

All businesses need a framework for both employees' and employer's conduct and procedures for handling disciplinary, grievance and dismissal issues. Here's the way to go about it

# Resolving problems with employees

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## Discipline and grievance issues

**Basic information on disciplinary and grievance issues must be included in your employees' written statement of employment details. Putting formal disciplinary and grievance procedures in place can help you defend any claim an employee might make at an employment tribunal — and from October 2004 it will be the law**

You should draw up disciplinary rules to set standards of conduct at work and explain what behaviour is unacceptable. The rules could cover areas such as:

- timekeeping
- absence
- holidays
- health and safety
- standards of work
- personal appearance
- use of company facilities
- smoking
- discrimination

You must include details of disciplinary rules and grievance procedures if you have them in your written statement of terms and conditions. From October 2004 all businesses will be required to have minimum disciplinary and grievance procedures in place.

You must explain:

- what your disciplinary rules are
- to whom the employee should apply if they are dissatisfied

with a disciplinary decision or want to put right a grievance

- how to apply and what further procedures, if any, will follow

For the first and last of these you can also refer employees to a separate document that they should be able to easily get hold of if these details are not fully contained in the written statement.

If you employ fewer than 20 people, you currently only need to state who the employee should contact — but this exemption will be removed in October 2004.

Disciplinary procedures set out the action you will take against staff who break your rules. From October 2004 all businesses will have to put minimum disciplinary procedures in place, including the following stages:

- informing the employee in writing of the problem
- meeting to discuss the problem with the employee — who has the right to be accompanied by a colleague or trade union official
- after the meeting, informing the employee of the employer's decision and of their right to appeal against it
- an appeal, if the employee requests one

Minor breaches of rules should be dealt with informally.

Examples of misconduct you might deal with using your disciplinary procedure could include persistent lateness or unauthorised absence.

Gross misconduct is an action

so serious that you may dismiss an employee for their first offence without notice or pay in lieu of notice. In practice, however, you should generally suspend the employee on full pay and investigate the incident before dismissal. The employee should be given a chance to put their case at a meeting.

Examples of offences which are normally regarded as gross misconduct include: theft; fraud; fighting; assault; deliberate damage to company property; being under the influence of alcohol or illegal drugs; serious negligence which causes unacceptable loss, damage or injury; serious acts of insubordination.

A grievance procedure allows individual workers to raise grievances with management about their employment. From October 2004 all businesses will have to put minimum grievance procedures in place, including the following stages:

- the employee informs the employer in writing of their grievance
- the employee is invited to a meeting to discuss the grievance — they have the right to be accompanied by a colleague
- the employer responds to the grievance
- right of appeal for the employee if they feel the grievance hasn't been satisfactorily dealt with

The Acas Code of Practice on Disciplinary and Grievance

## Check for changes in the law

Regulations, figures and sums of money may have changed since publication. Update check:  
0845 600 9 006  
[www.businesslink.gov.uk/figures](http://www.businesslink.gov.uk/figures)

Procedures provides practical guidance on drawing up disciplinary and grievance procedures.

### Next steps

- See *Drawing Up Employment Contracts*, page 59
- See *Acas Code Of Practice* below
- The Acas helpline can offer advice. Contact: 08457 47 47 47
- For more information read: *Producing Disciplinary And Grievance Procedures (ACAS/G02)*; *Discipline At Work Handbook (ACAS/H02)* — free online, £4.95 hard-copy. Contact 08702 42 90 90; [www.acas.org.uk](http://www.acas.org.uk)

## The Acas Code of Practice

**The Acas code of practice can help you set up your disciplinary and grievance procedures, making sure problems are dealt with fairly and that employees get the chance to put their side of the story. It's also used by employment tribunals — so it's well worth playing it by the book**

The Acas Code of Practice on Disciplinary and Grievance Procedures states that good disciplinary procedures should:

- be in writing
- state who they apply to
- be non-discriminatory



*I sought advice from an employment law specialist before laying someone off as they just weren't right for the job. Always take advice before dismissing someone*



James Keay  
Select-a-Skip UK Ltd  
skip hire service  
Shrewsbury, Shropshire

- ensure problems are dealt with quickly
- ensure information is kept confidential
- set out what disciplinary actions might be taken
- state which levels of management have the authority to take disciplinary action
- ensure employees are informed of complaints against them and any relevant evidence before a hearing
- give workers the chance to put their side of the story before a decision is reached
- allow workers to have a companion at hearings
- not dismiss an employee for a first offence, except for gross misconduct
- make sure no disciplinary action is taken until the case has been fully investigated
- ensure workers are given an explanation for any penalty
- give employees the right to appeal against any decision and explain how they can do so

