

# Disciplinary Hearings

## What to expect when you are going through disciplinary processes at work



### Overview

A good disciplinary procedure helps employees to follow the rules and allows employers to deal fairly with those who do not. However, going through such a process is daunting. This factsheet sets out what you can expect of your employer's procedure and best practice in disciplinary hearings, following the introduction of the ACAS Code of Practice on Discipline and Grievance Procedures and as governed by the Employment Act 2008, both of which came into effect on 6th April 2009.

### Disciplinary Procedures

Disciplinary situations include misconduct and/or poor performance.

If your employer is intending to take, or is considering taking, disciplinary action against you (for example if they are contemplating dismissing you, or applying sanctions such as demotion, loss of seniority or loss of pay), then they should follow the procedures set out in the ACAS Code of Practice, which apply from April 2009. These are, however, only a minimum standard and your contract of employment or handbook may contain a disciplinary or capability procedure that is superior. If it does, then your employer should apply that better standard of procedure.

You have the right to be accompanied by a colleague or a trade union representative at both the initial disciplinary hearing to discuss the allegations and any appeal meeting. That right does not apply to any investigative or fact-finding meeting. While the choice of the accompanying person is yours, you cannot take anyone other than a fellow worker or trade union official unless your employer agrees or your contract gives you the right. If your chosen person is not available for the meeting you have the right to have it postponed for up to 5 working days. If your employer does not allow anyone to accompany you this will amount to a breach of the Employment Relations Act 1999, and you can complain to an Employment Tribunal about a breach of these provisions as long as you lodge your claim within three months.

If you are not a trade union member, and do not have a trade union which operates in your workplace, Russell Jones & Walker may be able to arrange for a trade union representative to accompany you. Please ask for further details. In most cases there is no right to be legally represented. The exceptions are if your contract (or legislation) gives you that right, or if the allegations against you are extremely serious and a finding would jeopardise not just your job but your livelihood.

**The Main Steps** - The ACAS Code sets out the main steps which an employer should follow when considering or progressing disciplinary action:

- The employer should investigate to establish the facts of each case
- The employer should inform the employee of the problem in writing
- The employer should hold a meeting with the employee to discuss the problem
- The employer should allow the employee to be accompanied at the meeting

- The employer should decide on appropriate action after carefully considering the position
- The employer should inform the employee of the outcome in writing
- The employer should provide the employee with an opportunity to appeal.

The ACAS code advises that where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with any grievance.

**Importance of complying with the ACAS Code** - If you later bring a claim in the Employment Tribunal, for example for unfair dismissal, the Tribunal has the power to increase any compensation awarded to you by up to 25% if your employer has unreasonably failed to follow the ACAS code, for example, by failing to offer you a right of appeal. But if the Tribunal finds that you have unreasonably failed to follow the Code, for example by failing to attend a disciplinary hearing without good cause, any compensation awarded to you could be reduced by up to 25%.

### Time limits for bringing claims

The normal time limit for bringing a claim in the Employment Tribunal is three months less one day from the date of the act or incident about which you are complaining. If you are dismissed for misconduct, an unfair dismissal claim must be lodged within three months of the date your employment ends. This isn't always straightforward so if in doubt seek advice sooner rather than later.

### Disciplinary hearings

**Before the hearing** - Your employer should let you know; in writing the details of the complaint against you; the disciplinary procedure to be followed; and that you must attend a disciplinary hearing. Details of the date and time of the meeting should be provided as soon as possible.

You should also be told that you have the statutory right to be accompanied at the hearing. If you have any special requirements, for example if English is not your first language or you have a disability that will make your participation in the hearing difficult, you may request relevant assistance. For example you can ask your employer for a translator or sign language interpreter to be present at the meeting.

**At the hearing** -

- The hearing should be a two-way process
- Your employer should introduce those present and explain the purpose of the hearing to you along with how it will be conducted
- Your employer should outline briefly the case against you and go through the evidence gathered
- You should be given the opportunity to state your case and answer any allegations that have been made. You should be able to ask questions, present evidence and call witnesses. If you have a person accompanying you they should also be allowed to ask questions and you should be given the opportunity to confer privately with them. While the person

accompanying you should be allowed to address the decision-maker at the hearing, they are not entitled to answer questions on your behalf, unless this is agreed by your employer

- You should be given the chance to provide an explanation for the alleged disciplinary offence. You should also be asked if there are any special circumstances that you want your employer to take into account.

**After the hearing** – It is good practice for your employer to adjourn the disciplinary hearing before any decision is taken. Your employer may choose to take no further action or may impose a disciplinary penalty.

The kind of penalty that your employer could impose will depend on what is contained in your contract of employment. But as a general guide, the options can include:

- A verbal warning
- A written warning
- A final written warning
- A disciplinary transfer
- A disciplinary suspension without pay
- Demotion
- Loss of seniority
- Dismissal with notice
- Dismissal without notice.

## How will you be informed?

Once the decision has been made you should be informed in writing.

**Appealing the decision** – You should be offered the opportunity to appeal against the outcome of the disciplinary hearing, in accordance with the ACAS Code, and your employer should inform you of this option.

Wherever possible the appeal should be dealt with by a manager who has not had previous involvement in your case.

You are also entitled to be accompanied at any appeal meeting by a colleague or trade union representative, in the same way that you are entitled to be accompanied at the original disciplinary hearing.

As with the original meeting, the employer should write to you with a decision on your appeal as soon as possible.

## Contact Us

*Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:*



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