Managing discipline: Investigation to possible dismissal
A guide

Be prepared
...should things go wrong

And know the basics

How to deal with a problem

Do this first...
Look into the problem

Next...
Meet the employee and talk it through

Next...
Taking action about conduct
Taking action about performance

Next...
Handling an appeal against a decision

Legal check

Useful tools
Real-life situation 1
Real-life situation 2

Myth-busting:
True or false?

Frequently-asked questions

Managing discipline – in other words, unacceptable behaviour and poor performance – is not something you really want to think about in the early days of taking on staff.

However, you need to be prepared should things not go to plan.

Often, a quiet word early from a manager is enough to sort out a problem over an employee’s conduct or performance.

But, if that doesn’t work, you need to take action and:

- Comply with the law;
- Understand the basics for handling discipline;
- Manage a problem over conduct or under-performance from investigating it through to, if necessary, dismissal.

This tool is aimed at small firms, and line and team managers in larger organisations.

**Discipline can be about conduct issues or performance issues, and sometimes both...**

<table>
<thead>
<tr>
<th>Conduct issues include:</th>
<th>Performance issues include:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Insubordination</td>
<td>- Failing to meet work targets</td>
</tr>
<tr>
<td>- Negligence</td>
<td>- Inadequate quantity of work</td>
</tr>
<tr>
<td>- Using illegal practices</td>
<td>- Missing work deadlines</td>
</tr>
<tr>
<td>- Falsifying records</td>
<td>- Inaccurate work</td>
</tr>
<tr>
<td>- Theft</td>
<td>- Wasting work materials</td>
</tr>
<tr>
<td>- Bullying</td>
<td>- Poor customer service</td>
</tr>
<tr>
<td>- Dangerous behaviour</td>
<td>- Failure or refusal to follow instructions</td>
</tr>
<tr>
<td>- Fighting or hostile behaviour</td>
<td>- Unwillingness to take responsibility</td>
</tr>
<tr>
<td>- Poor attendance record</td>
<td></td>
</tr>
<tr>
<td>- Poor time-keeping</td>
<td></td>
</tr>
</tbody>
</table>

You are at the beginning of this guide  

Next page Know the basics
Managing discipline: Investigation to possible dismissal
A guide

Be prepared
And know the basics

How to deal with a problem
Do this first...
Look into the problem

Next...
Meet the employee and talk it through

Next...
Taking action about conduct
Taking action about performance

Next...
Handling an appeal against a decision

Legal check

Useful tools
Real-life situation 1
Real-life situation 2
Myth-busting: True or false?
Frequently-asked questions

Be prepared
And know the basics

- Follow the principles set out in the Acas Code of Practice on discipline and grievance -
  - Investigate what’s happened – and that includes talking to the employee about the issue;
  - Once the investigation is complete, write to the employee with details of the alleged problem;
  - Hold a meeting to discuss it and decide what to do;
  - After the meeting, write to the employee, this time telling them of the decision, and why, and if it goes against them, that they have the right to appeal.
  - Should the employee disagree with the outcome, allow them to appeal.

- It is good practice to set out this procedure in writing. An example of the wording of a procedure for managing discipline is in the Acas guide on discipline and grievances at work.

- And, if you have not already done so, it is good practice to:
  - Write down the basic rules of expected behaviour - these should cover conduct, absence, timekeeping, health and safety, and use of work equipment such as computers, phones and vehicles.
  - Set standards of performance so employees know what is expected of them.
  - For more on managing performance so, hopefully, you never have to go down this disciplinary route, see How to get the best out of your staff, another online tool which is part of this series of guides.
  - Make sure these rules and standards are clear, fair and consistent.
  - Refer to them in the employee’s Written Statement of Terms and Conditions of Employment, and say where they can be easily found.
Managing discipline:
Investigation to possible dismissal
A guide

Do this first...
Look into the problem

- Investigate the problem to find out what’s been going on. Ideally, this should be done by a manager who has not been involved in the matter. But, in a small business, it may have to be done by the owner/manager.

- How do I investigate? Go to Frequently-asked questions.

- Check your company’s rules to refresh your memory.

- And if it’s a new problem – such as the use of social networking websites at work – and you are concerned other staff may get into the same trouble, then, once the case being investigated has been concluded, talk to all staff to ensure they all know what they can and cannot do. Also, include any new rules in a written policy.

