



Code of Practice

Disciplinary Practice and Procedures in Employment

Important Notice

Following the implementation of The Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005 on 1st March 2006, the 'Adjudicator' referred to within this Code of Practice has now been replaced in law by 'The Employment and Discrimination Tribunal' (The Tribunal).

This notice is intended to provide clarification following legislative changes since the Code of Practice came into force. This notice does not form part of the Code which is reproduced below.

Code of Practice

Disciplinary Practice and Procedures in Employment

This Code of Practice is issued under Section 3 of the Employment Protection (Guernsey) Law, 1998.

Effect of Failure to Comply with the Code

A failure on the part of any person to observe any provision of the Code of Practice does not of itself render that person liable to any proceedings; but in any proceedings under this Law before an Adjudicator any Code of Practice issued under the Law shall be admissible in evidence, and if any provision of the Code appears to the Adjudicator to be relevant to any question arising in the proceedings, that provision shall be taken into account in determining that question.

Introduction

This document gives practical guidance on how to draw up disciplinary rules and procedures and how to operate them effectively. Its aim is to help employers and trade unions as well as individual employees - both men and women - wherever they are employed regardless of the size of the organisation in which they work. In the smaller establishments it may not be practicable to adopt all the detailed provisions, but most of the features listed in the Section entitled 'Essential Features of Disciplinary Procedures' could be adopted and incorporated into a simple procedure.

Why have Disciplinary Rules and Procedures?

Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations. They also assist an organisation to operate effectively. Rules set standards of conduct at work; procedure helps to ensure that the standards are adhered to and also provides a fair method of dealing with alleged failures to observe them. Failure by an employee to reach and maintain standards of work may not, in the first instance, be a disciplinary matter.

It is important that employees are aware of their terms and conditions of employment and the standards of conduct that are expected of them.

The importance of disciplinary rules and procedures has been recognised in the Employment Protection (Guernsey) Law, 1998, and an Adjudicator, hearing a complaint of unfair dismissal, will take into account any provision of the Code, and its relevance, before deciding whether an employer has acted reasonably or unreasonably prior to the dismissal.

Formulating Policy

Management is responsible for maintaining discipline within the organisation and for ensuring that there are adequate disciplinary rules and procedures. The initiative for establishing these will normally lie with management. However, if they are to be fully effective, the rules and procedures need to be accepted as reasonable both by those who are to be covered by them and by those who operate them. Management should therefore aim to secure the involvement of employees and all levels of management when formulating new, or revising existing rules and procedures, and staff responsible for applying disciplinary procedures should be trained for the task. In the light of particular circumstances in different companies and industries, trade union officials may or may not wish to participate in the formulation of the rules but they should participate fully with management in agreeing the procedural arrangements which will apply to their members and in seeing that these arrangements are used consistently and fairly.

Rules

It is unlikely that any set of disciplinary rules can cover all circumstances that may arise: moreover, the rules required will vary according to particular circumstances, such as the

type of work, working conditions and size of establishment. When drawing up rules, the aim should be to specify clearly and concisely those necessary for the efficient and safe performance of work and for the maintenance of satisfactory relations within the workforce and between employees and management. Rules should not be so general as to be meaningless.

Rules should be readily available and management should make every effort to ensure that employees know and understand them. This may be best achieved by giving every employee a copy of the rules and by explaining them orally. In the case of new employees this should form part of an induction programme.

Employees should be made aware of the likely consequences of breaking rules and, in particular, they should be given a clear indication of the type of conduct which may warrant summary (instant) dismissal.

Essential features of disciplinary procedures

Disciplinary procedures should not be viewed primarily as a means of imposing sanctions. They should also be designed to emphasise and encourage improvements in an individual's conduct.

Disciplinary procedures should:

- (a) Be in writing.
- (b) Be applied equally and consistently to all staff.
- (c) Provide for matters to be dealt with quickly.
- (d) Indicate the disciplinary actions which may be taken.
- (e) Specify the levels of management which have the authority to take the various forms of disciplinary action, ensuring that immediate superiors do not normally have the power to dismiss without reference to senior management.
- (f) Provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached.
- (g) Give individuals the right to be accompanied by a trade union representative or by a fellow employee of their choice.
- (h) Ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline.
- (i) Ensure that disciplinary action is not taken until the case has been carefully investigated. Wherever possible, the person conducting the disciplinary hearing should not also conduct the investigation.
- (j) Ensure that individuals are given an explanation for any penalty imposed.

