

## Guidance on Disciplinary Procedures in the Workplace

At HKKLAW, we provide comprehensive legal advice and support on managing disciplinary procedures within the workplace. Our expertise ensures that employers can address conduct and performance issues effectively and fairly, while also safeguarding the rights of employees throughout the process. We offer detailed guidance on every aspect of disciplinary action, from initial investigations to the final decision and appeals process.

For employees, we provide advice to navigate through disciplinary proceedings. We understand the stress and uncertainty that can accompany disciplinary actions and are committed to offering clear, supportive guidance.

For employers, our counsel includes the development and implementation of fair disciplinary procedures, advice on conducting investigations and hearings, and strategies to minimise the risk of employment tribunal claims.

HKKLAW's commitment extends to delivering expert guidance and support through the complexities of disciplinary procedures, ensuring fairness, compliance, and the protection of rights for both employers and employees.

Disciplinary procedures are used to address employee behaviours or performance issues that do not meet the employer's standards. They provide a framework for addressing such behaviours and issues. The following guidance outlines the key elements of disciplinary procedures, ensuring fairness and compliance with UK employment law.

**Establishing a Clear Policy:** Employers should have a clear and accessible disciplinary policy in place, outlining the steps of the disciplinary process, the behaviours that could lead to disciplinary action and the possible outcomes. The policy should also provide employers and employees with a clear understanding of the disciplinary process, ensuring fairness and compliance with legal standards. This policy should be communicated to all employees and be in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

**Informal Resolution:** Whenever possible, employers are encouraged to address minor issues informally before moving to formal disciplinary actions. An informal discussion can often resolve concerns without the need for formal proceedings.

**Formal Disciplinary Procedures:** If an issue cannot be resolved informally or if it is of a serious nature, the formal disciplinary procedure should be initiated. This typically involves the following steps:

- **Investigation:** The first step is a thorough investigation to gather all relevant facts about the alleged misconduct or performance issue. This may involve interviewing the employee involved and any witnesses, as well as reviewing relevant documents. The employee should continue to work as usual during this time, except in cases of gross misconduct where suspension may be necessary.
- **Notification:** Once the investigation is complete, if there is a case to answer, the employee should be notified in writing of the alleged misconduct or performance issues, the evidence gathered, the possible consequences and the time and place of

the disciplinary meeting. It should also inform the employee of their right to be accompanied at the meeting. Employees should be given reasonable time to prepare for this meeting.

- **Disciplinary Meeting:** The meeting provides an opportunity for the employee to respond to the allegations, present any evidence and make their case. It should be conducted in a fair and unbiased manner, allowing both parties to express their views.
- **Decision:** After the meeting, the employer should consider all the information and evidence presented, decide whether disciplinary action is warranted before making a decision. If disciplinary action is warranted, it could range from a verbal warning to dismissal, depending on the severity of the issue. The decision should be communicated to the employee in writing, along with an explanation of the findings and any sanctions to be imposed.
- **Sanctions:** Disciplinary sanctions may include a verbal warning, written warning, final written warning, demotion, or in serious cases, dismissal. The severity of the sanction should be proportionate to the nature of the misconduct or performance issue.
- **Written reasons for Dismissal:** In the event of a dismissal, employees with more than 2 years' service have the legal right to request written reasons from their employer, detailing the grounds for their termination. A request may be verbal or written. Upon request, employers must provide a clear and comprehensive explanation, including the specific reasons for the dismissal and the basis of any decisions made. Failure to do so can give rise to a complaint to the Employment Tribunal. If the employee is pregnant or on maternity, parental or adoption leave, the employee is entitled to a written statement without making any request.
- **Right to Appeal:** Employees should be given the opportunity to appeal against any disciplinary decision. The appeal should be made in writing, specifying the grounds of the appeal, should be heard without unreasonable delay and ideally by a manager who has not been previously involved in the case. The outcome of the appeal should be communicated to the employee in writing.

**Documentation:** Maintaining detailed records throughout the disciplinary process is crucial. This includes documentation of all meetings, correspondences, decisions made and the reasons for those decisions. Employers should keep detailed records of all stages of the disciplinary process.

**Ensuring Fairness and Compliance:** Employers must ensure that the disciplinary process is conducted fairly and consistently for all employees and without undue delay. This includes applying the disciplinary policy uniformly and respecting the rights of the employee throughout the process. Employers must follow their own disciplinary procedures as well as the ACAS Code of Practice. Failure to comply may result in employment tribunal claims. Employees have the right to be accompanied by a colleague or trade union representative at disciplinary and appeal meetings.

Failing to follow a fair disciplinary procedure can lead to disputes escalating to employment tribunals, where employers may be found liable for not conducting disciplinarys properly. If the employer is found to have failed to follow the ACAS Code in a disciplinary process

leading to dismissal, the tribunal may increase the compensation awarded to the employee by up to 25%. It is important to note that this uplift is not automatically applied in every disciplinary case but is contingent upon the specific circumstances and the tribunal's assessment of reasonableness in following the ACAS Code.

**Conclusion:** Effective disciplinary procedures are essential for managing performance and behaviour in the workplace in a fair and legally compliant manner. By adhering to a clear policy and following a fair and transparent process and communications, employers can address issues constructively, while minimising the risk of grievances and legal disputes. For employees, understanding these procedures is key to navigating disciplinary situations and asserting their rights.

Seeking expert legal advice can provide valuable guidance through disciplinary procedures for both employers and employees.