



BluSkyHR



# Need to take disciplinary action?

Here's everything you need to know



## **When your business employs people, it's inevitable that at some point you may need to take disciplinary action.**

If you find yourself in this position, it's vital you have an effective disciplinary process that complies with both employment law and the Acas code.

When conducting a disciplinary process, it's really important to do it by the book and you don't miss any steps. Not only to complete this process in the most effective way, but also in a way that protects you and your business from any potential claim against you, which could prove to be very expensive.

I've created this guide to help you understand what these steps are. But this guide should not be used as a substitute to seeking advice from an expert HR professional.



# Why might you need to take disciplinary action?



Generally speaking, disciplinary procedures cover two broad categories of conduct:

## Category 1:

Misconduct or improper behaviour

This encompasses a wide variety of unacceptable workplace behaviours, from theft to poor timekeeping, bullying to harassment.



## Category 2:

Capability or performance

If your employee is unable to do their job to a satisfactory standard it may be down to inadequate training, unacceptable absence, or something else. Here it's important to identify the reason and offer support before taking formal steps.

Misconduct may also occur outside of the workplace and an employee can still face disciplinary action. For example, bad behaviour at a company social event, or bullying a colleague on social media.

Gross misconduct is where misconduct is deemed extremely serious or may have a serious effect. In such cases, a disciplinary procedure should still be carried out, but you may decide on dismissal without notice or pay.

Examples of gross misconduct include fraud, violence, or gross negligence.

# Employment law

When we talk about disciplinary action it's easy to imagine it means disciplining someone by giving them a stern talking to. In reality it's not about punishment – or if you intend to maintain a healthy working environment it really shouldn't be.

The goals of your disciplinary procedure should be to make sure all your employees are treated equally and fairly, to set standards of conduct that everyone understands, to resolve issues internally, and to demonstrate that a legal process has been followed (which is important in case the action goes further and reaches an employment tribunal).

This is also critical to make sure your business remains compliant with employment law. Failing to do so could see you facing an employment tribunal.

And you probably already know this could cost your business thousands, as well as taking up a lot of your time. It's something we all want to avoid wherever possible.

In the UK, employers are governed by two laws – the Employment Act 2008, and the Employment Tribunals Regulation 2008. You also need to make sure your disciplinary procedure adheres to Acas' Code of Practice on Disciplinary and Grievance Procedures, because it's the standard that a tribunal measures fairness by.



# The Process

It's really important that from the very beginning to the very end, you follow a fair procedure.

**When you've tried to resolve an issue informally without success, it's time to start a disciplinary procedure.**

You'll need to inform your employee straight away. This should be done in writing and include information about the alleged conduct, as well as the potential outcomes of the meeting, such as a written warning.

Give your employee time to prepare, too. Ideally, while the meeting should be conducted as soon as possible, you'll still need time to investigate, and for your employee to prepare their case.

Disciplinary procedures usually only apply to those with employee status, but it's good practice to treat everyone in the business the same way in the interest of fairness.

As part of your investigation, before the initial meeting, take some time to check if a similar situation has occurred in the business before.

If it has, you'll need to follow the same procedure as you did then and look at what the outcome was before. You should expect the outcome of your new case to be similar to the previous case to ensure equity.



through the procedure, keep lines of communication open with the employee being disciplined, but also with any other staff who've been affected by the case. This can help to prevent misunderstandings, loss of morale, stress and even further legal action.

You should also keep your employee's mental health and wellbeing in mind during a disciplinary procedure. It can be a stressful time for everyone involved, so look out for signs like increased absence, a change in behaviour, or a loss of motivation at work.

You may find that your employee wishes to resign during a disciplinary procedure before it concludes. Be careful in such cases, as this has the potential to lead to a constructive dismissal claim.

Encourage your employee to complete the disciplinary first. If they refuse, ask them to sign a document that states they are leaving of their own accord and were not pushed into the decision.

# The Process... Investigation

Your investigation into the alleged conduct should begin as quickly as possible.



**If possible, someone not involved in the case should carry out the investigation. This may be an HR person or a manager. In a small business, the employer may have to take this role.**

It's also a good idea to have a different person handle each step – the investigation, the disciplinary hearing and outcome, and any appeals.

