

## **How to... make sure you follow the ACAS Guidelines in a disciplinary process.**

In unfair dismissal claims, employment tribunals take the ACAS code of practice on disciplinary and grievance procedures into account where relevant and may increase an award of compensation by up to 25% for an employer's unreasonable failure to follow it.

But where do employers commonly go wrong?

### **Not warning the employee of the possible consequences of the disciplinary action.**

From the outset, the employer must tell the employee the possible outcome of the disciplinary action. In order to give them a fair chance of defending the allegation properly, it should not come as a surprise to the employee later on that dismissal is a possibility.

### **Not setting out the nature of the accusations clearly to the employee.**

The employer should explain the alleged misconduct clearly and should, throughout the disciplinary process, be consistent in what it is accusing the employee of. New allegations that come to light during the investigatory stage can be added to the process, but any disciplinary sanction must be imposed only in respect of allegations that were properly investigated and brought to the employee's attention as part of the proceedings.

### **Not furnishing the employee with relevant evidence against them.**

The employer should provide the employee with all the evidence, typically in the form of witness statements, in advance of the disciplinary hearing. Ideally, the evidence should be provided when the employee is invited to the hearing, or at least far enough in advance for them to be able to prepare a defence.

### **Not operating a system of warnings where appropriate.**

In some cases, the alleged misconduct will be so serious that summary dismissal for a first offence will be justified. However, in cases of minor misconduct, a series of warnings before dismissal will be appropriate.

### **Not allowing the employee to be accompanied at a disciplinary hearing.**

Although it is a statutory right, the ACAS code reminds employers of the requirement to allow the employee to be accompanied at a disciplinary hearing. The right to be accompanied arises when a worker who is invited by his or her employer to attend a disciplinary or grievance hearing makes a reasonable request for a companion to attend the hearing.

### **Relying on evidence from one particular source with no corroborative evidence.**

There may be limited circumstances where one individual's evidence is enough to lead to a disciplinary sanction, but an employer should always look for more. Employers should be alert to the problems of relying on one person's evidence and always look for corroborative evidence.

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### **The absence of an adequate appeal stage.**

The right of appeal is fundamental to ensuring natural justice. Employers should give the employee the opportunity to appeal when the outcome of the disciplinary hearing is communicated to them. Appeals should be unbiased and not be a "foregone conclusion".

### **Failure to keep clear records of the whole disciplinary process.**

To stand the best chance of successfully defending employment tribunal claims, employers must keep clear records of each stage of the disciplinary process. It is too easy for claimants to find inconsistencies in the evidence if witnesses have to rely purely on memory.

### **Delays in dealing with disciplinary issues.**

Most cases should be dealt with in a matter of weeks and unexplained delays in the disciplinary proceedings will always be frowned upon by tribunals. However, more complex or difficult cases (for example, where fraud or a criminal offence is alleged) will inevitably take longer.

### **Having the same person deal with the whole disciplinary process.**

A common failing found in tribunal claims is that the same individual is in charge of the disciplinary process from start to finish. Ideally, different people should carry out the investigation, disciplinary hearing and appeal stage, although this will not always be practicable, particularly for small employers.

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**For further advice and help on dealing with disciplinary matters, please contact us on 07899 665506 or email [tracy@crafnantconsulting.co.uk](mailto:tracy@crafnantconsulting.co.uk)**