

1. Introduction

- 1.1 Please note that the Guidance Notes apply to disciplinary matters in England and Wales. It does not apply to Scotland or Northern Ireland.
- 1.2 Both employees and employers should be made aware of the relevant disciplinary procedures and the Guidance Notes. A copy of the Disciplinary Policy and Procedures to all employees at the start of their employment. These Guidance Notes explain the procedures provided in the Disciplinary sub-folder. This does not constitute legal advice and, if any queries arise, legal advice should be sought.
- 1.3 Having a disciplinary procedure that:
- 1.3.1 Employees know the standards expected of them, and the consequences of failing to meet these standards;
 - 1.3.2 Individuals who do not meet the standards can be identified, and appropriate action can be taken to ensure they meet the required standard;
 - 1.3.3 Goals and improvement plans can be agreed between the employee and employer;
 - 1.3.4 Should a complaint be made to an employment tribunal, the procedure followed will assist the tribunal to help establish whether the employer acted reasonably.
- 1.4 An employer should ensure that the disciplinary procedure is followed in each case has been fully investigated;
- 1.4.1 No disciplinary action should be taken until the case has been fully investigated;
 - 1.4.2 Employees are given the opportunity to be accompanied at all stages of the procedure;
 - 1.4.3 Employees are given the opportunity to appeal against any discipline imposed; and
 - 1.4.4 No employee should be suspended from work except where there has been gross misconduct and the employer must be acting reasonably.
- 1.5 Suspension should only be used as a last resort and for as short a period as possible. Suspension should be reviewed regularly. When suspensions are being considered, it should be made clear that suspension is not considered a disciplinary action. There is a presumption of guilt. During a period of suspension, employees should receive their pay and benefits in accordance with the conditions of employment.

- 1.6 At the end of each document, we have linked a selection of letters which, depending on the stage, may be appropriate. Please refer to the relevant stage and amend as necessary. If none are suitable, please seek legal advice for your particular situation.
2. **Stage 1 – Informal Discussion**
- 2.1 If a matter can be resolved by discussion, it is beneficial for both the employer and employee to do so. Such discussion as to the employee's shortcomings can help to improve their performance and avoid any need for formal procedure. The employer should try to arrange an informal meeting with the employee to discuss the matter.
- 2.2 Where an informal discussion is arranged, a letter such as *Informal Discussion Letter (EMP.DISC.04)* should be sent to the employee and what was discussed and what actions have been agreed.
- 2.3 Where an informal discussion is arranged and improvement is shown thereafter an acknowledgment letter should be provided in a letter such as *Improvement Letter (EMP.DISC.05)*.
- 2.4 Where an informal discussion is arranged and the employee does not provide a solution to the problem the formal disciplinary procedure should be followed as below.
3. **Stage 2 – Written notice of an investigatory meeting**
- 3.1 It may be appropriate to hold an investigatory hearing prior to deciding if formal disciplinary action should be taken. An *Invitation to an Investigatory Meeting Letter* <https://www.simply-docs.co.uk/Document-Guidance/Misconduct/Misconduct-Invitation-to-an-Investigatory-Meeting-Letter> should be sent to the employee.
- 3.2 Once an employer has decided to proceed with formal disciplinary procedure, a letter must be sent to the employee (the *Formal Disciplinary Notice Letter*) stating that it is the first stage of the formal disciplinary procedure (the *Formal Disciplinary Notice Letter*) and outlining the reason for the disciplinary procedure.
- 3.3 Depending on the circumstances, it may be appropriate to use the *Formal Disciplinary Notice Letter* following an informal discussion (EMP.DISC.06).
- 3.4 The employee should be given the opportunity to attend the meeting using the above letter. The letter should be sent to the employee using the above letter and the Disciplinary Procedure should be followed.
- 3.5 The meeting should be held as soon as possible after the employee is given the letter, allowing the employee a reasonable opportunity to prepare for the meeting.
- 3.6 Employers, employees and witnesses should make every effort to attend the meeting and, where possible, should be offered to attend at a mutually agreeable alternative time and date. The employee may suggest a reasonable alternative time and date if they are unable to attend on the original date if they have given notice of their chosen company.
- 3.7 Advance notice should be given to call witnesses.
- 3.8 Document *Guidance on Disciplinary Meetings (EMP.DGG.03)* is a useful Checklist for preparing for a disciplinary meeting.

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4. Stage 3 – Meeting

- 4.1 At the disciplinary meeting, the employer should explain the complaint and go through any relevant evidence.
- 4.2 The employee must be given the opportunity to present his or her own evidence and call witnesses.
- 4.3 The employee may bring a representative to the meeting and the employer should be aware that the co-ordinator should not act as a witness.
 - 4.3.1 May address the employee to help set up the employee's case;
 - 4.3.2 May confer with the employee during the meeting;
 - 4.3.3 May not answer questions on the employee's behalf;
 - 4.3.4 May not address the employee if the employee does not wish them to; and
 - 4.3.5 May not prevent the employee from explaining their case.

