

## The Dos and Don'ts of Disciplinary and Dismissal Procedures

A productive workforce is one of the key ingredients to business success. Consequently it is vital to ensure that your workforce is performing at its best. It may be that you have been in business for 20 years, with over 50 staff, and you have not had to issue so much as a first written warning. If this is the case you are very lucky. More likely you do not fall within this category or you do but you have been keen to avoid taking formal disciplinary action when problems with staff have arisen.

Most if not all employers will have to take disciplinary action against a member of staff at some stage in their careers, be it an informal warning or disciplinary action resulting in dismissal. But this should not always be considered in a negative light as a good disciplinary policy should be aimed at promoting improvement as opposed to consisting of an awkward meeting and slap on the wrists. It should encourage employee engagement by giving the employer and employee an opportunity to communicate and reach a better understanding thus enabling you to work together more effectively. So here are a few tips to get the most out of what is often seen as a bad situation and instead to use the situation to your advantage:

### 1. **Do follow a fair procedure**

Check your contracts, staff handbooks and any trade union agreements if applicable for a written disciplinary procedure that you should follow. In the absence of this familiarise yourself with the ACAS Code of Practice on Disciplinary and Grievance Procedures and follow the spirit of this in relation to any proposed disciplinary action.

<http://www.acas.org.uk/index.aspx?articleid=2175>

### 2. **Do not drag out the process**

Do ensure you address misconduct or performance concerns when they arise. You may think you are being kind by not dealing with certain concerns but in fact if you leave things unsaid the situation is likely to get worse and damage the employment relationship. Don't let any subsequent procedure drag out for longer than is necessary. Putting these things off will only make matters worse.

### 3. **Do take notes of all meetings**

Take notes of all meetings that you have with the employee and any witnesses. There is no point holding a meeting if you have no record of what has been said as memory fades after just a short time and is unreliable. Contemporaneous notes should be taken.

### 4. **Do investigate thoroughly**

Ensure that you have investigated fully as it will not be considered sufficient to base your decision on assumptions. Having said that there is no need to go on a wild goose chase but you do need to show that you have taken steps to investigate that are within your power.

## **5. Do give notice of a disciplinary hearing in writing**

If the decision is to proceed to a formal disciplinary hearing give the employee reasonable notice of the hearing in writing and ensure that you explain in the notice that the employee has a right to be accompanied to the hearing by a colleague or trade union official. Note that the companion can ask questions and answer questions put to them but should not answer questions on behalf of the employee. If the outcome of the hearing could be dismissal, you must make this clear in the notice letter.

## **6. Do inform the employee why they are being disciplined**

Make sure that the reason(s) for considering disciplinary action is made clear to the employee in the notice of disciplinary or dismissal hearing letter so that they understand the case against them and have an opportunity to consider their defence. It may be that there is a perfectly reasonable explanation justifying their poor performance or misconduct.

## **7. Do attach any evidence you are relying upon**

Attach any evidence (e.g. witness statements, notes from meetings) to the notice of disciplinary or dismissal hearing. The employee should be given copies of any evidence you are relying on so they have an opportunity to comment on these.

## **8. Do let the employee speak**

At the hearing set out the allegations made against the employee and go through the facts. Give the employee the opportunity to put their case and comment on the allegations made.

## **9. Do not make your decision at the hearing**

Do not make your decision at the hearing but allow time for due consideration and take all factors into account. Relevant factors might be length of service or whether the employee has a clean disciplinary record.

## **10. Do impose an appropriate sanction**

Remember we don't always drive around in fifth gear so likewise don't jump to the highest possible sanction. For instance where you are considering dismissal think whether a final written warning would be reasonable instead or alternatively consider demotion provided the employee is agreeable to this. Understandably you may be disappointed in the employee but you may find that whilst the allegations are proven there is a perfectly reasonable explanation for the misconduct or poor performance or that the employee is genuinely remorseful. Consequently it may be reasonable to exercise leniency in the circumstances. Any formal warning should be issued to the employee in writing and confirm when it will expire, usually after 6 to 12 months. A copy of the warning should be kept on the employee's personnel file.

TPP Law has substantial experience in helping businesses to successfully resolve employment disputes - why not contact our specialist employment team for an initial free discussion on your key issues.

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