be accompanied by a work colleague or trade union representative to any formal disciplinary meeting and is also allowed to appeal against any formal decision made.

Invitations to formal disciplinary hearings and the subsequent outcomes should always be communicated to employees in writing. It is also good practice to record minutes of meetings and ask employees to approve these.

Grievances

A grievance is 'a concern, problem or complaint raised by a member of staff'.

Grievances can arise for many reasons including issues with terms and conditions of employment, relations with colleagues or management, health and safety, organisational change or discrimination.

Your business should have its own grievance procedures in place to help resolve any issues in-house in an effective and professional manner. Managers and employees should be aware of these procedures.

In line with the Acas Code of Practice, employers are always advised to try to address workplace grievances as soon as they arise, to avoid them escalating into a formal procedure and possibly ending in tribunal action.

Whilst managers should endeavour to resolve matters with disgruntled employees informally in the first instance, some complaints cannot be resolved informally. In these cases, a formal grievance procedure must be followed and may help avoid tribunal action at a later stage.

If following informal discussions, an employee remains unhappy, a **formal grievance procedure** will need to be commenced by taking the following steps.

- The employee should be asked to submit details of their grievance to their employer in writing.
- The employer should investigate the employee's grievance.
- The employee should then be sent a letter inviting them to a meeting to discuss their grievance and the findings of the employer's investigation.
- The employee can appeal the employer's decision if they wish.

The employee has the right to be accompanied by a work colleague or trade union representative to grievance hearings.

Unfair dismissal

Occasionally, an employer will be faced with the difficult decision of dismissing an employee, whether that be, for example, by reason of redundancy or following an escalation of disciplinary sanctions.

To be in the best possible position to defend a potential claim of unfair dismissal, a dismissal must be for a potentially fair reason in law and must be reasonable in all the circumstances.

The following reasons are potentially fair reasons for dismissal specified in the Employment Rights Act 1996:

- redundancy
- capability or qualifications (e.g. performance or fitness to work)
- conduct or
- 'some other substantial reason' (i.e. a justified business reason).

Once the employer has established a potentially fair reason for dismissal, it must then act reasonably in treating that reason as sufficient to justify dismissal. Acting reasonably will involve many considerations and will vary according to the circumstances. In general terms, an **employer should**:

- conduct the necessary investigations in a timely manner to establish the facts
- use a consistent and fair procedure when dismissing an employee
- follow their grievances and disciplinary procedures in an effort to avoid dismissal wherever possible
- ensure that clear rules and procedures surrounding dismissals are readily available to all managers and employees
- make sure that these rules and procedures are understood by all members of their workforce.

What is a dismissal?

Dismissal is the termination of an employee's contract of employment.

What is an unfair dismissal?

In broad terms, a dismissal will be classed as unfair if the employer has not been able to establish a potentially fair reason for the dismissal or the tribunal is of the view that the employer did not act reasonably in carrying out the dismissal.

A dismissal is classed as automatically unfair (regardless of the length of service of the employee) if an employee is dismissed for certain specified reasons, including the following:

- discriminatory reasons – e.g. because of their sex, age, disability, race, religion or sexual orientation
- pregnancy – including all reasons relating to maternity
- family reasons – including the fact that an employee has exercised their rights to parental leave, paternity leave (birth and adoption) or adoption leave
- the employee's membership of a trade union and/or trade union activities and
- health and safety reasons.



What is a constructive dismissal?

Constructive dismissal is when an employee is forced to leave their job against their will because of their employer's conduct. In order to prove constructive dismissal an employee must be able to show that their employer has committed a serious breach of their contract of employment, for example, not paying their wages or alternatively, breaching what is known as the relationship of 'mutual trust and confidence'.



Contact Palmers Solicitors for advice

At Palmers Solicitors, our specialist employment team can prepare effective written grievance and disciplinary procedures, as well as training managers in how to handle disciplinary and grievance issues fairly. Our HR package provides a suite of documents, including regularly updated policies to help employers to deal with disciplinary and grievance issues.

Our years of expertise in these areas means that we can provide tailored solutions for your business, making sure that you are in the best possible position to defend potential claims.

For more information, please contact us.



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