

Labour Relations AGENCY

Improving Employment Relations in Northern Ireland

Self help guide

**Preparing a disciplinary procedure
(to address issues of misconduct)
and a general dismissal procedure.**

The sample wording in this document is for guidance only. The wording must reflect your current contractual arrangements. Any errors or omissions cannot be held to be the responsibility of the Labour Relations Agency. It is also important to review and maintain your document to ensure compliance with changes in statutory obligations.

1 April 2016

Self help guide - Preparing a disciplinary procedure

This guide gives practical advice on how to prepare a disciplinary procedure and how to operate it effectively.

The information given in this guide is not an authoritative interpretation of the law. Such an interpretation can be given only by industrial tribunals and by the courts.

The Agency offers assistance in producing and reviewing employment documents and you are strongly advised to forward your draft disciplinary procedure for review.

Before implementing your finalised disciplinary procedure you should inform and consult with your employees and their representatives.

If you would like to have your document reviewed you can email, fax, or post your documents to the Agency.

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☎ For the attention of Advisory Services 028 90 330 827

📄 Labour Relations Agency, 2-16 Gordon Street, Belfast, BT1 2LG.

The Agency also holds Advisory Workshops to assist employers in drawing up the written statement of the main terms and conditions of employment and disciplinary and grievance procedures.

Workshops are held on the Agency premises in either Belfast or Derry/Londonderry on specified dates. There is no charge for attendance at these workshops. For more details on workshops and to book online visit Workshops on the LRA website or contact us at the telephone number above.

Once you have set up a procedure, you will need to know how to operate it and deal with any problems that might arise. The Labour Relations Agency's Advisory guide [Advice on handling discipline and grievances at work](#) and the [Labour Relations Agency's Code of Practice - Disciplinary and grievance procedures](#) give advice about dealing with disciplinary issues.

What is the legal position?

The three-step discipline and dismissal procedure

The statutory discipline and dismissal procedures were introduced on 3 April 2005 and still apply.

How does the three-step discipline and dismissal procedure operate?

Step one - You must give a written explanation to the employee setting out why you have decided to take disciplinary action.

Step two - You must meet the employee, who has the right to be accompanied by his or her colleague or union representative of his or her choice. You should state your case, let the employee respond and then, after the meeting, give the employee your decision. You should explain that the employee may appeal against your decision if they are unhappy about the decision or outcome.

Step three - The employee may appeal against your decision and again choose to be accompanied at the appeal meeting, which should ideally be heard by a different or more senior manager. You should inform the employee of the decision of the appeal. The employee must appeal to complete the statutory procedure given that there may be legal ramifications, resulting in a financial penalty, if an appeal is not exercised.

Has an employee the right to be accompanied at a disciplinary hearing?

If you ask your employees to attend any disciplinary hearing they have a statutory right to be accompanied (if they request it) by a fellow worker or trade union official. This right applies irrespective of how many employees

you employ. If you refuse a request from an employee to be represented at a disciplinary hearing the employee may make a complaint to an industrial tribunal.

For further information on the right to be accompanied see Section 3 of the **Labour Relations Agency's Code of Practice - Disciplinary and grievance procedures**

When should I follow the three-step discipline and dismissal procedure?

You should use the three-step procedure **only** when you are considering taking serious disciplinary action, such as dismissal, suspension without full pay or demotion, if permitted by the contract.

However informal processes such as having a "quiet word" to improve behaviour, conduct or performance may be preferred.

You should use the three-step procedure if an employee's conduct or performance has failed to improve following a series of warnings, or if the employee has allegedly committed an act of gross misconduct.

What is the modified statutory discipline and dismissal procedure?

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where the following **modified procedure** will apply.

The modified statutory discipline and dismissal procedure is a two-step procedure.

Step one - You write to the employee setting out the reasons for dismissal and give the employee the right of appeal.

Step two - This will be set in motion if the employee wishes to meet you to appeal against the dismissal.

An example of a Statutory modified dismissal and disciplinary procedure is set out on page **20**.

Would a dismissal be fair if I used the statutory three-step discipline and dismissal procedure?

Not necessarily. You should take disciplinary action which is appropriate and proportionate for the alleged offence. For example, if the offence required a final written warning and you used the three-step procedure to dismiss the employee, then the dismissal could be judged by an industrial tribunal to be unfair.