Do you feel that you know enough about the problem?
After the investigation, you may feel it best to try again with a quiet word.

Some problems come down to misunderstandings and can be cleared up informally while reminding staff about the company rules.

However, if that doesn’t work and you still need to continue, go to the Next page...
Managing discipline:
Investigation to possible dismissal
A guide

Next...
Meet the employee and talk it through

- Write to the employee:
  - They need to know what the alleged problem is and the possible consequences;
  - Arrange a suitable time and place for the formal disciplinary meeting, and let them know that they have rights to be accompanied and to appeal against the decision after the meeting;
  - With the letter, give them the facts from the investigation, including written evidence and witness statements, so they can respond.
  - See an example of a letter on the useful letters section of the Acas website.

- Prepare for the meeting, giving the employee reasonable time to also prepare their own evidence, witnesses and witness statements.
- Hold the meeting without unreasonable delay. Give the employee and their companion the opportunity to have their say. Listen carefully. If any unexpected issues come up, you can always pause to find out more and rearrange the meeting.

After the investigation and meeting, decide what to do next.
Write to the employee telling them of your decision.
See an example of a letter on the useful letters section of the Acas website.
But what you do will depend on whether the problem is about - conduct - or performance.

See the Next page for a separate section on handling conduct issues and another for dealing with performance issues.
If absence is a factor also see Managing staff absence, another online tool in this series of guides.
Managing discipline:
Investigation to possible dismissal
A guide

Next...
Taking action about conduct issues

Disciplinary action for conduct normally takes the form of:

- A first written warning saying what the problem is, the change in behaviour needed and how long the warning will last, normally six or 12 months. See an example of a letter giving a written warning on the useful letters section of the Acas website.

- A final written warning if the offence is serious, or there has been insufficient change in behaviour within a set time, or if a further offence of a similar kind has happened. This warning should be for a set time and state the change in behaviour needed and that further misconduct could lead to dismissal. See an example of a letter giving a final written warning on the useful letters section of the Acas website.

- Dismissal or action short of dismissal if the conduct has failed to change to what is needed after a final written warning. Action short of dismissal may include demotion or transfer to another part of the business (depending on what is allowed in their Written Statement of Terms and Conditions of Employment). See an example of a letter telling an employee of such action on the useful letters section of the Acas website.

- Gross misconduct may call for dismissal for a first offence. See an example of a letter telling an employee of the intention to dismiss them on the useful letters section of the Acas website.

The effect on a small firm...
An incident may have a bigger impact on a small business than it would in a large one. If the impact is seriously harming the business, or you fear it is likely to, you may feel it is fair for a first offence to give a final written warning, instead of a first written warning.
Managing discipline: Investigation to possible dismissal
A guide

Next...
Taking action about performance issues

Disciplinary action for performance normally takes the form of:

- An ‘improvement note’, not a first written warning. The note should set out the improvements needed within a set time, perhaps, for example, with the help of training or on-the-job coaching, or background reading, and also spelling out the consequences of failing to improve.

See an example of a letter issuing an improvement note on the useful letters section of the Acas website.

- A final written warning if there has been insufficient improvement in standards within a set time and despite measures to help.

A mistake, or series of mistakes, may have a bigger impact in a small business than in a large one.

On a rare occasion, when the impact is critically harming the business, or you fear it is likely to, you may feel it is fair for a first offence to go straight to a final written warning, if the employee cannot give a satisfactory explanation for the errors.

But, generally, you should consider an improvement note first and follow that route.

See an example of a letter giving a final written warning on the useful letters section of the Acas website.

- Dismissal or action short of dismissal if the performance has failed to improve after a final written warning.

Action short of dismissal may include demotion or transfer to another part of the business (depending on what is allowed in their Written Statement of Terms and Conditions of Employment).

See an example of a letter telling an employee of such action on the useful letters section of the Acas website.

For information on managing performance so, hopefully, you never reach the disciplinary stage, see How to get the best out of your staff, another online tool in this series of guides.
Managing discipline:
Investigation to possible dismissal
A guide

Next...
Handling an appeal against a decision

- The employee can appeal against a disciplinary decision on both conduct and performance matters, but must do so in writing. They need to set out grounds for appeal within five working days.

