

GUIDE TO DISCIPLINARIES



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- If you have been summoned by your employer to attend a disciplinary hearing it's important to understand the **ACAS code** by which employers must adhere.

The ACAS code organises an employer's obligations through eight stages when they initiate misconduct disciplinary proceedings.

STAGE 1



The employer must establish if the employee has participated in an act of misconduct.

STAGE 2



The employer must identify if the said act amounts to gross misconduct. If it does, then the employees duties are suspended, albeit with full pay, while the employer collects facts about the case.

STAGE 3



Should the employee deny any wrongdoing, the employer must perform an in-depth enquiry.

STAGE 4



An invitation to attend an investigation meeting is extended to the employee. The employee may wish to save a written account of what is discussed during the course of the meeting. Once this meeting is concluded the employer must decide if the employee is indeed culpable; if they are not, they can resume their duties.

STAGE 5



If the employer finds the employee guilty of misconduct; a written invitation to a disciplinary hearing must be extended. At this stage, the employee can be accompanied by either a union rep, or a fellow worker. It is important to ensure that employee is provided with plenty of notice and also copies of all the relevant evidence or documents.

STAGE 6



In the hearing, the employee should be given a fair chance to present their version of the events. Both parties, i.e. employer and employee, should take notes. It is advisable that an independent person, other than the one who conducted the investigation meeting, should oversee the disciplinary hearing.

STAGE 7



Following the disciplinary hearing, the employee must be informed in writing, at the earliest possible opportunity, of the decision as to whether or not, any further disciplinary action will be pursued. It is important to note the decision to discharge the employee of their duties can only be given by an individual with the jurisdiction.

STAGE 8



The employee should be offered an opportunity to appeal the decision. They must provide their grounds for appealing the decision in writing before the meeting, which, in turn, must be convened without any unwarranted deferments. The employer must inform the employee in writing of the appeal's conclusion.

An illustration of a man in a suit sitting at a desk with a laptop. He has a distressed expression, with his hand on his forehead. In the background, there is a large orange box with the word 'ERROR!' in bold black letters, and a lightning bolt symbol. The overall color scheme is orange and brown.

DURING DISCIPLINARY PROCEEDINGS THERE ARE SOME SCENARIOS THAT COULD IMPACT THE OUTCOME:

1. INABILITY TO ATTEND

The ACAS code specifically states that both employers, as well as employees, must avoid undue delays in reference to meetings, decisions, and confirmation of the relevant decision. It is applicable to both parties i.e. the employer or the employee can be blamed for slowing down the process. Sometimes the employer might not conduct an investigation into the matter at hand quickly enough or the employee might delay the meeting by being unable to attend due to sickness, for example. The disciplinary hearing must be rescheduled if the employee does not attend. However, in the event that the employee is either unable, or reluctant, to appear at a rescheduled meeting, even after all practicable attempts to accommodate them have been made, the employer has the right to carry out the disciplinary proceedings, in their absence, on the basis of the proof and available documentation. If either one of the parties does not comply with the ACAS code, they are entitled to either an increase or reduction of up to 25 per cent, if a tribunal concludes it is justified to do so.

2. DISAGREEMENT WITH THE DECISION

If employees are not in agreement with the disciplinary decisions, they are well within their rights to appeal against it. It is recommended that the employee study their employee manual or company guidelines to understand exactly how they can do this. If they are unable to obtain the relevant material, they must explain in writing, within a week of being informed of the decision, why they believe the punitive action is incorrect.

3. RESIGNATION



A. Employees facing disciplinary proceedings which could result in the termination of their employment are advised to wait for the overall conclusion instead of resigning prematurely.



B. There are some instances when the employer will direct the employee to resign instead of being subjected to a prolonged process. Some might induce the concerned employee's resignation by threatening them with dismissal if they don't resign. Such threats constitute proof that a decision in the context of the disciplinary process was made even before a legitimate investigation was conducted. Furthermore, according to the Employment Tribunal, employees who comply with such threats are usually deemed to have been dismissed by the employer.



C. Employees should find out more about their eligibility for unemployment benefits like Employment Support Allowance or Jobseeker's Allowance, since resigning in the absence of a reasonable cause can lead to the benefits not being paid immediately, even though they have been sanctioned.



D. Demotion is a punitive response for a misconduct or deficient performance. However, too much demotion could be deemed a breach of contract which could be cause for an employee's resignation and bringing a claim in the Employment Tribunal.

4. POSSIBLE SANCTIONS

The ACAS Guide to Disciplinary and Grievance Procedures states the following in reference to the sanctions employees are likely to face:



A. In the first instance of misconduct, employers generally issue a written warning, which could explain the misconduct or poor performance in detail and list the expected performance improvements or change in behaviour.



B. If the misconduct is severe, or if a written warning has been previously issued, employers usually issue a final written warning.



C. If the misconduct is deemed to gross misconduct, the employee faces immediate dismissal.

If you think that you have been unfairly dismissed our Employment Law Solicitors can assist with all types of claims. Naturally, we pride ourselves on providing the best possible service to the highest standards, we can provide free employment law advice on all problems.

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