The three-step discipline and dismissal procedure is the statutory minimum and as such it is not intended to replace established disciplinary procedures. You should set up your own procedures by following the guidelines for procedural and substantive fairness set out in this guide and in the **Labour Relations Agency's Code of Practice - Disciplinary and grievance procedures**

Would I have to change my existing disciplinary procedures to bring them in line with the statutory discipline and dismissal procedures?

Dismissals will probably be unfair if you do not at least go through the three steps outlined in the statutory procedure before you dismiss an employee. This guide shows you how you can set up a disciplinary procedure which satisfies the three-step discipline procedure.

What happens if I don't complete the statutory dismissal or disciplinary procedure?

The employee may be able to claim automatic unfair dismissal on the basis that the minimum procedure was not followed. However, if the failure to complete the procedure is the employee's fault his or her compensation may be reduced.

Are there any exemptions from the statutory dismissal or disciplinary procedures?

The Regulations do not apply where:

- in the case of collective redundancies (20 or more employees being made redundant), there is a duty to consult representatives
- strike action is taking place

- the business suddenly ceases to function
- factors beyond the control of either party make it impossible to go through the procedure in the foreseeable future, such as long-term illness
- the employee cannot legally continue working, such as where a driver has lost his or her licence
- a designated dismissal procedures agreement applies (such as between TU and an employers' association)
- the employee claims interim relief before the procedure is completed
- either party adopts violent or abusive behaviour
- one party has been subject to harassment (defined as violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment) and has reasonable grounds to believe that using the procedure would result in further harassment
- either party fails to attend the meeting. Where the meeting fails to take place due to either party being unable to attend, the employer, taking account of employee's right to be accompanied and any suggested dates, is required to rearrange the meeting, but only once. If the second meeting falls through neither party is under any further obligation to complete procedures. This is likely to cause problems and hence enquiries and claims
- national security is an issue.

What happens if I get it wrong?

The lack of procedures can be expensive, leading to:

- low morale and resistance to change
- lowered efficiency
- successful claims for unfair dismissal and possible increased compensation.

You can help avoid these problems by writing down company rules and drawing up fair, transparent and workable procedures.

Rules

Before drawing up a disciplinary procedure, you will need to consider what standards the procedure will be used to maintain. Rules set standards of conduct at work. **They should be fair, reflect the needs of the organisation and written in a way that everyone understands.**

Why have them?

If people know and accept the rules, they will be less likely to break them. Rules help ensure a consistency of management action and can improve efficiency.

What should rules cover?

It depends upon the nature of your organisation but rules can cover:

- gross misconduct
- timekeeping
- absence
- holidays
- health and safety
- standards of work
- personal appearance
- use of organisation facilities
- smoking

Don't have too many written rules. Be realistic. Consult with employees and their representatives, and be careful to avoid rules that are unjustifiable and unlawful.

What is a disciplinary procedure?

Rules set out standards and the disciplinary procedure helps employers deal fairly and consistently with employees who fail to maintain those standards.

Why have one?

Some disciplinary problems can be solved by informal discussions or

counselling. However, if this fails to resolve the problem you will need a more formal approach.

A disciplinary procedure will:

- encourage employees to achieve and maintain standards of behaviour
- provide a fair and consistent method of dealing with alleged failures
- remind managers and supervisors how disciplinary matters should be handled
- minimise disagreements about disciplinary matters
- reduce the need for dismissals.

What form should it take?

The procedure should be tailored to your own needs, but it should:

- be put in writing;
- say to whom they apply;
- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- allow for information to be kept confidential;
- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take various forms of disciplinary action;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- give employees a chance to have their say before management reaches a decision;
- provide employees with the right to be accompanied;
- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
- require management to investigate fully before any disciplinary action is taken;
- ensure that employees are given an explanation for any sanction; and
- allow employees to appeal against a decision.

A sample for disciplinary rules and procedure for misconduct is set out on page 10.

Operating the disciplinary procedure

Once the procedure has been written, you need to be sure that all employees are familiar with it and have access to a copy. You also need to be certain that all managers and supervisors are fully trained in its operation.

