



RUNNING A DISCIPLINARY PROCESS: SOME GOLDEN RULES

- **The Code:** Employment Tribunals are required to take account of the ACAS Code of Practice on disciplinary and grievance procedures. Breaching the Code can result in an adjustment to any compensation awarded of up to 25 per cent, although only if the failure to follow the Code is unreasonable. It is also important to follow your own Company disciplinary policy, which may go further in places than the Code requires.
- **The issues:** Are you dealing with misconduct or poor performance? A different approach will be required in each case. Performance issues will generally be dealt with, initially at least, in a more informal way, possibly through a Company performance improvement plan.
- **The team:** Where possible, you should separate the three stages of the disciplinary (investigation, disciplinary hearing and appeal) so that a different person deals with each. At the start of the process, think about who will deal with each stage and who will assist them (e.g. from HR). Try to limit communications regarding the disciplinary process to this core “team”.
- **Witnesses and evidence:** The employee should be shown all of the evidence (including witness statements) upon which the disciplinary chair will base their decision. If witnesses wish to remain anonymous, and you are satisfied that there are good reasons for this, consider how their evidence could be presented (e.g. by redacting) so that the employee is still aware of the case against them.
- **Letters:** The two key letters in any disciplinary process are the letter inviting the employee to the disciplinary hearing and the letter containing the decision. Both need to contain sufficient detail. The invite letter must tell the employee what the case is against them and what the potential sanctions might be. The decision letter must set out the findings from the hearing, the sanction imposed, the improvement required and over what timeframe.
- **Minutes:** taking a proper minute of the disciplinary hearing can be helpful but do not allow the process to be sidetracked if the employee does not agree that they are accurate. Make a record of the employee’s comments, append it to the minutes and move on.
- **Companions:** The legal entitlement is to be accompanied by a work colleague or trade union representative at disciplinary hearings (not investigation meetings). There may be occasions when there needs to be more flexibility, e.g. allowing a friend or family member to attend. Only in the rarest cases will there be a legitimate argument to be accompanied by a lawyer.
- **Delays:** The process can become delayed by, e.g., employees becoming sick or raising grievances. Sickness should not generally delay the process for any significant period although it may mean flexing the arrangements for the hearings. Likewise, grievances can be dealt with as part of the disciplinary process if the issues are related and, if not, a separate grievance process should not normally hold up the disciplinary process.

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