



CONSTRUCTION CONFEDERATION

DISCIPLINE IN EMPLOYMENT

Generic advice and other useful information including CIJC pay rates, holiday dates and other information on the Working Rule Agreement is available on the CC website at www.thecc.org.uk. Please remember you will need your password to gain entry to the members section of the website.

All members are able to access the ACAS (Advisory Conciliation Arbitration Service) free helpline on 08457 47 47 47

This document is intended to give general advice and guidance and is not a definitive statement of the law on the particular subject. If in doubt consult your trade association or professional advisor.

DISCIPLINE IN EMPLOYMENT

COMPLAINTS AND WARNINGS

It is important to understand that good disciplinary procedures do not solely lead to termination of employment but should be able to be used with the intention of improving the conduct/performance of the employee.

Where an incident occurs that falls within the scope of the disciplinary procedure, the following action should be taken:

- 1) Act immediately, take statements from witnesses and collect relevant documents in respect of the incident. If the offence is serious enough to be gross misconduct (i.e., go to the fundamental issues of the contract of employment), suspend the employee on full pay while the matter is investigated.
- 2) Ensure that the incident has been fully investigated before you consider what action is appropriate. This may result in a decision that the matter should be dealt with under the disciplinary procedures or that the employee's actions were not serious enough to warrant disciplinary action.
- 3) If it is decided that formal action is necessary, the following procedure should be used to arrange a disciplinary interview:
 - a) Inform the employee of the nature of the complaint and that he/she is to be asked to attend an interview, which is for disciplinary purposes. You must put your allegations in writing and allow sufficient time for the employee to consider their response to the allegation (allow at least 1 working day between notification and the disciplinary hearing). If the employee's conduct is considered to be gross misconduct, ensure that he/she is advised of the company's procedure in that respect.
 - b) Inform the employee of the date and time that the interview will take place (this should be as soon as practicable after the event; deferral because the police are taking or considering taking action is not normally a sufficient reason for delay) and that he/she has the right to be accompanied by a colleague or a trade union official.
 - c) Ensure a second member of management is present as a witness.

CONDUCTING A DISCIPLINARY INTERVIEW

A disciplinary interview should be conducted by a senior member of management. However, this should not, if possible, be the most senior member of management as that can make an effective appeal impossible.

The senior manager present should give an introduction at the start of the interview to ensure that all parties present are aware of the purpose of the interview and of the areas of their responsibility.

The interview should be minuted.

The manager should inform the employee of the nature of the complaint and detail any documentary evidence or witnesses' statements. An employee is normally entitled to know the identity of witnesses have copies of statements and other documents and cross-examine witnesses.

The employee should then be given the opportunity to state his/her case.

It is up to management present to ask questions in respect of any statements made by the employee.

The "burden of proof" in this respect is based on the balance of probabilities. Therefore, an employer may rely on one witness but is required to carry out reasonable investigation.

When all parties have stated their case, the disciplinary interview should be adjourned while the matter is considered by management.

The matters for consideration should include the seriousness of the offence, whether any similar offence has been committed by the employee previously and the employee's past record, which includes his/her length of service.

The interview should then be reconvened and the employee informed of the decision and the penalty to be imposed, if any.

The senior manager present should explain the appeals procedure of the company.

If the decision is that a warning should be issued, the employee should be told what improvement is required, how long the warning will last and the consequences of his or her failure to improve conduct. Where the timescale for improvement of the employee's attitude or conduct expires without improvement and/or a further similar offence is committed, then the procedures set out for a disciplinary interview must be followed and further disciplinary action, which may lead to termination of employment, should be taken.

A final warning in writing must specifically advise the employee that repetition or failure to improve will mean dismissal. It is not enough merely to refer to the possibility that dismissal or some other action might follow.

NB. Warnings have an effective life, which may be set down in the disciplinary procedure. Their purpose is not to pave the way to dismissal but to try to reform and improve the employee's conduct/performance. In general, it is unsafe to rely on a warning more than six months old in the case of a Written Warning and 12 months in the case of a Final Written Warning. If after that time misconduct recurs, it is usually necessary to give another warning; exceptions may be made for serious misconduct or misconduct which, by the nature of the job, could not have been repeated in a shorter timespan.

A written warning is a record of the stage reached, whether first, or final warning, and helps avoid the usual claim by tribunal applicants that they never received a warning.

Ideally, if the written warning is served by hand, the employee should sign a copy. However, if he/she refuses to do so, this should be noted on his/her personnel file.

The ACAS Code requires, where practicable, that at least two written warnings of dismissal should be given prior to dismissal. Therefore, a three-stage procedure, written warning, final written warning and dismissal is the minimum acceptable procedure.

The Disciplinary Code requires that, an employee should have a right of appeal at every stage of the procedure, including dismissal.

Dismissal without warning will not, of itself, make the dismissal unfair. An action sufficiently serious to be a fundamental breach of contract (gross misconduct) may make a warning impractical and unnecessary.

In the event of gross misconduct the employer may dismiss, with immediate effect and without prior notice, any employee. Before making the decision to dismiss, the employer shall suspend the employee, investigate the matter and hold a disciplinary hearing and give the employee the opportunity to respond. The employer must first set out in writing the employees alleged misconduct and advise of the right to be accompanied at the hearing by either a work colleague or trade union official. In these circumstances dismissal will be without notice and without payment in lieu of notice.