In brief, before taking disciplinary action using the procedure, you should try to ensure that:

- the matter cannot be resolved through informal conversations
- informal resolution processes such as mediation or counselling have been considered if appropriate
- you have investigated the matter fully and the employee knows the case against them in advance of a formal interview/ meeting/ hearing
- the individual is told that he or she will have a meeting with the appropriate manager/supervisor and has the right to be accompanied by a fellow worker or a trade union official of their choice.

At the **disciplinary meeting** make sure that:

- the employee concerned knows the details of the allegation
- he or she has the opportunity to put his or her side of the matter
- any disciplinary measure is appropriate and proportionate to the circumstances.

If a **warning** is given, it should tell the employee:

- the level of improvement/ change in behaviour required
- the date by which it is to be achieved
- what will happen if it is not
- how to appeal.

- that in the event of a final warning any further acts of misconduct (of whatever nature) may result in dismissal.

SAMPLE DISCIPLINARY RULES AND PROCEDURES FOR MISCONDUCT

Objective

The objective of this procedure is to give employees the opportunity to improve their conduct or performance. It identifies who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or if the conduct recurs.

Informal Action

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

General Principles for Formal Disciplinary Procedures

1. When a potential disciplinary matter arises, the employer will make necessary investigations to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Where an investigatory meeting is held solely to establish the facts of a case, it will be made clear to the employee involved that it is not a disciplinary meeting.

Having established the facts, the employer will decide whether to drop the matter, deal with it informally or arrange for it to be handled formally.

No disciplinary action will be taken until there has been a full investigation into any alleged incident.

2. Prior to any disciplinary hearing an employee has the right to receive:
 - a written statement of the alleged misconduct; and
 - particulars on the basis for the allegation

3. Prior to disciplinary hearing an employee has the right to a reasonable opportunity to consider their responses to the information provided on the allegation.

4. The employee is entitled to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion). The employee should let the employer know who the chosen companion is in advance of the hearing.

5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.

6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.

7. The employer will endeavour to ensure that:
 - all steps under the procedure are taken without unreasonable delay
 - the timing and location of all hearings are reasonable
 - hearings are conducted in a manner which enables employees to explain their cases
 - where possible, a more senior manager not previously involved with the case should hear the appeal. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal will be heard by the latter. In the event that neither of these is possible and the same manager who took the disciplinary action, unavoidably, has to hear the appeal, that manager will act as impartially as possible

8. Once warnings have expired they will be erased from the employee's personal record.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or if the conduct recurs.
12. If a final disciplinary warning has been validly issued and is still current then the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. However, the employer will have regard to the degree of difference or similarity between the different matters when deciding what sanction to impose.
13. If an employee is in receipt of warnings for different types of misconduct, then the employer is entitled to have regard to the overall situation, and issue a final general warning if the employee is found to have committed any further misconduct, even where that offence would be considered minor misconduct. If the employee already has a final warning of a separate nature to their other warnings on record, the Employer is usually entitled to dismiss for any further type of misconduct.

14. The employer, when dismissing for gross misconduct, must have a reasonable—belief that the conduct of the employee was willful or deliberate, resulting in a breach of an essential term of the contract or conduct amounting to gross negligence.

15. **Precautionary Suspension:** In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension with **full** pay whilst unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to a temporary transfer to other duties or another work station without loss of pay or the agreed taking of annual holidays to which the employee is entitled. Any action taken will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.

Types of misconduct

The following list shows examples of the type of rules/offences which the employer has categorised for each level of misconduct. This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised:

These examples are provided for guidance purposes only and should be amended to suit your organisation. You should therefore delete any which are not applicable to your organisation.