- The appeal should be heard without delay and, where possible, by a manager preferably more senior and not previously involved in the case. Again, this is not always possible in a small business, so the same manager or owner may have to hear the appeal, but they must be objective.

- Write to the employee to tell them the outcome of the appeal and how the decision was reached.

Examples of all the letters for all stages of the formal disciplinary process are on the useful letters section of the Acas website.

- Keep a confidential written record of disciplinary cases.
Managing discipline: 
Investigation to possible dismissal
A guide

Legal check

- In law, you no longer have to name the person, and their job, who an employee should write to if they are unhappy about a decision over performance, conduct or dismissal, or explain how they should appeal.

However, it is good practice to refer to these details in the employee’s Written Statement of Terms and Conditions of Employment, a document an employee is entitled to receive after working for you for two months. Also say where they can find a copy of the procedure they should follow.

- Follow the Acas Code of Practice on discipline and grievance otherwise it could cost you more if the dispute ends up before an employment tribunal.

- Should the employee go off sick just before or during the disciplinary process, the company can carry on with it when the employee returns.

Employee rights:

Your employees have the legal right not to be unfairly dismissed. They can make a claim to an employment tribunal:

- If they have been dismissed for exercising their rights on discrimination, pregnancy, maternity and paternity leave, pay and working hours, and representing employees. Dismissal on these grounds is judged to be ‘automatically unfair’. This right starts on day one of employment.

- If they feel that you have not behaved reasonably in the way you have dismissed them. For employees starting work on or after April 6, 2012, they need two years’ continuous service to make this claim. Those who joined you before that date need one year’s continuous service.

- Be aware of employee rights regarding disability, sex, race, religion and belief. To avoid discrimination see the Acas booklets Delivering equality and diversity, The Equality Act - what’s new for employers, and Age and the workplace - a guide for employers and employees.
Managing discipline:
Investigation to possible dismissal
A guide

Real-life situation 1
An employee responsible for business development comes back from a Friday lunch after too much to drink.

He admits he had something to drink while entertaining company clients. You remind him he said the same thing after an incident three months ago - and that entertaining clients doesn’t give him the right to come back to the office the worse for drink.

He already has a final written warning for the first incident.

He is slurring his speech and unable to work. You feel you have no choice but to send him home.

What do you do next?
You check your company rules. They state that being unfit for work because of excess alcohol is gross misconduct for which an employee can be dismissed.

Then, investigate the incident to see if there are grounds for a disciplinary meeting. You find there are.

In writing, you invite the employee to the meeting, set out the alleged problem, give him the findings of the investigation, and remind him he currently has a final written warning and that he could be dismissed.

In the letter, you also tell him of his right to be accompanied by an employee representative.

At the meeting, he admits he had too much to drink, is very apologetic and promises it will never happen again.

However, you again remind him that he said exactly the same after the first incident three months ago. You could have dismissed him for that offence, but gave him a second chance by, instead, giving him a final written warning. That meant that if he was drunk at work again, or committed any other serious breach of conduct, within 12 months you would look to dismiss him.

After the meeting, you tell the employee in another letter that you have decided to dismiss him, but that he has the right to appeal against the decision.

He appeals and you invite him to an appeal meeting.

At the meeting, it becomes clear his grounds for appeal lack substance.

In a further letter, you tell him you are standing by your decision to dismiss him.
Managing discipline: Investigation to possible dismissal
A guide

Real-life situation 2
The employee who deals with all invoices to customers has missed off the same item on all of the bills for two months. Which means, you have been under-charging.

This came to light by chance. You have talked to the employee about the error, told them that accuracy is essential and explained the repercussions – income against what you budgeted to get in is down. Also, explaining to customers that you have been charging the wrong price – and that it will have to go up in future – could cost the business customers.

The employee is taking a cavalier attitude to a very serious situation. He admits he has been trained, but can’t explain why he made the blunder.

What do you do next?
The blunder has tipped your firm towards the red and you are worried the employee could do something similar again. Your business might not survive a second dose of reckless accounting.

You decide to investigate the matter more fully and the findings point to a need for a disciplinary meeting.

At the meeting, the employee still cannot adequately explain why he made the mistakes, and, strangely, shows no remorse.

