

This model policy is intended to provide an example of good practice to employers and employees. It is not intended to represent a statement of the law. Any reference to male persons in the policy should be read as including, or being female persons where this is appropriate.

JACS recognises that it is often difficult for small employers (i.e. those with a single manager/owner and a very small number of employees) to conform to all the recommendations below. In particular, such employers may find it impossible to hold a disciplinary appeal using a different person to chair the appeal than the person who took the disciplinary decision in the first place. Similarly, the size of an organisation may make it inevitable that the same person chairs a disciplinary hearing having previously acted as the investigator of the alleged misconduct. In the Employment Law the Tribunal is able to consider the size and administration resources of the organisation in determining whether the employer acted reasonably. Providing employers in small organisations make every effort to ensure fairness, despite the limitations of their resources, the Tribunal should take that into account.

A MODEL DISCIPLINARY POLICY (Although this policy forms part of the terms of employment it is not contractually binding).

1. Purpose of the Procedure - The aim of the organisation is to encourage improvement in individual conduct or performance. This procedure sets out the action which will be taken when disciplinary rules are breached.

2. Statutory Entitlement - Right to representation - Employees have the statutory right to be represented at any formal part of a disciplinary process. This representative can be either a work colleague, union shop steward from within the organisation (if applicable) or a full-time union officer even if the company does not recognise that Union. The representative has the right to speak on behalf of the employee, state their case, and summarise the points made. However, the representative cannot answer questions on behalf of the employee.

3. Principles

- a) The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues;
- b) No disciplinary action will be taken until the matter has been fully investigated;
- c) A recent judgment from the Tribunal sets down that 48 hours notice of a disciplinary hearing 'was an unreasonably short time' for the claimant to prepare before attending a disciplinary hearing.
- d) At every stage employees will have the opportunity to state their case and be represented in accordance with their statutory right (see 2 above) if they wish;
- e) Unless the matter is deemed to be an act of gross misconduct (in such a case an employee is normally dismissed without notice or pay in lieu of notice), it is unlikely that an employee will be dismissed for a first breach of discipline;
- f) Employees have the right to appeal against any disciplinary action.

This procedure may be implemented at any stage as appropriate for the alleged misconduct.

4. The Procedure

Stage 1 – first warning

If conduct or performance falls short of the expected standards and informal discussions have not resolved the matter, then an employee will be asked to attend a meeting and advised that it may result in a formal verbal warning. If it is determined that the employee is at fault he will be:

- Told the reason for the warning;
- Advised that this is first stage of the disciplinary procedure
- Told how long the warning will remain on file (usually 6 months)
- Told the consequences of further lapses of conduct or performance
- Given the right of appeal

The employer will make a brief note of the meeting and place it on file. It will be destroyed – subject to satisfactory conduct/performance – once it has expired.

Stage 2 – written warning or final warning

If the alleged offence is serious or there has been inadequate improvement in expected standards, it may be necessary to move to the next stage of the procedure. Again the employee will be asked to attend a meeting and advised that it may result in a written warning or final written warning. If it is found the employee is at fault he will be:

- Told the reason for the warning, which will be sent to him in writing;
- Advised that this is second stage of the disciplinary procedure;
- Told how long the written warning will remain on file (usually 12 months);
- Told the consequences of further lapses of conduct of performance (possible dismissal);
- Given the right of appeal.

The employer will make a brief note of the meeting and the warning and place it on file. It will be destroyed – subject to satisfactory conduct/performance – once it has expired.

Stage 3 – Dismissal or Action Short of Dismissal.

If there is no satisfactory improvement in an employee's conduct/performance (and if previous warnings have not expired) or a further serious misconduct occurs, an employee may be dismissed with notice or other appropriate disciplinary action may be taken.

The employee will be asked to attend a meeting and advised they may be dismissed. If it is determined that the employee is at fault he will be:

- Told the reason for the dismissal (or other disciplinary action such as a period of unpaid suspension or demotion) which will be sent to him in writing;
- Advised that this is the final stage of the disciplinary procedure
- Told, if dismissed, the amount of notice to be given and the last date of employment;
- Told whether notice is to be worked or paid in lieu;
- Given the right of appeal

The employer will make notes of the meeting, the outcome and the reasons for the decision and place it on file.

5. Gross Misconduct

If, following an investigation, it is decided that the employee has committed an offence similar in nature to the following **non exhaustive** list then the normal consequence will be summary dismissal without notice or payment in lieu of notice. While the alleged gross misconduct is being investigated, the employee may be suspended, during which time normal rates of pay will be applied, and such suspension will be for as short a period as possible. Paid suspension is not regarded as a form of disciplinary action. Examples of acts of gross misconduct are:

- Theft
- Fraud
- Being under the influence of alcohol or illegal drugs at work
- Violence, abuse or threatening behaviour
- Bullying
- Sexual or Racial harassment
- Gross negligence
- Gross insubordination
- Falsification of documents/records
- Damage to property (employer's or client's)

When the investigation is complete the employee will be asked to attend a meeting and advised they may be summarily dismissed. If it is determined that the employee is at fault he will be told:

- The reason for such a dismissal which should be sent to him in writing;
- Advised that no notice will be given and that they are no longer required to work;
- Advised of any outstanding holiday entitlement for which they will be paid;
- The right of appeal

The employer will make notes of the meeting, the outcome and reasons for the decision.

6. Appeals

An employee who wishes to appeal against any disciplinary decision must do so to a named person – to someone who has not previously been involved in the matter - within 5 working days. The employee must clearly state the reasons for their appeal. The employer will then hear the appeal at the earliest opportunity and decide the case as impartially as possible, confirming the outcome in writing. Where possible, the appeal will be heard by a person other than the person who made the initial disciplinary decision.