If it helps, create an investigation plan. This could include what needs to be investigated, the witnesses you'll need to speak to, any evidence (such as emails or CCTV) you can collect, the policies you'll need to follow, confidentiality that needs to be considered, and the timeframe in which each step should be completed.

In cases where it's possible your employee could tamper with evidence or coerce witnesses, it's OK to conduct your investigation before you inform the employee of the issue. Or in very serious cases, it may be appropriate to suspend your employee while investigations are being carried out.

Make sure your investigation adheres to guidance, but also to your own policies and the timescales they outline.

Keep written records of conversations, as well as physical evidence you may discover, like emails, phone records, or text messages

When you invite employees to a disciplinary investigation meeting, there is no legal right for them to be accompanied. However, it's good practice to allow it. This may be a colleague, a workplace union representative, or someone employed by a union.

After you've completed interviews and investigations, you can either investigate again if you need to, or write a report on your findings, that should be shared with your employee.

The person investigating may conclude the report with their recommendation. This could be to take one of three actions:

**Formal action** – such as a disciplinary hearing, making changes to a policy or procedure, or further investigation.

**Informal action** – like training or coaching, counselling, mediation, or notification that further conduct issues will result in disciplinary action.

**No further action.**



## The Process...

# Disciplinary Hearing

Your disciplinary hearing should be held as soon as possible after the investigation, while giving your employee the necessary time to prepare.

Write to your employee detailing the alleged conduct, evidence from your investigation, information that you will be discussing, the date, time and location of the hearing, and details on your employee's right to be accompanied. You should also include the possible outcomes of the meeting.

During your meeting, you as the employer should explain the issue at hand. Go through the evidence and make sure someone else is there to take notes.

Allow your employee to set out their case, answer your allegations, ask questions, and show their own evidence. They may also wish to call their own witnesses and they can decide if their companion is allowed to speak for them during the hearing, too.

A companion may set out the employee's case, take notes, respond to points you've raised, converse with the employee throughout the meeting, and sum things up at the end, if the employee is in agreement.

At the end of the hearing, you should take some time to consider the case before you make your decision on the action to be taken. Tell your employee when and where you'll reconvene. This could be later the same day, the next day, or in a couple of days' time, depending on the amount of information you need to consider.

It's important that you take all of the findings into account and decide on a fair outcome. You should then inform your employee of your decision as soon as possible.

If there is no further action, end the disciplinary procedure. Make sure there is no bad feeling with everyone involved by speaking to them privately. Make it clear that there is nothing to be concerned or worried about anymore, and that work should continue as usual.

If there should be an informal warning you can issue a 'verbal warning' but you should still keep a confidential record of this for your future reference.

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You may decide on a formal written warning. This should state what the issue was, the changes expected in what timeframe, what will happen if there is further misconduct, and how long the warning will stay in place. You should also detail any agreed actions, such as training or support that is to be provided.

This written warning may be a first warning, or it could be a final warning. If the conditions of a first warning aren't met within the specified timeframe you can issue a final written warning to your employee.

If the conduct is serious, you can jump straight to a final written warning, bypassing the first written warning entirely.

Other outcomes of the hearing may be to move the employee into a less responsible role, but you must check that this complies with your employment contracts first.

Finally, your decision may be to dismiss your employee. That's if the behaviour amounts to gross misconduct or followed a final written warning. This should only be decided by a manager with authority to do so.

Your employee should be informed of the decision as soon as possible, and be given the reason for the dismissal, informed when their contract will end, their notice period and their right to appeal.

Your employee may appeal if they feel the outcome is too severe, the procedure was handled incorrectly or unfairly, or if there is new evidence. This would mean beginning the disciplinary procedure again.

As you can see, there's a lot involved in a disciplinary procedure and it's really important that you don't miss even one step. When a procedure like this is mishandled, it has the potential to become an even bigger headache for you, potentially leading to costly legal action.

We'd always advise you take expert advice from HR professionals if you find yourself needing to begin a disciplinary process. That way you can feel assured that you're taking the correct steps at the right time, that you're acting fairly and treating everyone equally.





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MAKING YOUR HR AS CLEAR AS THE SKY IS BLUE



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