

RAINEY COLLINS LAWYERS

Employers' Guide to the Disciplinary Process

Set out below are the steps that an employer must follow when undertaking any disciplinary process regarding an employee. In addition the specific requirements of any employment agreement also need to be followed by the employer.

1.
 - (i) If an issue has arisen about an employee's behaviour then you need to speak with the employee about that behaviour. If it is of a minor nature then the discussion can be an informal one.
 - (ii) You need to point out to the employee what aspects of their behaviour are unacceptable.
 - (iii) You should tell the employee what is expected.
 - (iv) You should advise them that such behaviour will not be tolerated and if there is any allegation of inappropriate behaviour then formal disciplinary proceedings may be instituted. You should provide to the employee copies of material which you have so far regarding the allegations.
2.
 - (i) If the employee has already had a prior verbal rebuke (or the matter is too serious for that) then the matter needs to be taken further. You should consider whether you have the power to suspend them pending the investigation and if so whether it is necessary to do so.
 - (ii) To be able to suspend you need either a power to do so in their employment agreement or that there is a need to do so for safety reasons e.g. if they are accused of assaulting staff or are apparently under the influence of alcohol.
 - (iii) Before you suspend you must give them an opportunity to comment on whether they should be suspended or not. Give them a written notice of the allegations and that you are considering suspension and give them a timeframe to reply to you by regarding suspension. Once you have their response consider whether suspension is necessary and advise them of the decision.
 - (iv) They should also be given written notice that they are required to attend a formal disciplinary meeting at a set time and place. The notice should set out what it is alleged that they have done. If possible you should set out the clause of their agreement that it is alleged they are in breach of.
 - (v) You should also advise in the written statement that the employee is entitled to have a support person or representative present at the meeting.

- (vi) You need to set out in the notice the consequences if the allegation is proved. If the allegation is of a minor nature then the likely consequences will be a warning. If the issue is more serious and could lead, if proved, to dismissal, then the notice should state that.
3. (i) It is vitally important that in any notice it is stated that the matters are only an allegation and you should not indicate that any conclusions have been reached about the behaviour at this stage.
 4. (i) At the formal disciplinary meeting you should explain that it is a formal disciplinary meeting to investigate their alleged failure and should set out the allegations.
 - (ii) You should ask the employee whether they wish to give any explanation or whether they accept or deny the allegations, and then give them an opportunity to do so.
 5. (i) Once you have heard their explanation, denial or acceptance you should advise them that you will consider that before deciding on whether the allegation is correct and if it is what action may be taken.
 - (ii) Tell the employee that you will notify them of the decision.
 - (iii) At this point you should conclude their involvement in the meeting.
 - (iv) You can then go on to consider whether you are satisfied with any explanation that has been given.
 - (v) You should also decide whether you need to make further enquiries if matters have been raised which mean you should check into those first.
 6. (i) After you have investigated any other matters that need investigating and considered the explanation raised by the employee you should decide whether you are satisfied or not that the allegations are correct i.e. what actually happened.
 7. (i) If you come to the conclusion that the allegations are correct then you need to decide on what course of action to take.
 - (ii) If you are satisfied with the employee's explanation then you should notify them of that. If you are not satisfied with their explanation you should then decide what action to take.
 - (iii) The course of action will depend upon the seriousness of the allegation, any particular steps which are set out in the employment agreement and whether the allegation is the first against the employee or if there have been problems before, requiring action by you as the employer.

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8. (i) Notify the employee in writing that you have reached a conclusion on the allegation and what your conclusions are e.g. that the employee has inappropriately failed to follow your instructions on cash handling by not locking cash away in the safe.
- (ii) If the matter is serious then you should give the employee an opportunity to have input into the steps to be taken as a result of your decision e.g. should they get a warning or be dismissed or some other outcome.
- (iii) Advise them of a further meeting at which they can give their input. Set a date, time and place and again invite them to have a support person or representative with them.
- (iv) At the further meeting seek their input. This is not an opportunity for them to argue with you about what happened but rather what should happen next. Let them know that you will consider what they have provided and get back to them. Do not make any indication that you have already decided on the outcome.
- (v) Consider all of the facts, including their input and then decide at what level the behaviour is. Can it be handled with a verbal warning? Does it require a written warning? Should it be a final warning? Should the employee be dismissed? If so is the dismissal to be immediate or on notice?
- (vi) Communicate the outcome to them at a further meeting and confirm it in writing to them.
9. (i) If you have decided to issue a warning then you should advise that if there is another lapse, further disciplinary action may be taken, which could put their employment at risk.
- (ii) Your first warning should be a verbal one but should be confirmed in writing to the employee with a copy put on the file.
- (iii) If there is a second or subsequent warning later on, this should be a written warning and once again a copy should be put on the employee's file.
10. (i) If you have previously given a warning and the employee appears to be in breach of it then you need to repeat the steps above but you need to advise the employee that the potential outcomes will be at a more serious level.
- (ii) The level depends on the circumstances and could be a written warning, a final warning or a dismissal.
11. (i) At each stage of the proceeding you must treat the matter as an allegation and put the allegation to the employee and give them an opportunity to make an explanation or accept or deny the allegations.

- (ii) You should consider their explanations and make any further investigations that are necessary.
 - (iii) Then decide whether the allegations are correct or not.
 - (iv) If they are correct then decide what action you are going to take.
12. (i) You should follow the stages set out above and you should not take any shortcuts, no matter how tempting they may seem at the time.
- (ii) If you take shortcuts in the procedures then even if you would have been justified in taking disciplinary action against an employee you will be liable to the employee for breaches of the process. That could include having to pay for lost wages, hurt and humiliation, plus legal costs and you may have to reinstate them to their position.

It can be seen that following proper process is very, very important.

Alan Knowsley
Rainey Collins
Lawyers

0800 733 424