

11. Disciplinary

Employment Rights Act 1996 S3, sets out that employers are obliged to inform employees and workers of its Disciplinary and Grievance procedures in the written statement of particulars of employment.

UK Gov: Employment Rights Act 1996

Employers should be proactive with new employees from the outset of their employment by ensuring that they receive a robust induction which includes explaining what is expected of them in terms of their compliance to company rules as detailed in the Policies and Procedures. This lays a strong foundation and clarifies the employer's expectation of the required standard of behaviour.

Disciplinary matters at work differ from grievances, they are mainly situations where there has been a breach of rules and/or company procedures this includes misconduct and/or poor performance, therefore, an employer or a colleague could have a complaint about an employee or co-worker.

Employers should identify whether any allegations presented to them are of potential misconduct they should do this by checking their own policies and procedures in the first instance and to establish whether the problem could be a performance or capability issue.

It should be noted that although anyone has the right to make a complaint at work the ACAS code of Practice on Disciplinary and Grievance Procedures only applies to employees but not people who are workers.

Employers should treat their staff fairly and consistently and try and deal with any issues informally in the first instance before progressing to a formal process. Care must

be taken that the informal process does not develop into a formal process and ensure that employee rights are not breached.

ACAS has produced guidance on good practice for dealing with disciplinary action at work, which, is considered to be procedurally fair for both employees and employers.

ACAS: Discipline and Grievances at work

ACAS: Code of Practice on disciplinary/grievance procedures

The Government has also produced guidance for employers:

UK Gov: Taking disciplinary action against an employee



Trade unions can be helpful to both employers and employees particularly with disciplinary and grievance matters and can support partnership working.

Details of trade union suited to industry sectors can be found here:

TUC: Join a union

Employers should always be aware that if they fail to comply with ACAS Code of Practice on Disciplinary and Grievance Procedures an Employment Tribunal may increase any award for compensation by up to 25% for unreasonable failure in compliance with this standard.

Employers should ensure that they have a competent manager trained in dealing with disciplinary action.

The employer's own policy and procedures should be followed and a company's disciplinary procedure should as minimum mirror the ACAS Code of Practice, Rules and Procedures for handling disciplinary and that grievances.

The ACAS code of practice on Disciplinary and Grievance sets out anyone facing disciplinary action should be informed of this in writing, clearly informing the employee of the problem.

- Employers should raise and deal with any disciplinary issues promptly
- Employers should always consider the seriousness of the allegation and determine appropriate sanctions
- Employers should not unreasonably delay meetings, they should also ensure employees are informed of what the potential disciplinary outcomes may be.
- Employers should act consistently.

- Employers should appoint an investigator to carry out any necessary investigations, to establish the facts of the case and gather any evidence.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting. In law this can be a colleague or Trade Union Representative
- Employers should notify the employee in writing of any disciplinary action to be taken
- Employers should allow an employee to appeal against any formal decision made.

Employers should always try and resolve any matters informally wherever possible, therefore be open to considering Alternative Dispute Resolution (ADR) and third-party involvement, such as using a mediator or arbitrator in an attempt to resolve the situation.

ACAS: Mediation: resolving workplace issues

Employers should also consider the appropriateness of the meeting venue and arrange for someone who is independent from the situation to act as minute taker/ observer at any formal meetings.

Employers should pay particular attention to allegations of discrimination. The Equality Act 2010 sets out legislation relating to detriment in employment.

Gov.uk: Equality Act 2010



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

Employers have a duty of care to protect the safety, health and well-being of its employees as set out in HASAWA 1974 section 2. and should be proactive in minimising any risk to its employees.

HSE: Health and Safety at Work etc Act 1974

As mentioned earlier, employers should always try and mitigate any risk to their business by ensuring that their employees are educated in equality and diversity law and promote the company core values at all times

The Equality and Human Rights Commission Scotland has produced guidance for businesses:

Equality Human Rights: Guidance for businesses

Problems at work can be stressful to deal with for everyone involved. This can greatly impact on an individual's health and wellbeing both at work and also in personal lives. Speaking confidentially to a GP, or contacting a counsellor or another appropriate agency can help.

Business with less than 250 employees can encourage employees to make self-referrals to Working Health Services Scotland WHSS who offer Free Independent & Confidential help with fast tracking certain medical treatments, including counselling and physiotherapy appointments:

NHS: Health and Wellbeing Services

The main legislation which covers disciplinary is noted:-

UK Gov: Employment Relations Act 1999

UK Gov: Trade Union and Labour Relations (Consolidation) Act 1992

ACAS: Disciplinary and grievance procedures

UK Gov: Data Protection Act 1998

UK Gov: General Data Protection Regulations 2018

South of Scotland Employment Rights Advice Service

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