### Next steps

- Read: *Acas Code Of Practice On Disciplinary And Grievance Procedures (ACAS/CP01)* — free online, £2.95 in hard-copy; *Producing Disciplinary And Grievance Procedures (G02)*; *Discipline At Work Handbook (ACAS/H02)* — free online, £4.95 hard-copy. Contact 08702 42 90 90; [www.acas.org.uk](http://www.acas.org.uk)

*This guide covers regulations. You should also read a guide to general business advice — from market research to writing a business plan*

## Monitoring email and web use

**You must inform employees if you intend to monitor their Web and email use — preferably making it part of their employment contracts. You can only inspect the content of individual emails in a number of restricted circumstances**

There are legal restrictions on how you can monitor employees' use of the Web and email. But this is a complex area which is covered by three laws: the Regulation of Investigatory Powers Act, the Data Protection Act and the Human Rights Act. If in doubt you should seek legal advice.

You must inform employees if you intend to carry out any monitoring of their email and Web use — whether this is of Internet and email traffic or the contents of emails. Include this in their employment contracts or refer to a separate Internet policy which mentions it.

In general you can monitor email and Internet traffic, installing software which logs websites visited and emails sent and received together with addresses (but not their contents).

You can inspect the content of individual emails without a worker's consent for a number of specific business purposes. These include:

- recording transactions or other important business communications
- making sure employees are complying with the law and your internal policies
- preventing abuse of your telecoms system
- checking emails when staff are on leave

If you want to monitor communications for other purposes, or are not sure whether you have the right to read an email, you must get permission to do so — from both the sender and recipient.

### Next steps

- *The law in this area can be complex and you should act carefully or consult a solicitor*
- *For more information read: Internet And Email Policies. Contact 08702 42 90 90; [www.acas.org.uk](http://www.acas.org.uk)*

## Valid reasons for dismissal

**If you're dismissing an employee, you must make sure you're acting fairly and reasonably. There are a number of potentially valid reasons for dismissal — from redundancy to the employee being unable to do the job**

Employees with at least a year's service with you who are under 65

(or the normal retirement age for a person doing that job) have the right not to be unfairly dismissed.

They can complain to an employment tribunal if they think they have been unfairly dismissed. If the reason for dismissal is one of a number which the law regards as 'automatically unfair', an employee can make a tribunal claim regardless of their age or length of service.

For a dismissal to be fair, you must have a valid reason for dismissing the employee.

Potentially valid reasons will relate to:

- the employee's ability or qualifications to do the job
- the employee's conduct
- the employee's position being made redundant
- any legal requirements preventing the employee from continuing to do the job (for example, if a van driver is banned from driving)
- some other 'substantial' reason not covered by the four reasons above

You must also act reasonably in dismissing the employee (rather than giving them a chance to improve or taking some other form of disciplinary action, for example).

There are no set rules on what's reasonable — it will depend on all the circumstances, including your business's size and administrative resources.

You may be required to prove you have acted reasonably to an employment tribunal if an

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*A tribunal is not pleasant for anyone involved. We won because the employee was dismissed for gross misconduct. We have now rewritten our contracts to make them watertight and we use the services of an employment law firm*

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Neil Shah  
Praesto Training and  
Development Ltd  
IT consultancy  
Harrow, Middlesex

employee makes a claim. You should be able to show you've acted fairly and consistently. From October 2004, a dismissal will be automatically unfair if you fail to follow statutory minimum disciplinary procedures before taking action — and tribunal awards may be increased.

Remember that a dismissal also takes place when an employee's limited-term contract expires but isn't renewed.

#### Next steps

- The Acas helpline can offer advice. Contact 08457 47 47 47
- See *Acas Code Of Practice*, page 81
- See *Dismissals Which Are Automatically Unfair* below
- See *Handling Redundancy*, page 87
- For more information on dismissal read: *Dismissal — Fair And Unfair (PL714)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

## Dismissals which are automatically unfair

**Some dismissals are regarded as automatically unfair. You have to follow minimum disciplinary procedures and must not dismiss an employee for reasons that include pregnancy, taking certain actions on health and safety grounds or seeking to assert statutory employment rights**

If you dismiss an employee or select them for redundancy when others in similar circumstances aren't selected it will automatically be unfair, regardless of their age or length of service, if your reasons include one or more of the list below. The list is not exhaustive — the DTI publication, *Dismissal — Fair And Unfair* provides more detailed examples (see **Next steps** below).

