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Employment

2.4 Staff Disciplinary

Policy statement

This procedure is designed to encourage all employees to achieve high standards of conduct and work performance and also aims to provide a fair, effective and consistent method of dealing with disciplinary matters.

Key principles

- employees are expected to know the standard of conduct or work performance expected of them (refer to employees handbook located in filing cabinet in office)
- employees will be provided with a management statement of the case prior to any disciplinary meeting and will be allowed to respond to any alleged fault or failing at the meeting
- an employee is entitled to be accompanied by a trade union representative to a disciplinary meeting or work colleague employed by the setting. Other external representatives may not accompany an employee
- for minor or isolated infringements of rules or expected behaviour, managers and supervisors should give employees informal advice, coaching and counselling as part of their supervisory duties
- where an employee's conduct or performance fails to improve as a result of advice, coaching or counselling, or where the offence is more serious, then the disciplinary procedure will be applied
- except in cases of gross misconduct, no employee will be dismissed for a first offence

Categories of gross misconduct

Gross misconduct is a category which can include:

- theft, fraud and deliberate falsification of records
- physical violence

- serious bullying or harassment
- deliberate damage to property
- serious insubordination
- misuse of the settings property or name
- bringing the organisation into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of confidentiality (subject to the Public Interest (Disclosure) Act 1998)
- serious failure to comply with procedures that safeguard children

This is not an exhaustive list.

Steps prior to deciding to take disciplinary action

- when any incident of misconduct or negligence or poor performance is alleged to have occurred, the manager must establish the facts to decide whether there is a need for a disciplinary interview
- where appropriate/possible, signed written statements should be obtained as quickly as possible from the individual(s) concerned and should include where possible dates, times, details of those present and the issues of concern

Procedures

Management statement of grounds for action and invitation to a meeting

- following an appropriate investigation, the manager must prepare a written statement of the employee's alleged conduct or characteristics, or of the circumstance which have lead to the contemplation of taking disciplinary action
- the manager or supervisor must send the statement to the employee including any evidence that will be relied upon at the meeting and invite her/him to attend a disciplinary meeting to discuss the matter. The employee should also be informed of their right to be accompanied at the meeting. Employees should be given an appropriate amount of notice of the meeting in order to prepare their response

The disciplinary meeting

- a disciplinary meeting must take place before any disciplinary action is taken, (except where the action in question consists of suspension pending a disciplinary meeting)
- at the meeting, the manager or supervisor should ensure that the circumstances of the complaint against the employee are fully discussed and that the employee is provided with an opportunity to respond to the management case. The manager will then decide whether or not to issue a disciplinary penalty. The outcome of the disciplinary meeting must be confirmed in writing within 10 working days, to include the right of appeal and to whom to address any appeal letter

The appeal

- any employee who feels they have been disciplined unfairly may appeal in writing to the person named in the disciplinary letter. All appeals must be submitted in writing, clearly set out the grounds for appeal, within 7 working days of the date of the disciplinary meeting letter
- normally, an appeal meeting will be arranged with the employee together with the line manager of the manager e.g. the committee, who issued the disciplinary penalty, within 15 working days of the employee's request
- appeals will normally be held within 15 working days of the date of the original disciplinary meeting. A letter detailing the outcome of the appeal should be issued within 10 working days of the appeal meeting

The key steps in taking disciplinary action – modified procedure

The setting has a modified procedure which applies where:

- the dismissal took place when the setting became aware of the conduct or immediately thereafter
- it was reasonable to dismiss the employee without notice or any payment in lieu of notice, because of his/her gross misconduct
- it was reasonable in the circumstances, to dismiss the employee before enquiring into the circumstances in which the gross misconduct took place

The modified element of the procedure is only likely to apply in the rarest of circumstances, such as where an employee does not have a work permit or is guilty of gross misconduct in circumstances where immediate dismissal is necessitated.

Management statement of grounds for dismissal

- In most cases of gross misconduct, following a period of suspension of the employee and an appropriate investigation, the manager must send the employee a written statement which includes the following:
- the employee's alleged misconduct which led to the dismissal
- the basis for thinking, at the time of dismissal, that the employee was guilty of the alleged misconduct
- the employees right of appeal

The appeal

- Any employee who feels they have been disciplined unfairly may appeal in writing, as set out in paragraph 5.
- The employee must take all reasonable steps to attend the disciplinary appeal meeting.

