

Employer Guide

DISCIPLINARY & DISMISSAL

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**Getting advice: Contact the IR department
at the SNIPEF offices at info@snipef.org**

DISCIPLINARY AND DISMISSAL

Minimising the need for disciplinary action and dismissal

An employee must be made aware of the standards and expectations required of them to successfully carry out their job. As a good employer you will provide and explain both the SNIJIB National Working Rules and the company rules and procedures to the employee when you provide him with a contract within the first two months of employment. An explanation of the standards and expectations can be provided during the employee's induction.

Where there are concerns regarding misconduct, the employee should be informed of what constitutes acceptable behaviour. Where performance is unsatisfactory, explain to the employee the improvement required, the support which will be given (where appropriate) and when and how performance will be reviewed and monitored. It is only right and fair that the employee knows they need to improve as he may not be aware he is below standard or acting inappropriately.

Procedures should be used to primarily help and encourage the employee to improve and become effective again, rather than just a way of imposing a punishment. However, if the employee conduct or performance has failed to improve following a series of interventions you should consider applying the statutory disciplinary procedure.

Statutory disciplinary procedure

You should remember that before any action or decisions are taken against the employee, you must first **investigate** the allegation of misconduct or unsatisfactory performance that has been brought to your attention. Only after having carried out an investigation by collecting evidence and witness statements should you consider proceeding to arrange a meeting. The standard dismissal procedure consists of three steps which you must follow:

- **Step 1:** Write and invite the employee to attend a meeting to discuss the alleged misconduct or unsatisfactory performance. The employee should be given copies of any documents that will be produced at the meeting and also informed of any witnesses who will be attending the meeting. Inform him that he has a right to be accompanied to the meeting by either a union representative or a work colleague.
- **Step 2:** Hold a meeting with the employee regarding the allegation in the presence of an independent minute taker. You need to state the purpose of the meeting; provide an account of the allegation and go through the evidence that has been gathered asking questions from that evidence. The employee should be allowed to set out a case in defence of the allegation(s). The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by the witnesses (if applicable). If the employee chooses to call witnesses and provide documentation he must inform you, as soon as possible before the date of the meeting. When both parties have completed their account and questions, you will then adjourn to make a decision. You must notify the employee of the decision made, both at the meeting and in writing within fourteen days and that he has the right to appeal against the decision in writing within five working days of receipt of the written outcome.
- **Step3:** Where requested, you will hold the appeal meeting (with a more senior manager not involved in the previous decision where possible). Inform him that he has a right to be accompanied to the meeting by either a union representative or a work colleague. Notify the employee of the decision made and follow this information up in writing.

Failure to carry out these procedures may result in a tribunal judging the case to be 'automatically unfair'.

Where an allegation of serious gross misconduct has been reported the employee will be suspended on full pay until the investigation and meeting have been carried out and a decision has been reached. In cases of alleged gross misconduct, you must remember to tell the employee (Step 2) that the allegation

is gross misconduct and if substantiated may lead to dismissal.

Decisions following the meeting

You need to take disciplinary action which is appropriate for the alleged offence. After discussions have taken place at the meeting, the following decisions can be made:

- *no action to be taken* (an employee must be notified of this in writing as per the step procedure)
- *verbal warning* (an employee must be notified of this in writing as per the step procedure)
- *written warning*
- *final written warning*
- *dismissal*

Record-keeping

The purpose of writing these decisions is to ensure a record is kept for monitoring and reviewing the employee's performance over a specified period. In situations where there is no evidence of improvement, keeping a running record of the case will show that you have provided the employee with support or training opportunities to improve his performance or change his behaviour. On occasions where there is a record of continued poor performance this may lead to disciplinary proceedings which could result in dismissal. As a good employer you will keep a record of any disciplinary actions in the employee's personnel file.

All records should be kept meticulously, as this will be vital should a case be pursued at an employment tribunal. Since the burden of proof is on you to show that the dismissal is not unfair or unreasonable, keeping records is vital. The type of records that should be kept include minutes of investigatory and disciplinary meetings, who attended, notes of telephone calls and copies of all correspondence. The length of time that this information should be kept in the employees file is as follows:

- *A verbal warning* - remains on an employee's personnel file for 6 months and should be disregarded for disciplinary purposes after 6 months.
- *A written warning* - remains on an employee's personnel file for 6 months and should be disregarded for disciplinary purposes after 6 months.
- *A Final Written Warning* - remains on an employee's personnel file for 12 months and should be disregarded for disciplinary purposes after 12 months.

Notice of termination

Employers and employees are entitled to a minimum period of notice of termination of employment. This should be given in writing.

	Notice by Employer to Operative	Notice by Operative to Employer
During 1 st week of employment	2 hours' notice to expire at the end of normal working hours on any day	2 hours' notice to expire at the end of normal working hours on any day.
After the 1 st week of employment	1 clear day's notice to expire at the end of normal working hours on a Friday.	1 clear day's notice to expire at the end of normal working hours on a Friday.
After 4 week's continuous employment	1 week's notice to expire at the end of normal working hours on a Friday	1 week's notice to expire at the end of normal working hours on a Friday.
After 2 years' and up to 12 years' continuous employment	1 week's notice for each full year of employment.	1 week's notice to expire at the end of normal working hours on a Friday.
After 12 years' or more continuous employment	12 weeks' notice (capped)	1 week's notice to expire at the end of normal working hours on a Friday.

Dismissal & notice periods

An employee who has completed one year's continuous service when dismissed is entitled to receive when requested, a written statement of reasons for dismissal within 14 days. However, should the employee be on maternity, adoption leave or during her pregnancy, the employee is entitled to a written statement regardless of length of service and regardless of whether it has been requested.

Employer's duties

- An employee has the right not to be unfairly dismissed. He requires one year's continuous service before he has this right.
- There is no length of service requirement in relation to a number of 'automatically unfair grounds'. For example, Discrimination.
- This requirement is reduced to one month (length of service) for an employee claiming to have been dismissed on medical grounds or as a consequence of certain health and safety requirements.
- You must ensure that you have acted reasonably in the situation leading up to the decision to dismiss the employee, as well as, the way in which the dismissal was carried out. This means correct disciplinary procedures should be followed.

Fair dismissal

Dismissal is normally fair only if you can show that it is for one of the following reasons:

- A reason related to the employee's conduct.
- A reason related to the employee's capability or qualification for the job.
- Because the employee was redundant.
- Because a statutory duty or restriction prohibited the employment being continued.
- Some other substantial reason of a kind which justifies the dismissal.

For further assistance on this issue contact Stephanie Lowe at the SNIPEF offices on 0131 556 0600.

Or email stephanie.lowe@snipef.org

Important- the information in this document is for guidance only. It is not an authoritative statement of the law. Any information is subject to change without notice. SNIPEF cannot accept responsibility for use of the information. You should always take professional advice on any specific legal matter.