

# **FREEDOM SCRIPTED - DISCIPLINARY AND DISMISSAL PROCEDURE – for PAYE employees only**

## **Introduction**

The purpose of the disciplinary procedure is to ensure that any concerns over an employee's conduct, attendance or job performance is handled in a fair, consistent and timely way, with the intention of bringing about an improvement in the employee's conduct/performance and also to protect the proper operation of the Company's business, and the health and safety of its staff.

This procedure applies to all PAYE employees. It does not generally apply to PAYE casual workers or Freelancers/Contractors.

## **Principles**

Our Disciplinary Procedure will be used only when necessary, and as a last resort where other informal methods have not been able to resolve matters.

**Minor disciplinary offences and general issues of poor performance** will be handled informally in the first instance, through discussion and informal warning(s). Where an informal approach does not bring about the desired improvement, or where the offence is more serious, the formal disciplinary procedure will be followed.

At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any disciplinary outcome is made.

At all stages of the procedure the employee will have the right to be accompanied by a work colleague or a certified trade union representative.

Neither the employee, or the Company, is permitted to covertly audio-record any meeting or appeal that forms part of the disciplinary process, as written notes will be taken. In certain limited circumstances, the Company may permit the meeting to be recorded electronically - for example where the employee is disabled, it may be appropriate as a reasonable adjustment under the Equality Act 2010. Where the organisation permits the meeting to be recorded electronically, it will take responsibility for making and sharing the recording with the employee.

The disciplinary procedure may be implemented at any stage if the employee's alleged misconduct warrants such action, but no employee will be dismissed for a first breach of discipline, except in the case of gross misconduct.

Decisions to dismiss or impose disciplinary penalties must be approved by a senior manager of the Company before being communicated to the employee.

An employee will have the right to appeal against any disciplinary decision imposed.

The Company's Disciplinary and Dismissals Procedure is based on the 2009 ACAS Code of Practice on Disciplinary and Grievance Procedures that may be amended from time to time.

Disciplinary matters will be handled with as high a degree of confidentiality as is practicable, particularly when the issue is of a sensitive nature.

The disciplinary procedure does not apply to:

- Termination of employment by reason of redundancy; or
- Termination of employment by mutual consent.

## **Data protection**

The Company processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its data protection policy. Data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure.

## **Examples of Misconduct**

The following are some examples of types of conduct that will normally be addressed through implementation of the Company's disciplinary procedure, but this does not constitute an exhaustive list:

- Unsatisfactory work performance (incapability or incompetence);
- Failure to work in accordance with the Company's policies and procedures;
- Smoking within the Company's premises or vehicles, outside of any designated areas;
- Persistent lateness or poor timekeeping;
- Unacceptable levels of absence from work, including going absent from work, without valid reason and when unauthorised;
- Abuse, misuse or neglect of the Company's property or facilities, including damage to Company vehicles where you are negligent;
- Unreasonable standards of dress, grooming, or personal hygiene;
- Theft, including unauthorised possession of the Company's property;
- Breaches of the Company's Data Protection Policies;
- Breaches of confidentiality, prejudicial to the interests of the Company;
- Being unfit for duty because of the misuse/consumption of drugs or alcohol;
- Physical assault, breach of the peace, verbal abuse, bullying, harassment or victimisation;
- Serious or repeated failure to follow reasonable requests or instructions from management;
- False declaration of the ability to work within the UK;

- False declaration of qualifications, professional registration or failure to divulge unspent criminal convictions;
- An offence under the Road Traffic Act that causes you to lose your driving licence.

## **Informal 'Improvement' Discussion**

Where an individual is not performing their work satisfactorily every effort will be made by managers to correct this situation through discussion. If an employee's performance at work needs to be improved the employee will be given clear guidance as to what is expected in terms of performance, the time scales for this improvement, when it will be reviewed and the employee will also be told, where appropriate, that failure to improve may result in formal disciplinary action.

If a formal record is made of this it will be given to the employee and a copy will be placed in their personnel file. If the improvements are made and no other action is needed then the record will be removed from the employee's file. If improvement is not achieved or the matter is more serious than previously thought the matter will be pursued under the formal disciplinary procedure.

## **Formal Disciplinary Procedure**

There will be a careful investigation of any alleged offence before disciplinary action is taken against an employee.

In some cases, this will require an investigatory meeting with the employee before proceeding to a disciplinary hearing. In other cases, the investigatory stage will be the collation of evidence by the employer for use at a disciplinary hearing.