5. Stage 4 – Outcome of Meeting

- 5.1 When deciding on the outcome of the meeting, employers should have regard to:
 - 5.1.1 The employee's previous disciplinary record;
 - 5.1.2 Any penalties imposed in the past;
 - 5.1.3 Whether the proposed penalties are acceptable to ensure this is a fair outcome;
 - 5.1.4 Whether the proposed penalties are reasonable considering all the circumstances;
 - 5.1.5 Whether any mitigating factors are necessary;
 - 5.1.6 Whether the proposed penalties are appropriate;
 - 5.1.7 Any special circumstances that may make it appropriate to adjust the severity of the proposed penalties.
- 5.2 At this stage of the disciplinary process, depending on the circumstances of the individual case, the employer should decide to:
 - 5.2.1 Take no further action – see *No further action* (EMP.DISC.18)
 - 5.2.2 Give the employee a verbal warning – see *Improvement Letter* (EMP.DISC.09)
 - 5.2.3 Give the employee a written warning – see *First Formal Warning* (EMP.DISC.08)
 - 5.2.4 Where the disciplinary case is serious it may be appropriate to go straight to a final written warning – see *Final Formal Warning* (EMP.DISC.08). **However, this should only be taken after careful consideration of all the circumstances and is not reasonable.**
- 5.3 The employer has a duty to ensure that the outcome of any disciplinary meeting is fair, regardless of whether a disciplinary finding is made.

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6. **Stage 5 – Appeal**

- 6.1 Employees have the right to appeal any formal disciplinary action. They must set out the grounds for appeal in writing and the employer should usually hear the appeal within 10 working days of the employee's request, and without unreasonable delay.
- 6.2 The appeal should be heard by someone where possible a manager not previously involved in the disciplinary process or appeal.
- 6.3 As in any other disciplinary process, the employee is entitled to be accompanied (refer to EMP.DGG.04).
- 6.4 Document *Guidance Notes on Disciplinary Proceedings (EMP.DGG.05)* may come in useful here.
- 6.5 Once the appeal has been heard, the employee must be notified as to the outcome in writing and the employer should note, however, that should employees wish to take the matter further they can go to the employment tribunal and/or other relevant bodies. Guidance letters may be relevant.
 - 6.5.1 *Appeal Meeting Letter (EMP.DISC.10)*
 - 6.5.2 *Appeal Decision Letter (EMP.DISC.11)*

7. **Stages 1 to 5 cover the disciplinary process and first/final formal warning. If a first disciplinary meeting is necessary to call a first formal warning, stages 2 through to 5 should be followed again for a second disciplinary meeting. The process is cyclical. The following letters may be appropriate:**

- 7.1 *Second Disciplinary Meeting Letter (EMP.DISC.12)* – Stage 2
- 7.2 *Second Disciplinary Meeting Letter (EMP.DISC.13)* – Stage 4
- 7.3 *Dismissal / Demotion Letter (EMP.DISC.14)* – Stage 5
- 7.4 *Appeal Meeting Letter (EMP.DISC.15)* – Stage 1
- 7.5 *Appeal Decision Letter (EMP.DISC.16)* – Stage 5

8. **Special Cases**

- 8.1 In cases where the employee is one of **gross misconduct** it may be appropriate to bypass the normal disciplinary procedure. However, employers should take caution to ensure that the procedure can be justified as reasonable. If in doubt as to the appropriate procedure to follow please refer to EMP.DGG.04.
- 8.2 Employers should not use the disciplinary process if the disciplinary matter / charges are so serious that, if proven, the employee is unable to work in the future, the employee has a free choice to leave or the employee has a free choice to leave disciplinary hearings.

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9. **External Proceedings**

9.1 Once the internal procedure has been exhausted, if the matter is still not resolved, it may progress to an employment tribunal. This is usually an employment tribunal.

9.2 If an employee makes a claim to an employment tribunal, she must now notify ACAS first and use the early conciliation process to try and settle the dispute.

10. **General Data Protection Regulation**

10.1 The General Data Protection Regulation (GDPR) requires employers to comply with principles of data protection, including protecting personal data, including protecting personal data. Personal data that is processed in a way that is likely to cause harm to individuals constitute a data breach. The GDPR requires employers to report all data breaches and, where the breach is likely to cause harm to individuals, the Company must notify the Information Commissioner within 72 hours of becoming aware of the breach.

For specific disciplinary matters see the Disciplinary Procedure. For other matters see also: Qualification Dispute and Sickness & Absence.

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