

## DISCIPLINARY PROCESS BASICS

### Introduction

1. Whether disciplinary action is justified will depend on whether the employer has a good reason and whether they have followed a fair process.

### Good reason

2. The starting point is to consider whether there is good reason to commence a disciplinary process. Look at your rules, policies and the employee's employment agreement to identify whether the employee has breached your expectations.
3. Categorising your concerns is important.
  - 3.1 Serious misconduct can justify a final written warning and/or dismissal without notice in the most serious cases. Generally, what is required is conduct that destroys the trust or confidence essential to the employment relationship. Examples may include unauthorised possession of the employer's property (i.e., stealing), bullying or harassing a colleague or customer, and serious breaches of health and safety rules etc.
  - 3.2 Misconduct is less serious and can justify disciplinary action up to a written warning in the first instance. Repeated misconduct can justify termination on notice, provided there have been previous warnings and a fair process has been followed on each occasion. Examples may include lateness, time or material wasting, and less serious breaches of policies etc.
  - 3.3 Note that poor performance requires a different process where the employee is assisted to improve before disciplinary action is taken.

### Fair process

4. The starting point is to refer to the employee's employment agreement and your disciplinary procedure policy. Any process that is stipulated should be followed.
5. You need to investigate your concerns and pull together relevant information like, for example, written statements from witnesses, CCTV footage of an incident etc. If the issue is a complex one like bullying and harassment allegations, or if your business does not have the internal resources to carry out an investigation, consider whether it would be appropriate to engage an independent investigator to carry out the investigation.
6. You then need to decide who will be the decision maker. This individual needs to have authority to make a decision and should not be a witness to the matter.
7. The decision maker will need to put concerns to the employee and invite them to a disciplinary meeting to hear their response. This involves writing to the employee, setting out the allegations in detail, and providing the employee with all the information they are seeking to rely on. The employee must be notified of the seriousness of the matter and the possible consequences that may result if the allegations are proven, in the absence of satisfactory explanations. The employee should be told of their right to seek independent advice and to bring a representative to any meetings. They must be provided with reasonable notice of the meeting.
8. At the disciplinary meeting, the decision maker should explain that the purpose of the meeting is to hear the employee's response to the allegations. They can ask clarifying questions when the employee presents their response, but they do need to take care about the language they use. Decision makers must demonstrate that they have an open mind about things and have not made a decision.

The next step is for the decision maker to consider the employee's explanations with an open mind.



9. If the decision maker is contemplating a warning or dismissal, they will need to take an additional step of writing a preliminary decision letter. This will set out what the employee's explanations were, why these are or are not accepted, what the decision maker's preliminary view is and the proposed disciplinary action. The employee needs to be given an opportunity to provide feedback on the proposed disciplinary action before a decision is made.
10. Again, the decision maker will need to consider any feedback with an open mind and then communicate their decision to the employee.

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