This investigation will be carried out by an 'investigating' manager who is not directly involved with the incident being investigated (where at all possible) and all the relevant facts will be gathered promptly. Statements will be taken from any witnesses at the earliest opportunity. If there is an investigatory meeting this should not, by itself, result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under our procedure.

A report will be prepared which outlines the facts and this will be given to an appropriate senior manager who will decide whether further action is required, where appropriate.

If further action is required after the investigatory stage, the employee accused of misconduct will be given a copy of this report, in most circumstances, and be given the opportunity to attend a disciplinary hearing to put forward their version of events. This would be chaired by a manager, who has not been involved in the complaint so far (if at all possible), who would be accompanied by another manager (where possible).

### **In the event of a disciplinary hearing, the Company will:**

- Give the employee a minimum of 24 hours' advance notice of the meeting in writing, making it clear that the meeting is being held under the Company's formal disciplinary procedure and detailing the alleged misconduct;
- The hearing will be held as soon as possible after the investigation is completed, while giving reasonable time for the employee to prepare for the meeting;
- Remind the employee of their right to be accompanied at the meeting by a work colleague or certified Trade Union representative;
- Where an employee is unable to attend a disciplinary hearing and provides a good reason, the hearing will be adjourned to another day. Unless there are any special circumstances, if the employee is unable to attend the rearranged hearing, the hearing will take place in the employee's absence, although a companion will be allowed to attend and the employee may submit written evidence.
- At the meeting, give the employee a full explanation of the case against them;
- At the meeting, give the employee every opportunity to challenge allegations against them, state their case and put forward an explanation of their conduct and any mitigating factors;
- Take all relevant factors into account before reaching a decision about any disciplinary action.

## **Suspension**

Suspension should not be seen as a disciplinary action itself, but it can be used by the Company when it is necessary to remove a member of staff, who is accused of a serious act of misconduct, from the workplace - pending an investigation for example, or to allow time for a 'cooling down period' for both parties.

The Company will always consider if there is an alternative to suspension, but the Company's management reserves the right to suspend an employee from work on full pay, normally for no more than 5 working days (this 5-day limit may be increased if necessary, although the duration of the suspension will be for a reasonable period and will be kept under review).

If an employee is suspended, they will receive written confirmation of the reason for the suspension, the dates and times from which the suspension will operate between and the timescale for the investigation.

### **The stages of the formal disciplinary procedure will usually be as follows:**

- **Stage 1 – formal verbal warning is given**

A verbal warning is appropriate when it is necessary to take action against an employee for any minor failing or minor misconduct that cannot be handled informally.

- **Stage 2 – first written warning is given**

A first written warning is appropriate when a verbal warning has been ignored and the misconduct is either repeated or where the employee's performance has not improved as previously agreed. Or, where the offence is of a more serious nature and a written warning is more appropriate. Or, where there is a reoccurrence or accumulation of an offence/offences.

- **Stage 3 – final written warning is given**

A final written warning is appropriate where an employee's offence is of a serious nature but not as serious as one that would justify dismissal. Or where an employee persists in the misconduct or unacceptable performance that they have previously received a lesser warning for. This warning will confirm that failure to improve may lead to Stage 4.

- **Stage 4 – dismissal or other penalty is imposed**

Where an employees' conduct and/or performance still fails to improve, dismissal will normally result (with notice or pay in lieu of notice, unless the dismissal is for Gross Misconduct – see below).

Where appropriate, the Company reserves the right to impose other disciplinary penalties as an alternative to dismissal. Such penalties may include, for example: demotion, transfer, loss of seniority. This action is appropriate when previous attempts via the disciplinary procedure to rectify a problem have failed and this is a final attempt to solve the problem before dismissal; or when the employee is considered by the management of the Company to be incompetent and unfit to fulfil their duties, but where dismissal is not thought to be appropriate.

Dismissal is also appropriate when an employee's behaviour is considered to be Gross Misconduct – see below – where the employee will be dismissed without notice.

## **Gross Misconduct**

In the event that an employee commits an act of gross misconduct, the Company is entitled to:

- Issue a final warning,
- Demote or transfer the employee,
- Dismiss the employee, after following the disciplinary procedure.

