



GUIDANCE NOTES ON DISCIPLINARY HEARINGS

An underlying tenet of any disciplinary or investigative process leading to a disciplinary hearing is that an employer must act fairly, consistently and objectively by adhering to natural justice and fair procedures at all times. The Courts and Employment Tribunal's will consider cases on this basis.

The Investigation

A full investigation of all the allegations must be conducted, potential witnesses interviewed and documentary evidence must be prepared by the Employer. This then allows the Employer to make a decision as to whether there are grounds to hold a disciplinary hearing.

Providing Information to the Employee

If there is sufficient evidence following the Investigation, you should be given a reasonable length of time to prepare the case and copies of all the documentary evidence that the employer intends to rely on should be furnished to you in advance of the disciplinary hearing. This is important as you can complain to the Employment Appeals Tribunal if an unfair procedure is followed. Further, you must be notified if, after all the investigations, there remains insufficient evidence to substantiate the allegations and accordingly no disciplinary action will be taken.

The right to representation at a Disciplinary Hearing or Grievance Hearing

You have the right to be accompanied to a disciplinary hearing by a friend, work colleague, union representative or other person as you see fit. The employer must permit the companion to address the hearing in order to do any or all of the following – put forward your case, sum up the case, respond on your behalf to any view expressed at the hearing and to confer with you during the hearing. However the companion is not allowed to:

- Answer questions on your behalf.
- Use the position in a way which prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.

Conduct of the Hearing

An employer must adhere to the rules of natural justice. The employer has to fully inform you of the allegations and any evidence to be used against them, and be given an opportunity to put a case forward, produce your own evidence and be allowed to question the witnesses. Your representative should be allowed to ask questions during the disciplinary hearing. The employer must not be biased during the investigation or hearing and an objective person must be present, whose duty is solely to take notes and who should not be involved with the hearing in any other way. Any new matters raised during a hearing must be investigated thoroughly and you should be told of the outcome of the investigations and be given sufficient time to consider



a response. At the end of the hearing, it should usually be adjourned to give the employer an opportunity to make an informed decision taking all the evidence into consideration.

You must be advised in writing of the outcome. Once a decision is made you may be notified verbally of the decision, however, this should always be confirmed in writing. The letter should always include the nature of the misconduct, time required for the employee to improve, the improvement required and the duration of the penalty on the employee's record, as well as the consequences of further misconduct and appeal details.

The Appeal

You should always be notified of the right of appeal. Written notification should state to whom and the deadline by which an appeal must be lodged (five days is usual). The opportunity to appeal against a decision is essential to natural justice. Employee's may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgment, the severity of the penalty, new evidence coming to light or procedural irregularities. The Employer must consider the grounds when deciding the extent of any new investigation or re-hearing in order to remedy previous defects in the disciplinary process.

Appeals should be dealt with as promptly as possible. A time limit should be set within which appeals should be lodged. This time limit may vary between organisations but five working days for lodging an appeal is usually appropriate. A time limit should also be set for hearing the appeal. Wherever possible the appeal should be heard by an appropriate individual, usually a senior manager, not previously involved in the procedure. You should be informed of the arrangements for appeal hearings and also of your statutory or other right to be accompanied at these hearings. Where new evidence arises during the appeal you or your representative should be given the opportunity to comment before any action is taken.

The appeal may be adjourned to investigate or consider such points. You should be informed of the results of the appeal and the reasons for the decision as soon as possible and this should be confirmed in writing. If the decision constitutes the final stage of the organisation's appeals procedure this should be made clear to you.



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Summary

The employer must:-

1. Conduct a preliminary investigation
2. Issue a disciplinary hearing invite letter
3. Provide a copy of all documents in advance of the hearing
4. Advice of Right to Representation at hearing

The employee is entitled:-

1. Disciplinary hearing invite letter
2. Copy of all documents to be used at disciplinary hearing
3. To be informed and given a copy of disciplinary process
4. Be advised of right to be accompanied or represented at hearing
5. Be allowed ask questions, request copy documents and view other documentary evidence, to include witness statements.
6. Respond in writing to the allegations put.
7. Be advised of the outcome of the hearing, confirmed in writing
8. Be advised of the sanction imposed and the length same will apply
9. Be advised of the right to appeal and appeal process.