

## DISCIPLINARY PROCEDURES

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Failure by businesses to adhere to fair procedures when disciplining employees has resulted in a significant increase in the number of Unfair Dismissals claims succeeding. Such claims can result in awards up to a maximum of 104 weeks' remuneration to claimants. The number of Unfair Dismissals claims made to the Tribunal increased by 37% between 2007 to 2008 alone, with an average compensation being awarded by the Tribunal of €11,476.

The *Unfair Dismissals Act, 1977-2001* places the onus strictly on employers to prove that a dismissal was fair.

In proving that a dismissal was fair, particular consideration will be given as to whether an employer has a disciplinary procedure in place, whether it conforms to the general provisions set down in the Labour Relations Commission Code of Practice on Grievance and Disciplinary Procedures and the extent to which an employer has complied with its own procedures.

A **Disciplinary Procedure** describes the process by which disciplinary matters should be dealt with.

*Section 14, Unfair Dismissals Act 1977 (As amended)* requires that employees are provided with a copy of the disciplinary procedures within the first 28 days of employment. This is normally contained within the employee's Contract of Employment, Terms and Conditions or Company Handbook.

### **Some key components of a fair Disciplinary Procedure are as follows;**

Employers should identify within their Disciplinary Procedure, the type of conduct and issues which may lead to disciplinary action e.g. lateness and conduct which would be considered gross misconduct and could lead to dismissal, e.g. violence.

Provision should be made, in the case of alleged gross misconduct, for the suspension of the employee **with** pay pending the completion of an investigation.

Ranking of disciplinary issues is important. Before formal disciplinary action is taken it would not be unusual for informal counselling to have taken place where minor issues arise. Disciplinary Procedures should normally consist of progressive steps and such steps may include;

- (a) Verbal Warning**
- (b) Written Warning**
- (c) Final Written Warning**
- (d) Suspension without Pay**
- (e) Dismissal.**

Provision should be made to allow the employer to skip stages if the issue is more serious and deserves more serious action. With each warning a timeframe for the duration which they will remain active on an employee's file should be specified. Normally all warnings, after a verbal warning, are 12 months.

A Disciplinary Procedure should make reference to an Appeal Mechanism, stating a timeframe within which the appeal must be made and to who the appeal should be processed. Seven days would be a reasonable timeframe within which an appeal should be made and would normally be in writing and to the next more senior person in line who had

no involvement within the initial investigation process. Reference should also be made for the referral by the employee concerned, to a third party in the event that the disciplinary action is still challenged after making an internal appeal. e.g. Rights Commissioner.

#### **DISCIPLINARY INVESTIGATION PROCESS:**

Disciplinary Action should not be taken without an investigation first into the alleged breach of conduct or behaviour.

The right to respond should be afforded during a formal Disciplinary Investigation Meeting, which should take place in a location which is private and confidential. The Invitation to such a meeting would ideally be provided in writing to the employee.

#### **NOTICE OF DISCIPLINARY MEETING**

Sufficient notice of the meeting should be provided, where possible, allowing the employee a reasonable timeframe within which to prepare. The employee concerned should also be made aware of the complaint/allegations being made, their entitlement to representation/accompanied by a colleague, shop steward, or other representative. It should also be outlined, that they will be given a chance to **respond** to allegations or complaints relating to him/her and will be afforded the right to question/challenge any evidence or allegations. This may include affording the employee the right to request or question witnesses.

In the interest of ***Procedural Fairness***, it is important to ensure that persons conducting disciplinary investigation meetings do not have a conflict of interest.

#### **RECORD KEEPING**

Throughout the disciplinary process, employers should keep accurate records, particularly in relation to serious disciplinary matters, to assist them should the need arise that they must prove a disciplinary decision to be fair. The employee is entitled to view the minutes taken during the investigation and, therefore, it is best practice to get the employee concerned and the interviewer in attendance to sign off on the minutes taken during disciplinary meetings in the interest of avoiding any disputes over discrepancies.

#### **DISCIPLINARY DECISIONS**

Following the investigation, it is best to take some time deciding on the type of action, if any, that is to be taken. A Disciplinary Meeting must then be held to inform the employee concerned whether any disciplinary sanction is going to be issued.

Where a Disciplinary warning has been given, employers must notify the employee of; **the nature of the breach, the consequential disciplinary sanction, the improvements required, the duration of the warning remaining active on file, the consequences should further breach of conduct or performance occur and reference to the employees right to appeal and procedures should they wish to appeal.** These details should be confirmed in writing to the employee and placed on the employees personnel file.

**This update is provided by the MSS HR Support Service**

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## ***Sample Disciplinary Procedure***

Company X disciplinary procedure is designed to be corrective rather than punitive. Company X will endeavour to deal with initial minor performance issues or breaches of conduct informally with employees without recourse to the disciplinary procedure, through the use of a pre-disciplinary counselling session.

Should informal counselling not resolve an issue or the issue is of a more serious nature the disciplinary procedure will be invoked. Prior to any disciplinary/investigation meetings, the employee will be advised in advance of the nature of the meeting, the right to representation which may include; union representative, working colleague or other appropriate person and that disciplinary action may result.

### **Disciplinary Procedure**

#### **Stage 1- Verbal Warning**

This warning will be issued for minor issues or breaches of conduct. This warning will remain active on the employees file for a period of six months.

#### **Stage 2- Written Warning**

This warning will be issued where it is necessary to take disciplinary action within the timeframe of the verbal warning or for more serious breaches of conduct/ issues, without recourse to previous stages of the disciplinary procedure. This warning will remain active on the employee file for a period of twelve months.

#### **Stage 3-Final Written Warning**

This warning will be issued where it is necessary to take disciplinary action within the timeframe of the previous written warning issued or for more serious breaches of conduct / issues, without recourse to the previous stages of the disciplinary procedure. This warning will remain active on the employee's file for a period of twelve months.

#### **Step 4 –Dismissal**

If it is necessary to take disciplinary action within twelve months of the issue of a Final Written Warning the company may decide to dismiss the employee.

Examples of Misconduct include; **Poor Timekeeping or attendance, Failure to comply with company reporting procedures Failure to comply with company rules or procedures, Failure to perform to company standards.** This list is not exhaustive.

**Summary Dismissal (Immediate dismissal)** may apply, with no recourse to earlier stages of the procedure, where the nature of the breach of conduct is more serious and is considered Gross Misconduct. In these circumstances, the employee will be dismissed following consideration of all the relevant circumstances and allowing the employee the opportunity to respond before the final decision is taken.

**Examples of Gross misconduct** that will normally result in an offending employee's summary dismissal without recourse to earlier stages of the disciplinary procedure: **Unauthorised removal of property, falsification of company records, including attendance records, theft, abusive,**

**threatening or violent behaviour, fighting or provoking a fight, harassment or bullying.** This list is not exhaustive.

### **Appeal**

At any stage of the disciplinary procedure employees have the right to appeal a decision taken. An appeal must be submitted in writing within seven days of the date of the notification of the disciplinary sanction to the designated more senior manager. Where an employee is still not satisfied with the outcome of a disciplinary decision, the employee has the right to bring a claim to the Rights Commissioner.

Company X will endeavour to investigate all allegations/complaints/ breaches of conduct/ issues, affording the employee the right to respond, prior to any disciplinary decisions taken.