- (k) Provide a right of appeal and specify the procedure to be followed. Preferably, the appeal should be conducted by someone not involved in the original hearing.

The Procedure in Operation

When a disciplinary matter arises, the supervisor or manager should first establish the facts promptly before recollections fade, taking into account the statements of any available witnesses. In serious cases, consideration may be given to a brief period of suspension while the case is investigated and this suspension should be with pay. Under these circumstances, suspension should not be seen as a penalty but as a means of removing an individual from a potentially difficult situation while an investigation is being carried out. Before a decision is made or penalty imposed, the individual should be interviewed and given the opportunity to state his or her case and should be advised of any rights under the procedure, including the right to be accompanied or to call witnesses.

Often supervisors will give informal oral warnings for the purpose of improving conduct when employees commit minor infringements of the established standards of conduct. However, where the facts of a case appear to call for disciplinary action, other than summary dismissal, the following procedure should normally be observed:

- (a) In the case of minor offences the individual should be given a formal oral warning, or if the issue is more serious, there should be a written warning setting out the nature of the offence and the likely consequences of further offences. In either case the individual should be advised that the warning constitutes the first formal stage of the procedure.
- (b) Further misconduct might warrant a final written warning which should contain a statement that any recurrence would lead to suspension or dismissal or some other penalty, as the case may be.
- (c) The final step might be disciplinary transfer, or disciplinary suspension without pay (but only if these are allowed for by an express or implied condition of the contract of employment), or dismissal, according to the nature of the misconduct. Special consideration should be given before imposing disciplinary suspension without pay and it should not normally be for a prolonged period.

Except in the event of an oral warning, details of any disciplinary action should be given in writing to the employee and if desired, to his/her representative. At the same time the employee should be told of any right of appeal, how to make it and to whom.

When determining the disciplinary action to be taken, the supervisor or manager should bear in mind the need to satisfy the test of reasonableness in all the circumstances. So far as possible, account should be taken of the employee's record and any other relevant factors.

Special consideration should be given to the way in which disciplinary procedures are to operate in exceptional cases. For example:

- (a) **Employees to whom the full procedure is not immediately available:** Special provisions may have to be made for the handling of disciplinary matters among night shift workers, workers in isolated locations or depots or others who may pose particular problems, for example because no one is present with the necessary authority to take disciplinary action or no trade union representative is immediately available.
- (b) **Trade union officials:** Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official.
- (c) **Criminal offences outside employment:** These should not be treated as automatic reasons for dismissal. The main consideration should be whether the offence is one that makes the individual unsuitable for his or her type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody.

Appeals

Grievance procedures are sometimes used for dealing with disciplinary appeals though it is normally more appropriate to keep the two kinds of procedure separate since the disciplinary issues are in general best resolved within the organisation and need to be dealt with more speedily than others. The external stages of a grievance procedure may, however, be the appropriate machinery for dealing with appeals against disciplinary action where a final decision within the organisation is contested or where the matter becomes a collective issue between management and a trade union.

Independent arbitration is sometimes an appropriate means of resolving disciplinary issues. Where the parties concerned agree, it may constitute the final stage of procedure.

Records

Records should be kept, detailing any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be carefully safeguarded and kept confidential.

Except in agreed special circumstances, breaches of disciplinary rules should be disregarded after a specified period of satisfactory conduct.

Further Action

Rules and procedures should be reviewed periodically in the light of any developments in employment legislation or industrial relations practice and, if necessary, revised in order to ensure their continuing relevance and effectiveness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all employees and, where appropriate, their representatives have been informed.

Contact Information

For further advice

- **Check** www.gov.gg/employmentrelations
- **Email** employmentrelations@gov.gg
- **Contact the Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey, GY1 3WH
- **Call us on** 01481 732500