

How to manage employee misconduct

Dealing with instances of misconduct

In circumstances where an employee has acted in a way which contravenes the organisation's required standards of behaviour, whether such behaviour is of a minor nature, for example poor timekeeping, or of a serious nature, for example theft, then this should be addressed by following the steps outlined below.

Preparation

- The employer should ensure that its disciplinary procedure and ensure that this is followed in full.
- The handling of the complaint should be impartial and unbiased.
- The employer should establish the nature and background of the misconduct and where relevant quantify the damaging impact.
- It should investigate the incident(s) thoroughly and interview witnesses, where appropriate (see How to Conduct an Investigation).
- It should consider the employee's personal file and training record to gain an overall picture.
- Notes should be taken and records made throughout the process that are thorough and objective.
- The employer should establish whether there is a case to answer and if there are any external or mitigating factors which might have contributed to the misconduct. It should also consider whether either informal or formal disciplinary action has already been taken.
- It should then consider (where it becomes clear there is no case to answer) or informal action (where the matter can be resolved quickly and easily) or whether formal disciplinary action is required.
- Where formal action is deemed necessary, the employer should consider whether suspending the employee is appropriate.
- The disciplinary hearing should take place at a suitable private location.
- An independent person should take notes at the hearing. It may be appropriate for an interpreter or for other adjustments to be made if the employee speaks English as a second language or is disabled.
- The employee should be advised of the reason why the hearing is taking place, providing full details of the alleged misconduct; the arrangements for the hearing; their right to be accompanied to that meeting and the potential consequences of the hearing.

- It is necessary to provide the employee with copies of any witness statements and other documents which will be relied on.

At the hearing

- At the hearing the employer should introduce those present, explain the purpose of the meeting and how it will be conducted.
- The allegations of misconduct which are made against the employee should be explained.
- It should then ask the employee to respond to and comment on the allegations against them, allowing them to present their own witnesses.
- The employer should consider any mitigating circumstances which might explain the misconduct and ask questions of witnesses and the employee to ensure that it fully understand the nature of the events.
- The employer should allow the employee's companion to address the hearing and to ask questions to clarify issues. The companion is entitled to support the employee but that it is not their role to answer questions on the employee's behalf. They may, however, put the employees' case and respond to any view expressed at the hearing.
- The employer should then summarise the key points of the employee's response and seek their confirmation that it understands it correctly.
- The employer should then adjourn the meeting to carry out any further investigation as necessary or to consider its decision. If necessary, further investigation should be undertaken and then the hearing re-convened.
- Adjourn to consider the decision, taking into consideration the seriousness of the misconduct and any mitigating circumstances, the existence of any live disciplinary warnings which are on file and the penalties which might have been imposed on other employees in similar circumstances.
- Having reached a decision, the employer should consider whether any penalty is reasonable in all the circumstances.
- It should then communicate the decision to the employee either in person, with confirmation in writing, or by way of letter. This communication should advise the employee of their right to appeal.
- Where a disciplinary warning is given, the period for which this warning will remain 'live' should be detailed and the employer should explain the consequences of any future misconduct which might take place during the life of the warning.
- The decision should be confirmed in writing and advise the employee of their right to appeal.
- All notes of the proceeding should be collected and placed on the individual's personal file.