

SEPERATION OF PROCESS

Ensuring that you, as an employer or manager, are compliant in terms of employment law and particularly in that area of disciplinary and grievance procedure is absolutely essential.

It is very important to ensure that you not only have the necessary procedure in place but that it has been issued to and signed off by all employees in order to guarantee that you are in a position to correctly manage disciplinary issues in the workplace.

A disciplinary and grievance procedure should make it easier for you the employer to manage the situation as it ensures that the process is standardised, employees are aware of the process and know what to expect when involved in a disciplinary investigation.

Having a formal procedure in place, which is issued to all staff members will remove any ambiguity or accusations of unfair treatment as, when correctly applied a disciplinary and grievance procedure allows for all employees to receive the same treatment is a disciplinary issue arises.

Although implementing the disciplinary procedure can seem to be tedious and time consuming, it is clear that failure to follow the process is a costly decision that is easily avoidable. Indeed the majority of cases at third parties are lost due to a failure to follow procedures.

Fair Procedures

Section 6(7) of the Unfair Dismissal Act states that in determining whether the dismissal is fair or unfair it has regard to:

- (A) The reasonableness or otherwise of the conduct of the employer in relation to the dismissal, and
- (B) the extent, if any, of the compliance or failure in comply with the employer in relation to the employee to the disciplinary procedures or the provisions of the Code of Practice on Disciplinary and Grievance Procedures (Industrial Relations Act 1990) (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order 2000.

The employers own disciplinary procedures will first be looked at as it may be more extensive than the procedures outlined in the Code of Practise.

The Rules of Natural Justice

The procedure you implement should follow the rules of natural justice – follow the procedures! Employers who commence disciplinary proceedings against their employees must ensure that they follow the rules of natural justice. The rules of natural justice require:

- An employee is made fully aware of any formal allegation made against them
- They are afforded the opportunity to reply to any formal allegation made against them
- They are afforded the right to representation throughout the disciplinary process
- They receive the right to a full and objective investigation of the allegation
- They receive the right of appeal

The Right To Receive A Fair and Impartial Investigation How Do I Implement in My Organisation?

It is our advice that prior to commencement of the disciplinary process the Managers of each stage are put in place. This is helpful in establishing order to the disciplinary process prior to communicating with the employee.

For example in some cases this may be the Assistant Manager acting as the Investigation Manager; Store Manager acting as the Outcome Manager; the Managing Director acting as the Appeal Manager.

Note takers can accompany the Managers at each stage. There is no onus on the employee to have a separate note taker at each stage. The reasoning behind this is that the note taker is not involved in the meeting and is merely in attendance to provide a note taking service.

The separation of process extends to the correspondence which is issued through the disciplinary process also. The invitation to the disciplinary investigation meeting will be drafted by the Investigation Manager. This Manager may also be involved in the suspension of the employee in cases of suspected gross misconduct. This Manager will interview witnesses, finalise the investigation and will draft a summary report to be issued to both the employee and the Outcome Manager. The invitation to the disciplinary outcome meeting, where the employee has an opportunity to respond to the summary report and include any other comments, will be drafted by the Outcome Manager. The sanction will be issued by the Outcome Manager and will include the process of appeal and whom the employee can address their appeal to. The appeal meeting and the appeal decision will be attended by the Appeal Manager.

It is important to note that in smaller organisations the separation of process must still be adhered to. Case law has indicated that the separation of process is key to ensuring fair procedures within any organisations and no leeway is given to smaller organisations for failing to comply with this. In these circumstances the smaller organisation is advised to ensure that the Disciplinary Policy includes a reference regarding the Company reserving the right to avail of the services of an experienced third party in conducting all or part of the disciplinary process.

Employers invariably lose Unfair Dismissal cases because fair procedures and the rules of natural justice were not adhered to. Based on the experience of our team this happens because advice from experienced professionals was not obtained before the dismissal procedure was put in place and in a worst case scenario before the dismissal took effect.

For advice on Employment Law or other HR related issues for employers contact the team at the HR Suite on 066 7102887 to discuss your requirements.

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