The following list provides examples of offences, which are normally, regarded as gross misconduct - the list is not exhaustive:

being under the influence of alcohol or other stimulants or drugs during working hours to the extent that personal competence and ability is impaired;

physical assault on a fellow employee;

violent, disorderly or indecent conduct;

malicious damage to company or other employees' property;

falsification of company records, documents or time sheets;

removal from company sites or other premises of property belonging to the company, fellow employee, client, sub-contractor or supplier without the approval of the employer;

serious breach of the company safety policy rules or regulations;

acts of incitement to or actual acts of discrimination on grounds of sex, race, religion, colour, ethnic origin or disability;

serious negligence resulting in loss or damage;

harassment of any kind of colleagues or any other person whilst in the course of employment.

REMEMBER: Failure to follow a satisfactory procedure will lead to a finding of unfair dismissal, with an increase in compensation of between 10% to 50%.

SAMPLE LETTERS ON DISCIPLINARY MATTERS

Disciplinary Hearing Letter 1 (Stage 1)

Dear ...

Disciplinary Hearing

I am writing to instruct you to attend a disciplinary hearing in respect of *(insert details of alleged offence or problem)*.

The disciplinary hearing will take place:

At: *(insert time)*
On: *(insert date)*
At: *(insert place)*

You are entitled to be accompanied at the hearing by a colleague or trade union official

If the disciplinary hearing finds against you, you may be issued with a Written Warning in accordance with the company's disciplinary procedure.

If you do not attend the disciplinary hearing and have not notified *(insert name of person to be notified)* of good reason for your non-attendance before *(insert time and date approximately one working day before the disciplinary hearing but **after** employee will have received this letter)*, I must warn you that the hearing will take place in your absence.

Yours sincerely,

Disciplinary Hearing Letter 2 (Stage 2)

Dear ...

Disciplinary Hearing

I am writing to instruct you to attend a disciplinary hearing in respect of *(insert details of alleged offence or problem)*.

The disciplinary hearing will take place:

At: *(insert time)*
On: *(insert date)*
At: *(insert place)*

You are entitled to be accompanied at the hearing by a colleague or trade union official.

As you are currently on a written warning, I must warn you that if the disciplinary hearing finds against you, you may be issued with a final Written Warning under the company's disciplinary procedure.

If you do not attend the disciplinary hearing and have not notified *(insert name of person to be notified)* of good reason for your non-attendance before *(insert time and date approximately one working day before the disciplinary hearing but **after** employee will have received this letter)*, I must warn you that the hearing will take place in your absence.

Yours sincerely,

January 2005

Disciplinary Hearing Letter 3 (Stage 3)

Dear ...

Disciplinary Hearing

I am writing to instruct you to attend a disciplinary hearing in respect of *(insert details of alleged offence or problem)*.

The disciplinary hearing will take place:

At: *(insert time)*
On: *(insert date)*
At: *(insert place)*

You are entitled to be accompanied at the hearing by a colleague or trade union official.

As you are currently on a final written warning, I must warn you that if the disciplinary hearing finds against you, you may be dismissed.

If you do not attend the disciplinary hearing and have not notified *(insert name of person to be notified)* of good reason for your non-attendance before *(insert time and date approximately one working day before the disciplinary hearing but **after** employee will have received this letter)*, I must warn you that the hearing will take place in your absence.

Yours sincerely,

Disciplinary Hearing Letter 4 (Gross Misconduct)

Dear ...

Disciplinary Hearing

I am writing to instruct you to attend a disciplinary hearing in respect of *(insert details of alleged offence)...on (insert date that alleged offence took place)*.

The disciplinary hearing will take place:

At: *(insert time)*
On: *(insert date)*
At: *(insert place)*

You are entitled to be accompanied at the hearing by a colleague or trade union official.

I must warn you that due to the seriousness of the alleged offence, should the disciplinary hearing find against you, you may be dismissed for gross misconduct without notice or pay in lieu of notice.

If you do not attend the disciplinary hearing and have not notified *(insert name of person to be notified)* of good reason for your non-attendance before *(insert time and date approximately one working day before the disciplinary hearing but **after** employee will have received this letter)*, I must warn you that the hearing will take place in your absence.

Yours sincerely,

Disciplinary Warning Letter (Written or Final Written)

Dear ...

Disciplinary Hearing

I am writing to confirm the following points made at the disciplinary hearing on *(insert date)*.

As a result, it has been decided that you be given a *(written or final written)* warning for the misconduct.

The warning will be kept "live" on your file for six months *(amend to 12 months for final written warning and state that further of misconduct or failure to improve during this period will lead to dismissal)*.

If you wish to appeal against the disciplinary decision set out above, you may do so by setting out, in writing, the grounds of your appeal to *(insert name)* by *(insert date of approximately two weeks from the date of the warning letter)*.

Yours sincerely,

Dismissal Letter (After Warnings)

Dear ...

Disciplinary Hearing

I am writing to confirm the following points made at the disciplinary hearing on *(insert date)*:

(insert the main points of the hearing).

As a result, it has been decided that your employment be terminated with notice. (or pay in lieu of notice). Accordingly your employment will terminate on (date).

If you wish to appeal against the disciplinary decision set out above, you may do so by setting out, in writing, the grounds of your appeal to *(insert name)* by *(insert date of approximately two weeks from the date of the warning letter)*.

Yours sincerely,

Dismissal Letter (Gross Misconduct)

Dear ...

Disciplinary Hearing

I am writing to confirm the following points made at the disciplinary hearing on *(insert date)*:

(insert the main points of the hearing).

As a result, it has been decided that your employment be terminated with immediate effect without notice or pay in lieu of notice for the gross misconduct.

If you wish to appeal against the disciplinary decision set out above, you may do so by setting out, in writing, the grounds of your appeal to *(insert name)* by *(insert date of approximately two weeks from the date of the warning letter)*.

Yours sincerely,