

Dismissal for Misconduct

Dismissing an employee for misconduct falls under the potentially fair reason for dismissal of “conduct”. However, even if the conduct of the employee is sufficiently serious to warrant dismissal, the dismissal may be unfair if a proper and fair procedure is not carried out. When considering conduct dismissals the following steps should be considered:

Check if the employee has one year’s service. If he does not he may not have the right to bring a claim for unfair dismissal.

Employers should have a written disciplinary procedure. If you do, you should ensure it conforms with the ACAS Code of Practice and follow it. If you do not, follow the procedure below:

1. Investigate the alleged misconduct thoroughly. Interview any witnesses and take statements, examine any documentary or other evidence. If appropriate or necessary, suspend the employee concerned on full pay while the investigation is carried out, making it clear that the suspension is not a disciplinary sanction.
2. If the investigation indicates that matter needs to be taken further, write to the employee informing him that he will be required to attend a disciplinary meeting. Give the employee reasonable notice of the date and time of the meeting. Your letter should include the following information:
 - The reason why and nature of the allegations against him;
 - His right to be accompanied by a work colleague or a trade union advisor;
 - Copies of the statements you have taken, or any documentary evidence to support the allegations;
 - A copy of your written disciplinary procedure; **and**
 - Possible disciplinary sanctions.
3. The meeting should be chaired by an impartial officer of the employer in order to minimise potential claims of bias. At the meeting, have someone present to take notes. Put the allegations and any evidence to the employee and ask for his/her side of the story. Allow the employee every opportunity to reply to each allegation. Adjourn the meeting to consider the facts and make your decision. If more investigation is needed as a result of the meeting then carry this out before giving decision. It may be that decision cannot be made until the next day or later.
4. Re-convene the meeting to give your decision. The disciplinary sanction will depend upon the facts, the seriousness of the misconduct, the employee’s length of service and any previous disciplinary record. Remember: the action you take must be reasonable in the circumstances. The action will usually be an oral, first written, or final written warning or dismissal. When giving a warning advise the employee of the areas of improvement needed and warn that misconduct will lead to further disciplinary action which could include dismissal. Monitor the employee’s subsequent behaviour to ensure that there is no repetition. If there is, ensure it is picked up and dealt with by way of further disciplinary meetings and action.
5. Immediately after the meeting type up any handwritten notes but keep the handwritten copies as a contemporaneous record. Write to the employee confirming the outcome of the disciplinary action. Provide the employee with a copy of the disciplinary meeting notes. Inform the employee of his right of appeal, how to appeal and any time limits that apply.

6. At the appeal hearing, ensure the person or people dealing with the appeal were not involved at an earlier stage to ensure impartiality. Depending upon the circumstances the appeal can be a full review of the evidence or simple a review to see if the decision to dismiss was reasonable based on facts at the time.
7. If the employment contract provides, consider demotion/withholding pay etc as alternative to warning.

Note:

- If you decide to dismiss, dismissal will normally be with notice unless gross misconduct is proven.
- If the employee wishes to attend the disciplinary meeting with legal representation try to avoid this if possible. If the employee insists it may be best to concede. Never refuse the employee his chosen representative without due consideration and good reason.
- Give the employee the opportunity to query the meeting notes, if they do not think they accurately reflect the meeting discussion, to try to avoid arguments later.
- Ensure all employees are aware of and have access to copies of company rules and policies and make sure that these are reviewed regularly to keep them up to date. For example, if your employees have email and Internet access, devise and circulate a usage policy.
- If the misconduct is sufficiently serious, the employer does not have to go through the steps of giving an oral warning then a first written warning then a final written warning. If the conduct warrants it, you can go straight to a final written warning or even dismissal if appropriate – in other words the sanction can fit the conduct even if there are no previous warnings, where appropriate.

This checklist is provided for your general information only and does not seek to set out the employment legislation in this area in detail. If you have any queries or wish to discuss specific circumstances, please do not hesitate to contact one of our employment team who will be happy to assist.

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