**Dismissal for gross misconduct is summary**, therefore the Company is entitled to terminate the employee's contract of employment without notice or pay in lieu of notice. The following

non-exhaustive list gives examples of offences that the Company would normally regard as gross misconduct: -

- Theft, fraud, dishonesty or deliberate falsification of records/documents;
- Fighting, assault or other violent behaviour at work;
- Deliberate damage to, or misuse of, the Company's property;
- Deliberate use of the internet and/or e-mail to access and/or distribute material of a pornographic, offensive, obscene, illegal or inappropriate nature;
- Incapability at work, or while driving company vehicles, due to the effect of alcohol or drugs (whether legal or illegal);
- Possession, custody or control of illegal drugs on the Company's premises or at an associated or Client's premises;
- Serious breach of the Company's rules, policies and procedures including Confidentiality and Security;
- Serious negligence which causes loss, damage or injury;
- Conviction of a criminal offence that is relevant to the employee's employment with the Company and renders them unsuitable for their work (including Driving Offences);
- Conduct likely to bring the Company's name into disrepute;
- Bullying, harassment, victimisation or discrimination of another person, whether face-to-face, in any form of online communication or by any other means;
- Sexually Harassing a member of staff in the course of their work;
- Serious acts of insubordination;
- Bribing or attempting to bribe another individual or organisation;
- Incompetence or failure to apply sound professional judgement;
- Unsatisfactory and negligent work performance due to taking excessive and/or unauthorised breaks, or unwillingness or neglect in performing work duties for any reason.
- Breaches of the Company's Data Protection obligations and Policy, such as unauthorised removal, destruction, misuse or disclosure of personal data, unnecessary use of personal data, data breaches or failure to apply adequate security standards.

## **Confirming the outcome of the disciplinary hearing/ Letter of Warning**

The Company will write to the employee with the outcome of the disciplinary hearing. This letter will (as appropriate):

- Be issued within seven working days of the disciplinary hearing (if possible);
- Specify the nature of the offence (the reason for any disciplinary action), the standards of conduct or work performance expected in the future and details of any objectives and timescales required for improvement;
- Explain the period of time given to the employee for improvement;
- Explain the consequence of failing to achieve these improvements;

- Explain the period after which any warnings will be disregarded for disciplinary purposes;
- In the case of a final written warning, reference must also be made in the letter that any further misconduct will lead to dismissal.
- In the case of dismissal, the letter must also contain details of the reason for dismissal and any administration matters concerning the termination of their employment.
- Remind the employee of their right to appeal against any disciplinary action (at all stages).

This letter and any supporting documentation will also be attached to the employee's personnel file, which will be kept confidential and secure.

## **Timescale for the Expiry of Warning Letters**

When warnings are issued to an employee a copy will be placed on their personnel file. These warnings will normally expire after the following periods of time:

- Verbal Warnings: 6 months
- First Written Warnings: 12 months
- Final Written Warnings: 18 months (or as agreed and recorded at the hearing).

These timescales will stand, provided that during the period, no further warnings have been issued in respect of the employee's conduct and no further misconduct/unacceptable performance is noted.

There may be circumstances when the Company believes the period of the warnings should be longer, and there also may be limited circumstances when the Company will take into account any expired warnings in any future disciplinary proceedings. When warnings have expired they will remain on your personnel file during your employment and for the period after your employment when your data is kept on record.

## **Appeal**

Every employee has the right to appeal against the outcome of any formal disciplinary action. The basis of the appeal should normally be related to one of the following:

- That the Company's Procedure had not been followed correctly;
- That the need for disciplinary action was not warranted and/or was inappropriate;
- That new information relating to the disciplinary offence has come to light.

If you wish to appeal against a disciplinary decision, this appeal should be made in writing within 5 working days of receiving the warning/dismissal letter, stating the grounds for the appeal and it should be addressed to the most senior manager of the Company.

An appeal meeting will be arranged as soon as is practicable. Written statements by both sides should be submitted before the appeal date and witnesses can be called at the appeal meeting.

**Appeals against Verbal/First Written Warnings** – the appeal should be heard by the manager next in line to the one who issued the warning (if this is possible).

**Appeals against Demotion, Transfer, Final Warnings and Dismissal** – the appeal should be heard by the most senior manager of the Company (if this is possible).

The outcome will be confirmed to you in writing within seven working days of the appeal meeting, if possible. The outcome may be:

- Confirmation of the original disciplinary sanction;
- Imposition of a lesser, more appropriate disciplinary sanction;
- Removal of the original disciplinary sanction.

**Decisions made by the Company at this stage will be final.**