



## **Disciplinary Process, The Do's and Don'ts**

Before undergoing a restructure it is important to seek legal advice. If you are considering restructuring and would like to talk to one of our employment specialists then please contact The Engine.

To start, let's understand what a disciplinary meeting is. It is a tool that you can use to manage poor performance or bad behaviour and the purpose is to get change and move forward into a more constructive space. It is what we call a formal process after you have firstly tried to address the issue in a more informal way. Unfortunately, when informal chats have failed to get the result you want then you need to take more formal steps.

Please understand, if you are wanting to discipline someone and subsequently provide a warning, you need to go down a formal process. You cannot just chat to an employee and then provide them with a warning letter, this is not sufficient as you have not followed due process.

Tip – Any informal discussions you have with employees regarding behaviour or performance issues, should be recorded on file.

Challenge – Disciplinaries are governed by case law and guidance and there are strict guidelines you need to follow in order to get it right and not expose yourself to a personal grievance.

### **So, what's important to get right?**

There needs to be three meetings

1. First you provide a notification of meeting to the employee. Pull them aside, give them the letter but do not enter into a discussion about the issues at this point. This letter outlines your concerns, the next step and the employees' rights.
2. You hold the disciplinary meeting. Note the timeframe between the notification letter and the meeting should be a minimum of 2 working days. Anything up to 2 weeks is reasonable. This meeting is a "response meeting". The purpose is for the employee to give their viewpoint and for the employer to listen and ask questions. The employee is entitled to have a support person or representative with them at this meeting and it is critical that you allow and encourage them to do so. The next step is the go away and fairly consider the information at hand and make a decision on what to do moving forward, for example to issue a warning or not.
3. The third meeting is to confirm the outcome of the disciplinary meeting. To outline whether you as the employer are going to take further action. You cover your decision, their feedback and your response to that feedback. You would then cover how long a warning is

valid for and what the next steps are to help the employee improve. A performance improvement plan might be necessary at this point.

### **What do you need to get right?**

1. You need to treat employees fairly and reasonably.
2. Under Section 103A of the Act– you must make employees aware of your concerns and/or allegations and get feedback.
3. Employees must have the opportunity to seek advice.
4. Employees must have a chance to give feedback. If they choose not to give you their side, that's fine, as long as you've given them the opportunity.
5. You must investigate feedback, it's very important to be unbiased and not have preconceived ideas.

### **Common things to go wrong:**

1. Employers issues written warnings without going through the correct process.
2. Employers misbehave and they tell their employees not to bother coming back.
3. Employees can delay the disciplinary process and /or get a combative representative who tilts the employee leaving and getting some money.
4. Predetermination of the process can happen when the employer thinks they have cut and dry evidence. You still need to ensure you follow the process - eg CCTV evidence of stealing cash from a till .
5. Pre-work is important. You need to ensure you have good grounds that can be supported by HR policies in place within the business.
6. Employees can raise a personal grievance if you have missed steps or been unfair and unreasonable (or even if you have done everything right, they can still raise a personal grievance).
7. Letting emotions and feelings get away on you. It's important to remain calm, not to lose your cool and to stay professional at all times in your dealings with your employees. You must ensure you keep your temper and remain patient.

### **Next Step**

Use discipline as a corrective tool, hopefully the employee improves and there is a productive outcome.

Or you've tried everything and lost patience and want the employee out of the business, so you can use a performance improvement plan and/or warnings. Remember you need to go through a formal, full and fair disciplinary process every time you are wanting to issue a warning. The usual process is a first warning letter and second warning letter and then dismissal, but you need to check what is in your employment agreement and follow what is outlined, this is very important. Please note you should not use verbal warnings as evidence for dismissal, you must follow a formal process.

Please note, if you terminate employees on the spot, you take the risk of the consequences, as you will not have followed correct process. NB As the employer the process you undertake is just as important as the issue itself. You may be justified in taking action but if the action you take is incorrect, you will be deemed to be in the wrong when it comes to a personal grievance.

If a dispute arises with an employee you can look to enter into a settlement agreement to bring the employment relationship to an end.

Our advice in order to get it right

1. Ensure you have all the correct HR documentation in place, as this will allow you to take action when needed in addressing employee issues.
2. Understand and follow the correct process when addressing employee issues, there are no short cuts.
3. If you really need to get rid of an employee and you don't want to follow the due process, be prepared to have to pay out that employee.

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