After the meeting, because of the seriousness of the situation facing your business and the employee’s manner, you decide to go straight to giving him a final written warning, explaining that if there is a repeat of such carelessness in the next 12 months you will look to dismiss him.

Another factor in your decision is that there is no-one else in the business who you could move into the role.
Managing discipline: Investigation to possible dismissal
A guide

Myth busting: True or false?

- **If somebody repeatedly misbehaves at work, it is still hard to sack them without ending up at an employment tribunal.**

If you take a few steps, you will reduce chances of the employee taking the claim to tribunal, and increase your chances of defending it, if they do.

First, clearly spell out from the beginning how your employees must behave, setting out what is misconduct, how these rules will be enforced and how they can be dismissed if they are broken.

Put these rules in writing and make sure that they are referred to in an employee’s Written Statement of Terms and Conditions of Employment, and say where they can be easily found.

And use their induction to make sure your employees fully understand how misconduct will be dealt with.

- **Poor performance and unacceptable conduct at work, once they become disciplinary matters, can be treated in the same way – they just mean someone is not up to scratch.**

They are not exactly the same.

How a manager investigates, writes to the employee, holds a meeting and the right of appeal are the same in issues of both conduct and job performance. But the actions taken are different at the first stage.

In matters concerning conduct, an employee may get a first written warning where another breach must not happen again for a set period, normally 12 months.

In issues concerning job performance, the employee will not get a first written warning, but an improvement note spelling out improvements which must be made within a set period.

Or, it may turn out that the employee has not been properly trained, so a programme of training should be organised to help them reach the required standard.
Managing discipline: 
Investigation to possible dismissal 
A guide

Frequently-asked questions

• How do I investigate an allegation?
  Ideally, the person conducting the investigation should have no connection with the allegation, so they can find out the facts in a fair and reasonable manner.
  But finding a person who is unconnected is not always possible in a small business. However, whoever carries out the investigation must do so with an open mind.
  That entails talking to all the parties involved and producing written evidence, and being willing to look for evidence supporting the employee and against them.
  People involved should be asked not to discuss the allegation – or look for corroborating evidence or verification of what the employee and other staff are saying.
  And remember to keep an open mind, as what you uncover may not be what you expected. For example, someone’s performance may have deteriorated because of a family bereavement they haven’t told anyone at work about.
  Also, at this stage the employee does not have a right to be accompanied.
  For more on investigation see the Acas guide on discipline and grievances at work.

• What constitutes gross misconduct?
  Fighting, bullying, stealing, gross negligence and serious insubordination for which an employee could be dismissed without notice pay.
  In cases of gross misconduct, you may want to think about suspending the employee on their normal pay until their case is decided.

• How do I decide whether to suspend the employee during the investigation and until the matter is decided?
  Factors include the size of your business and whether the employee’s role requires specialist skills.
  A large business can have enough staff and skills to cover most roles if an employee is suspended, but in a small firm that may not be an option.
  An employee is usually suspended to avoid the risk of others involved in the investigation feeling intimidated while it is conducted, or evidence being corrupted.
  In a small firm, the employer will have to weigh suspension against the impact on their business of the
absence of the employee if no-one else can cover the role.
But whether you suspend, or not, will also depend on the gravity of the allegation. Suspension for gross misconduct, such as violent behaviour, is much more likely.

• **What should I keep in writing?**
  All the basics - the complaint, the investigation, the employee’s defence, any correspondence, grievances raised, a record of the disciplinary meeting, if an appeal was made and how it was decided, and developments following the appeal.
  For more examples, see the [Acas guide on discipline and grievances at work](#).
  Give a copy of meeting minutes to the employee, but you don’t have to include the information where a witness needs to stay anonymous.
  Remember, these records are confidential and should be kept in a safe place.

• **Why should I keep disciplinary matters in writing?**
  If you don’t keep a written record, details are more easily challenged and open to misunderstandings which are only likely to make matters worse.
  Also, you need evidence in writing, as well as being presented verbally.
  Details of a disciplinary matter are vital on an employee’s personal file.
  And written records of past disciplinary matters are useful for ensuring that new and similar cases are dealt with consistently.

