

This information is intended to be a brief introduction to the subject. Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law.

## Leaflet 7

February 2016

### Rules and procedures

Good company rules benefit employers and employees. They make clear what conduct the employer considers is acceptable and what is unacceptable. They also make sure that employees' conduct and job performance meet certain minimum standards. From the employee point of view they ensure consistency which benefits employer and employee. And they clearly indicate what action the company will take if company rules are broken.

The current law relating to dismissals enables eligible employees, who believe that they have been unfairly dismissed, to challenge both the reason for the dismissal and the manner in which the dismissal was handled, at an industrial tribunal. Many complaints to industrial tribunals involve employers who have no procedures in place to deal with disciplinary issues or workplace grievances.

Employers should follow the guidance set out in the LRA Code of Practice [Disciplinary and grievance procedures](#) when dealing with disputes. Industrial tribunals are legally required to take the LRA Code of Practice into account when considering relevant cases. Tribunals will also be able to adjust any compensatory awards made in these cases by between 10 and 50 per cent for unreasonable failure to comply with any provision of the Code.

The rules should particularly identify two types of unacceptable conduct:

- **misconduct** - conduct which initially requires disciplinary action other than dismissal (although if further misconduct takes place, it may lead to dismissal). This can include persistent lateness, unauthorised absence and failure to meet known work standards
- **gross misconduct** - conduct which may lead to dismissal without notice - summary dismissal. This can include working dangerously, stealing or fighting. But much will depend on the circumstances of each offence and whether summary dismissal would be reasonable in such circumstances.

It is difficult to list all instances of misconduct and gross misconduct. Companies should give their employees enough examples to make sure they understand what is meant by each of them.

### What should rules cover?

The following are examples of subjects on which companies may want rules and the sort of issues that rules should deal with:

- **Absence**
  - Whom should employees notify if they are absent from work?
  - When should notification take place?
  - When is a medical self certificate sufficient?
  - When will a doctor's Statement of fitness for work be necessary?
- **Health and safety**
  - Are employees aware of the importance of health and safety rules?
  - Is alcohol prohibited?
- **Standard of work performance**
  - Have agreed performance standards been established?
  - Are employees aware of required standards?
  - Does performance measure up to agreed standards?
  - Are standards reasonable?
  - Is adequate training provided?
  - Are exceptions made in special circumstances?
- **Use of company facilities**
  - Are private telephone calls or private use of company computer facilities (eg internet/email) permitted?
  - Are employees allowed to be on company premises outside work hours?
- **Timekeeping**
  - Are employees required to 'clock' in?

- **Holidays**

Do employees have to take holiday at specific times - eg summer shutdown?

## Breaking company rules

If after checking the facts thoroughly, employers genuinely believe that employees have broken the rules, they will usually need to take some form of disciplinary action. *The LRA Advisory Guide [Advice on handling Discipline and grievances at work](#)* follows the Code of Practice - [Disciplinary and grievance procedures](#) and gives valuable advice on how to deal with disciplinary matters.

The aim of disciplinary action should be to improve future conduct. No company should take such action lightly, however, since it can have serious results for both employer and employee. It is essential that the employer's approach should always be the same in similar cases. If not, employees may feel unfairly treated.

Initially it is often better to try to solve the problem informally. Small firms are generally well-placed to do this. Can the problem be dealt with by the employee's immediate boss or by the employer talking to the employee about it? But it should not simply be a 'friendly warning' - the discussion should be two-way.

Try to find out if the problem (for example, persistent absence or lateness or unsatisfactory performance) really is a disciplinary matter. If the underlying problem is a financial, domestic or health one, the firm may be able to help the employee overcome it and achieve the required change. However, if these problems do not explain the employee's poor performance, it will be necessary to make clear the likely consequences of failure to improve or change.

If a discussion does not solve the problem, the more formal approach of a disciplinary procedure may be called for. Details of the procedure should be in writing, readily accessible, known and understood by all employees. The procedure should be:

- Fair
- stress the need to improve and not overstate the punishment

- provide for employees to be notified and allow them to put their case before decisions are reached
- set out clearly so that employees understand the penalties which can result from unacceptable conduct and failure to change it?

A procedure should also:

- ensure that disciplinary action is not taken until the case has been fully investigated. If it is thought necessary to suspend an employee during the investigating period, it should be with pay and for as short a period as possible
- give employees the right to be accompanied by a colleague or trade union official of their choice
- make sure employees are aware that the employer is dissatisfied with their conduct before disciplinary action is taken and that no employee is dismissed for a first breach of discipline except for gross misconduct
- require that disciplinary action be implemented as soon as reasonably possible
- provide the employee with a right of appeal and the right to be accompanied at the appeal meeting

A disciplinary procedure will normally operate as follows:

- **first formal warning: unsatisfactory performance**  
An employer should issue an 'improvement plan' setting out the nature of the problem; the improvement required; and the timescale for improvement
- **first formal warning: misconduct**  
A first written warning
- **final written warning** - for further poor performance or misconduct as relevant. The warning should make clear that dismissal may follow failure to improve
- **dismissal** - with appropriate notice will follow if there is insufficient improvement.

Employees should be made aware that the employer will record all written warnings. Employee conduct or performance should then be reviewed at a specified later stage with a view to 'wiping the slate clean' if employees' behaviour is satisfactory.

Employers should follow the guidance set out in the LRA Code of Practice [Disciplinary and grievance procedures](#). Industrial tribunals are legally required to take the LRA Code of Practice into account when considering relevant cases. Tribunals will also be able to adjust any compensatory awards made in these cases by between 10 and 50 per cent for unreasonable failure to comply with any provision of the Code.

## Employee grievances

Just as employers sometimes feel they must take action against an employee, individual employees may sometimes feel that there is a need to complain about employer's actions as they affect them.

A grievance procedure should provide an open and fair way for employees to make known their complaints, to have these complaints considered by the company and for the company to decide whether to accept or reject the complaint.

A grievance procedure in a small firm should:

- be in writing
- be known and understood by all employees
- allow the employee to be accompanied by a work colleague or trade union official in the procedure if he or she wishes.
- ensure a speedy resolution to the problem - the circumstances of each organisation will affect the length of time taken. But first most firms ought to be able to complete both stages within seven to ten working days.

Employers should follow the guidance set out in the LRA Code of Practice [Disciplinary and grievance procedures](#). Industrial tribunals are legally required to take the LRA Code of Practice into account when considering relevant cases. Tribunals will also be able to adjust any compensatory awards made in these cases by up to 50 per cent for unreasonable failure to comply with any provision of the Code.

The type of issues that may be raised as grievances include:

- Pay issues - such as bonus calculations or overtime entitlement
- Holidays - complaints concerning allocation of holiday period

- Discretionary benefits - such as paid time-off for medical visits and unpaid leave-of-absence.

## **Mediation**

An independent third party or mediator can sometimes help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator.

The Labour Relations Agency provides a mediation service to assist parties resolve disputes. For more information about mediation see the LRA website at [Mediation Explained](#)

## **Where can I get more information?**

The Agency Helpline 028 9032 1442 gives free advice on employment matters.

For practical help and guidance in drawing up disciplinary and grievance procedures you can sign up for one of our [Workshops](#).

A self help guide to preparing disciplinary and grievance procedures is also available at [Self-help Guides](#).