Disciplinary penalties

- Managers should not issue any disciplinary penalties without a formal meeting.
- There are five disciplinary penalties, which may result from misconduct:
 - formal verbal warning (first formal warning)
 - written warning
 - final written warning
 - dismissal with notice
 - summary dismissal
- The gravity of the offence will determine which disciplinary penalty is issued.

Formal verbal warning

Minor breaches of organisational discipline, misconduct or time keeping, or failure to meet performance criteria, may result in a formal verbal warning given by the manager. The manager may give this at a disciplinary meeting with the employee. This warning should be confirmed in writing. If the warning relates to unsatisfactory performance then it should set out:

- the performance required

- the improvement required
- the timescale for improvement
- any review date
- any support that can be offered to assist the employee to improve their performance

If the warning relates to conduct then the nature of the misconduct and the change in behaviour required should be set out in the warning letter.

The employee may be accompanied at the meeting by a work colleague or a trade union representative.

The warning will be placed on the employee's personnel file. After a period of three months, if no further disciplinary action has been found necessary and the minor breach has been resolved, the warning will expire.

Written warnings

If the infringement is regarded as more serious, or the employee's work or conduct are considered unsatisfactory after they have received a formal verbal warning and after a period has elapsed in which the employee has had time to remedy their work or conduct, a disciplinary meeting conducted by the manager will be held.

The employee will be informed of the nature of the complaint and such evidence as may exist, and will be given an opportunity to respond. The employee will be told of the decision and given a letter of confirmation within 10 working days of the disciplinary meeting. The written confirmation will state:

- the date of the disciplinary meeting and those present
- the penalty imposed
- details of the misconduct, poor performance or poor time keeping that has occasioned a warning and the performance required or the change in behaviour required
- the timescales for performance improvement, where appropriate
- details of any necessary action to remedy the situation, any period of review, extra training or supervision etc., or the possibility for redeployment / demotion
- that any further misconduct etc. will result in a further disciplinary meeting and will normally result in a confirmed final warning, which if unheeded will result in dismissal with appropriate notice
- that there is a right of appeal

After a period of six months, if no further disciplinary action has been found necessary and the minor breach has been resolved, the warning will expire.

Final written warning

If the employee's work or conduct fails to improve, or where the infringement is sufficiently serious, the manager will follow the same procedures as for issuing a written warning. If proven, a final warning, which will be in writing, will be given to the employee warning that any further misconduct will result in dismissal with appropriate notice.

After a period of twelve months, if no further disciplinary action has been found necessary and the breach has been resolved, the warning will expire.

Gross misconduct

Employees dismissed with notice will be paid for this notice period. An employee may be dismissed without notice if there has been an act of gross misconduct, or a major breach of duty or conduct that brings the organisation into disrepute. The employee will be suspended with pay while the circumstances of the alleged gross misconduct are investigated.

A dismissal must be confirmed in writing within 10 working days of the date of the disciplinary interview. As well as covering the points in paragraphs 9.1 and 9.2, the letter should also include details of any outstanding money owed to the employee, how and when it will be paid and the final date of employment.

Where a member of staff is dismissed from the organisation or internally disciplined because of misconduct relating to a child, we inform the Department for Education and Skills, OFSTED, other relevant agencies and follow Local Safeguarding Children Board guidelines.

Suspension

Suspension should be used sparingly in circumstances where the manager needs to conduct an investigation prior to a hearing where it is felt that the impact of not suspending the employee during the period would be likely to be more detrimental than suspending them.

Cases which involve potential gross misconduct will usually result in suspension - particularly when relationships have broken down or where the setting's property or

responsibilities to other parties are involved, or where the employee's presence may prejudice the inquiry.

Suspension should be kept brief and reviewed to ensure that it is not unnecessarily protracted.

Timescales

Employees are required to take all reasonable steps to attend the hearing. However, should, for a reasonably unforeseen reason, either the employee, the line manager or their companions be unable to attend the meeting, it must be rearranged.

Should an employee's companion be unable to attend then the employee should make contact within 5 days of the date of the letter to arrange an alternative date that falls within 10 days of the original date provided.

Time limits may be extended by mutual agreement.

Amendments to the Procedure

These procedures may not apply where there is a significant threat of violence or harassment. Under these circumstances the management committee should be contacted.