

Disciplinary hearings and investigations – Some Common Mistakes Employers Make*

The following is our quick guide to what employers should do. In the event that employers do not comply with fair procedures then any dismissal may subsequently be held to be unfair simply because fair procedures were not applied.

1. Before starting any disciplinary process look at your own disciplinary policy. An employer must follow this.
2. If the Code of Practice on Grievance and Disciplinary Hearings is more beneficial to the employee then the Code must be applied.
3. An employer's disciplinary process should as a minimum comply with the Code of Practice.
4. It is important that a manager or supervisor who is starting a disciplinary process is fully aware of and trained in relation to the disciplinary process.
5. There are times that the suspension of an employee will be considered. Suspension is only allowed where there is a risk to the business if they remain in work.
6. Suspension should only be used when absolutely necessary.
7. Any disciplinary allegation has to be set out in detail to the employee.
8. The employee should be furnished with a copy of the disciplinary process. The fact that they may have got the disciplinary process documentation as part of a staff handbook is not relevant. They need to be sent it again.
9. Consider whether an investigation into the allegations should take place before a disciplinary hearing. This allows relevant documentation to be obtained, witnesses interviewed and a report compiled to determine if there is a case to answer. It is best that somebody independent undertakes the investigation.
10. Where an issue goes to a disciplinary hearing a person who is conducting the meeting should be independent. A person cannot be accuser, judge and jury in these matters.
11. It is imperative that an employer makes sure that the employee knows they have a right to be accompanied by a work colleague or a union representative. There is no right to legal representation, normally.
12. Any outcome should be carefully considered and reasoned.

13. If the outcome is dismissal on the grounds of misconduct care is needed. The issue is whether dismissal is a reasonable sanction and one which an employer in the circumstances of the employer would consider as a reasonable option.
14. An employee should always be advised of the right to appeal the outcome of a disciplinary process.
15. Any appeal should be heard by somebody who was not previously involved in the process.

Every employer should have a disciplinary policy. Where there is no disciplinary policy there is a much greater potential for a claim for Unfair Dismissal being successful on the grounds that the employer did not provide a fair process.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

***In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**