A MINOR MISCONDUCT

- Regular incidents of absence
- Poor timekeeping
- Failure to comply with the Absence Notification and Certification Procedure
- Careless work or poor effort at work
- Minor breach of safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Abuse of personal phone use/internet/email during working hours
- Excessive time away from the job
- Failure to wear any protective clothing/equipment provided
- Failure to complete time/stock or work sheets as instructed

B MAJOR MISCONDUCT

- Dangerous physical horseplay
- Neglect causing damage to or loss of employer's, customer's or other employee's property/equipment/tools
- Serious neglect of safety/hygiene/security rules
- Smoking in the workplace
- Consuming intoxicants/non prescribed drugs, during working hours or bringing these into the premises without permission
- Wilful or excessive wastage of material
- Unsatisfactory attitude to customers or colleagues
- Use of foul offensive language

- Gambling on the premises
- Insubordination

C GROSS MISCONDUCT

- Theft or fraud
- Physical violence or serious incidents of bullying
- Leaving the premises or site without permission
- Refusal to carry out a reasonable work instruction
- Serious insubordination
- Deliberately ignoring health/safety/hygiene/security rules thereby endangering one's own or another's physical well-being or safety
- Obscene behaviour
- Intoxication induced by alcohol or drugs
- Disclosing confidential business information to a third party
- Deliberate and serious damage to property
- Undertaking work in competition with employer
- Unauthorised use of employer vehicle
- Gross misuse of organisation's internet/e mail system
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Bringing the organisation into serious disrepute
- Serious breach of confidence

NOTE:

Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure. The disciplinary response will depend upon the nature and seriousness of the incident; and in extreme cases may result in summary dismissal.

Inappropriate use of social media, during working hours or outside of working hours could result in disciplinary action. The severity of the

penalty imposed could range from a verbal warning for minor breaches to dismissal where the breach amounts to gross misconduct.

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms. Such acts, whilst they occur only once, strike, at the very root or heart of the contract of employment such as to destroy the essential bond of trust and confidence between the parties to the contract.

Formal Procedure

When taking formal disciplinary action, the employer will comply with the Statutory Procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

Step 1 Statement of grounds for action and invitation to meeting

The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will invite the employee to a hearing to discuss the issue.

Step 2 Meeting

Prior to the hearing the employer will supply the basis of the allegation. After the meeting the employer will inform the employee of the decision and offer the right to appeal.

Step 3 Appeal

If the employee wishes to appeal he or she will inform the employer within 5 working days. The employer will invite the employee to a further hearing to discuss the appeal. The final decision will be communicated to the employee.

Minor Misconduct

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

- Stage 1** You will be given a **verbal warning**. It will be recorded and retained on file for a period of 6 months.
- Stage 2** If the same or similar offence is repeated within 6 months you will be given a **first written warning**. It will be recorded and retained on file for a period of 12 months.
- Stage 3** If the same or similar offence is repeated within 12 months you will be given a **final written warning**. This will contain a clear notice that any other offence committed within 12 months may result in dismissal.
- Stage 4** If any other offence is committed within 12 months you may be **dismissed**.

Major Misconduct

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred you will receive a **final written warning** which will contain clear notice that any other offence within 12 months may result in dismissal.

Gross Misconduct

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred the employee will be **dismissed** summarily: i.e. without notice and without wages in lieu of notice.

Appeals

Where an employee feels that action taken **at any stage** under this procedure is unjustified or unfair, there shall be the right of appeal. All appeals should be made in writing to **(Insert job title)** within 5 working days of being informed of the disciplinary sanction. Appeal hearings will be held within 5 working days of receiving the notification of appeal. The employee has the right to be accompanied at the appeal hearing.

The result of the appeal hearing will be notified to the employee within 5 working days in writing.

Disciplinary Authority

In the event of a breach of employer rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows:

Stage	Disciplinary Hearing	Appeal
Stage 1 (Recorded verbal)	(Insert job title)	(Insert job title)
Stage 2 (First written)	(Insert job title)	(Insert job title)
Stage 3 (Final written)	(Insert job title)	(Insert job title)
Stage 4 (Dismissal)	(Insert job title)	(Insert job title)

Statutory Modified Dismissal and Disciplinary Procedure

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice, and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:

Step 1 Statement of grounds for action

The employer will provide the dismissed employee with:

- a written statement of the alleged misconduct which led to the dismissal
- written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
- a written confirmation of his/her right of appeal against the dismissal.

Step 2 Appeal

- If the employee wishes to appeal he/she must inform the employer within 5 working days
- All appeal requests must be made to (Insert job title).
- Appeal hearing shall be heard within 5 working days of receipt of the request.

- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.
- The result of the appeal hearing shall be notified to the employee within 5 working days of the appeal hearing.