• **How do I prepare for a disciplinary meeting?**
  Only have a disciplinary meeting if your investigation finds enough evidence to suggest disciplinary action might be needed.
  Ensure all the facts are available, with specific examples of the problem, written witness statements, and any other evidence or relevant records, may be on absence or sickness.
  Arrange for someone not involved in the case to take notes at the meeting and be a witness of what was said.
  Both employer and employee should say which witnesses they intend to call.
  Prepare for the meeting thoroughly, planning: how you will introduce the meeting; the procedure the meeting will follow, including allowing the employee to call witnesses and submit witness statements; and questions you need to ask.
Also, ensure arrangements for the meeting take account of language, communication and access needs of those attending.

For more on preparation, see the Acas guide on discipline and grievances at work.

- **When do I hold a disciplinary meeting?**
  Have the meeting soon, but when depends on how complicated the allegation is and how long you think it would take for the employee to prepare their defence.

- **Acas uses the word ‘reasonable’, as in judging whether someone has behaved reasonably, or holding a disciplinary meeting without unreasonable delay. But how do you determine what is reasonable?**
  Look at all the circumstances of the situation and weigh up the factors. If your judgment is based on rational, fair, sensible and unbiased thinking, an employment tribunal should view your action as reasonable.
  A second test is to consider whether an outsider would consider your decision extreme or excessive. If you think they might, then so might a tribunal.

- **How do I hold a disciplinary meeting?**
  The employer should explain the allegation and go through the evidence gathered from the investigation.
  This would be presented to the employee and their companion. The employer would call any witnesses and ensure any questions the employee has for witnesses are answered.
  The employee should then set out their case against the allegation, calling witnesses, submitting witness statements, and asking questions and raising points about the evidence.
  After the meeting, only a manager with the authority should decide on any disciplinary action or dismissal.
  Ideally, the person chairing the meeting should be unconnected with the case and not the same person who conducted the investigation.
  But, again, this may not always be possible in a small business. But whoever conducts the meeting must stay impartial.
  For more on holding a meeting, see the Acas guide on discipline and grievances at work.

- **What if a witness wants to be anonymous?**
  That is allowed, but mainly in circumstances where the witness is genuinely fearful of reprisals. Also, you should try to find other evidence that backs up what they’re saying and think about why they’re testifying. Have they had personal issues with this employee?
Also, while you should give the employee being investigated a copy of the anonymous witness’s statement, remove from the copy the witness’s name and any details which would identify them.

- **Should the employee give the employer a copy of their evidence before the meeting?**
  Yes. The employer will give the employee the facts from their investigation, including written evidence and witness statements with the letter inviting the employee to the disciplinary meeting.
  It is only fair that the employee should do the same with their evidence, including witness statements and naming which witnesses they will be calling.
  Any serious surprises – important new evidence - raised at the disciplinary meeting may mean it will have to be adjourned. The new evidence may need to be investigated before the meeting can resume at a future date.

- **Who can accompany an employee at a disciplinary meeting?**
  Usually a fellow worker without a conflict of interest, a trade union representative qualified to accompany a worker or an official employed by a union who can get to the meeting.
  However, some employees may have rights in their contract to be accompanied by a partner, spouse or legal representative.
  For more on the companion, see the Acas guide on discipline and grievances at work.

- **What can a companion do at a disciplinary meeting?**
  They can put and sum up the employee’s case, talk privately with the employee during the meeting, or respond to anything said at the meeting.
  While the companion can answer questions for the employee, you have a right to insist the employee answers questions.
  And a companion can only do what the employee says they can do. They cannot get in the way of you presenting your case.
  For more on the companion, go to the Acas guide on discipline and grievances at work.

- **What if the companion cannot make the meeting?**
  If they can’t come, the employee can offer you another time within five working days of the time you set so they can attend.
  But should the employee need a translator or other help with communication, say a sign language interpreter for a deaf worker, it may be wise to be reasonably flexible.
I need to take disciplinary action against an employee, but they are off work ill. What should I do?

An employer can still take disciplinary action against them, but it needs to be handled sensitively. You must take into consideration the nature of the illness – its seriousness, and whether it is stress or work related.

Also, you should get the employee’s permission to ask their GP if the employee is well enough to attend a disciplinary meeting, or how long before they will be well enough to attend. You may also want to consider consulting an occupational health provider.

