

Clover HR



# CLOVER HR EMPLOYER GUIDE:

When to discipline an Employee

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## When to discipline an Employee



### 01

## WHEN SHOULD YOU DISCIPLINE AN EMPLOYEE?

Companies use disciplinary procedures to formally handle employee behaviour. There are two main types of employee conduct that are addressed under a disciplinary procedure these are **Misconduct** and **Capability**

### MISCONDUCT

Misconduct (unacceptable or inappropriate behaviour) can cover a wide range of unacceptable behaviour which includes absence, lateness, failure to carry out a reasonable request, bullying, theft, AWOL and misuse of company property. Some behaviours are classed as gross misconduct, rather than just misconduct, these are because they are more serious or can have major consequences.

Gross misconduct can include fraud, physical violence, failure to adhere to Health and Safety regulations, serious insubordination. Gross Misconduct may result in immediate dismissal (a process must still be followed), for example, summary dismissal – immediate dismissal with pay or pay in lieu of notice.



## CAPABILITY

Capability (performance) is when an employee is not performing in their role to a satisfactory level.

The Employment Act 2008 and the Employment Tribunals Regulations 2008 govern discipline at work. The ACAS code of practice on Disciplinary and Grievance Procedures are the minimum standards that employers must adhere to. The ACAS code is not law, however if a case reaches an employment tribunal, they will see if a company has followed the ACAS Code in a fair and timely manner.

# 02

## DISCIPLINE IS NOT JUST A PUNISHMENT



Disciplinary procedures must not just be about punishment. A disciplinary procedure should ensure that:

- All Employees are treated fairly.
- Standards of conduct are clearly defined, so employees know exactly what is expected of them, and the process which will be followed if these standards are not adhered to. The process should be clear and fair.
- Disciplinary sanctions should make employees aware that their behaviour has been unacceptable and to assist them to improve, (not to dismiss them from the company)

If discipline is done correctly, it can help to improve an employee's conduct and in turn increase productivity, also an effective disciplinary process can protect a company from employment tribunal claims made against them

## 03

### **INFORMAL PROCESS**

Before an employer starts a disciplinary process with an employee, they should always seek to see if the problem or issue can be sorted in an informal way.

If there is an issue with an employee, a manager should talk to their employee and find out what is happening; listening to anything the employee has to say, agree on improvements that need to be made and ensure the required standards and timeline for improvement are understood and develop a training plan if needed. Usually, in a lot of cases, this is the quickest and best solution and helps to resolve the issue early on.

## 04

### **ENSURING A FAIR PROCEDURE IS FOLLOWED**

If the issue has tried to be resolved informally and it has not worked, then the employer may wish to start the formal disciplinary procedure. An employer must ensure that they follow a fair process and complete an investigation. A full investigation must be done with all disciplinary cases, to ensure that there is a fair outcome. Records must be kept of the investigation and the process.

Once an investigation has been completed, if there is the possibility of action being taken against the employee, the employee must be formally invited to a disciplinary hearing in writing, confirming where and when the disciplinary hearing will take place and who will chair the hearing.

It must also contain:

- The alleged misconduct or performance issue
- Any evidence from the investigation
- Any other information they plan to talk about
- Information on the employee's right to be accompanied to the hearing
- The possible outcomes





Employees must be given sufficient time to prepare for a disciplinary hearing.

At a disciplinary hearing, the employee must be given the opportunity to defend themselves against the allegations made, it is up to the chair person to then decide upon the outcome of the hearing.

Once a decision has been made, the employee must be informed of this in writing. Employees must be given the right to appeal the decision.

## 05

### **STAGES OF A DISCIPLINARY PROCEDURE**

The minimum stages you must include in your disciplinary procedure are:

- Written Warning
- Final Written Warning
- Dismissal

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