If the illness is likely to be long term and the disciplinary matter is pressing, you may need to consider getting the employee to provide a written statement and asking them to nominate a representative to attend the meeting on their behalf.

Or, if the issue is work-related, the meeting could be held at a neutral location or the employee’s home, if they agree. But if the GP says they are not well enough and the disciplinary matter is not a major issue, the meeting may have to wait. It’s a matter of striking a balance between how pressing the issue is and having consideration for the employee’s wellbeing and recovery.

If it is a short illness, the meeting should be held when the employee returns to work. You should be sensitive about employees’ welfare. If a matter relates to disability or mental health and you want to know more, see Acas booklets Delivering equality and diversity, The Equality Act - what’s new for employers, Health, work and wellbeing, and Promoting positive mental health at work.

What if the employee doesn’t turn up for the disciplinary meeting, or a re-arranged meeting?

Ask for an explanation why they didn’t attend – they may have a valid one. And if they don’t turn up for a re-arranged meeting, you again need to ask why.

There are a range of factors, from illness to the seriousness of the allegation, you may need to take into account. Also, go to the question I need to take disciplinary action against an employee, but they are off work ill. What should I do? For more, see the Acas guide on discipline and grievances at work.

However, if they keep not showing up without a good reason, you can still hold the meeting without the employee. Minutes should still be taken, and you can make a decision on the evidence you’ve got.
And you may want to consider their absence as a separate conduct issue.
For more on repeated absence, see the Acas booklet *Managing attendance and employee turnover.*

- **What if an employee raises a grievance during disciplinary proceedings?**
  Take care to give enough time to assess whether it may be justified and be impartial.
  Otherwise, if you make a snap decision in dismissing it, you could face a second grievance for failing to look into the first one if it turns out to be genuine.
  Serious allegations will almost certainly warrant the adjournment of disciplinary proceedings until the grievance has been dealt with.
  However, if the employee is simply mistaken in their claim, or over how the proceedings work, then you can carry on.
  For more, see the Acas guide on discipline and grievances at work.
  And for more on handling grievances, see *Managing a complaint,* another online tool which is part of this series of guides.

- **How do I hold an appeal hearing?**
  Before the appeal, you should carefully consider whether you need to rehear any, or all, of the evidence from the first meeting, and recall witnesses, to arrive at a fair decision after the appeal.
  At the appeal, the chair should explain how it will be conducted and the possible outcomes.
  Ask the employee why they are appealing.
  Pay particular attention to any new evidence and ensure the employee has the opportunity to comment on it.
  Once the relevant issues have been thoroughly explored, summarise the facts and adjourn the appeal to consider a decision.

- **What if the employee under investigation is a trade union representative?**
  The same standards apply to trade union reps, but you may want to start discussing the issue early on with a trade union official, if the employee agrees to it. This may help to ensure the issue is not seen as an attack on the functions of the union.

- **Can I dismiss or discipline someone if they have been charged with or convicted of a crime?**
  Not just because of the charge or conviction.
What you can do is assess the effect on their ability to do their job and their relationships with you, colleagues and customers.

But justifying your decision to an employment tribunal can be difficult, unless the crime relates to their job. For example, if they have been convicted of theft of money when they work in a money-handling role serving the public and when being trustworthy is a key part of their role.

For more, see the Acas guide on discipline and grievances at work.

- **An employee doesn’t seem up to the job - what do I do?**

Ensure an employee is properly trained, and, where you can, offer them opportunities to develop.

Otherwise, if an employee makes mistakes, and you try to discipline him, he may respond by saying the training for the job has been inadequate.

- **How do I discipline someone without souring the atmosphere in the workplace?**

While this is a common worry, it should not be your main concern. What you should really be asking is: What happens if I don’t do anything about it? Or, what happens if I deal with it badly?

The answer to both questions is that the issue is only likely to get worse - and even cause additional problems. Also, staff may question your ability to lead - and colleagues usually appreciate management tackling poor conduct or performance effectively.

Handling sensitive issues such as discipline requires the skill of knowing how to conduct a challenging conversation. For more, see the Acas guide Challenging conversations and how to manage them.

How useful is this tool? Email webteam@acas.org.uk to let us know.

And if you want to find out more...

Download the Acas Code of Practice on discipline and grievance and the Acas guide on discipline and grievances at work.