- pregnancy
- taking particular kinds of action on health and safety grounds, such as carrying out or proposing to carry out duties as a health and safety representative
- carrying out or proposing to carry out functions as an employee representative
- membership or non-membership of a trade union, or taking part in the activities of an independent trade union
- carrying out or proposing to carry out duties as a trustee of a company pension scheme
- seeking to assert a wide range of statutory employment rights, including rights under minimum wage, tax credits or working time legislation
- disclosing certain kinds of wrongdoing in the workplace
- taking — or trying to take — parental leave or time off for dependants
- taking lawfully organised industrial action lasting eight weeks or less (or longer if you don't take reasonable steps to resolve the dispute)

From October 2004, a dismissal will also be automatically unfair if you fail to follow statutory minimum disciplinary procedures before taking action — and tribunal awards may be increased.

#### Next steps

- See *Race, Sex and Religious Discrimination*, page 69
- See *Workers With Disabilities*, page 70
- See *When An Employee Is Pregnant*, page 72
- See *Unpaid Leave For Parents*, page 78
- See *Time Off Work Other Than Annual Leave*, page 68
- For more information read: *Dismissal — Fair And Unfair (PL714)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

## Dismissals which are automatically unlawful

### Some reasons for dismissal are automatically against the law

It is unlawful to dismiss a worker or select them for redundancy because of their:

- sex (including gender reassignment)
- marriage status
- race, nationality or ethnic origins
- disability
- sexual orientation
- religion or belief



*We found people by word of mouth initially. New businesses are in quite a vulnerable situation because you don't know how it is going to go. Luckily all our recruits so far have been a success*



Christine Armstrong  
Second Nature UK Limited  
natural-wool  
building insulation  
Penrith, Cumbria

#### Advice in Scotland

*Business Gateway in Lowlands*  
(0845 609 6611;  
[www.bgateway.com](http://www.bgateway.com));  
*Highlands & Islands Enterprise*  
(01463 234171; [www.hie.co.uk](http://www.hie.co.uk))

A worker — who can be an employee or any individual who works for you who is not genuinely self-employed — who believes they have been dismissed for such a reason could make a discrimination claim against you.

#### Next steps

- See *Race, Sex and Religious Discrimination*, page 69
- See *Workers With Disabilities*, page 70
- See *When An Employee Is Pregnant*, page 72
- See *Unpaid Leave For Parents*, page 78
- See *Time Off Work Other Than Annual Leave*, page 68
- For more information read: *Dismissal — Fair And Unfair (PL714)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

## Giving notice of dismissal

### If you dismiss an employee, they're entitled to a minimum amount of notice — unless it's for gross misconduct

The minimum amount of notice you must give an employee you're dismissing depends on how long they've been continuously employed. You can include longer periods of notice in your employment contracts if you wish (see **Next steps** below).



You must give one week's notice to staff with at least one month's service. Employees with two years' service must get at least two weeks' notice.

You must then give an extra week's notice for each further year of continuous employment with you up to a maximum of 12 weeks' notice for service of 12 years or more.

You're not obliged to give notice if you're dismissing an employee for gross misconduct.

You must pay employees at their normal rate during their notice period. They have the right to a minimum rate of pay if they're on sick leave, holiday or ordinary maternity leave during the period of notice.

If you don't provide work for an employee on a day when you would normally do so because the business isn't working at its normal level, the employee is 'laid off'.

But you can't refuse to pay them because work isn't available unless their contract of employment states that you have the right to do so.

Employees may agree to be laid off without pay in particular circumstances — such as where redundancy would be the only alternative. But this does not give you the right to lay them off in future.

Most employees are entitled to a statutory guarantee payment for any complete day of lay-off without pay — but with a limit of five days' payment in any three-month period.

### Next steps

- See *Discipline And Grievance Issues*, page 80
- See *Drawing Up Employment Contracts*, page 59
- For more information read: *Rights To Notice And Reasons For Dismissal (PL707)*; *Guarantee Payments (PL724)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)
- The Acas publications *Discipline & Grievances at Work* and *Lay-Offs And Short-Time Working* provide more details. Contact 08702 42 90 90; [www.acas.org.uk](http://www.acas.org.uk)

## Written reasons for dismissal

### There are cases in which you may be obliged to provide written reasons for dismissing an employee

If an employee who has been continuously employed with you for at least one year asks for the reasons for their dismissal — orally or in writing — you must provide a written statement of the reasons within 14 days.

If you dismiss a woman who is pregnant or on maternity leave or an employee who is taking adoption leave, you must give them a written statement of your reasons whether they ask for one or not and regardless of their length of service.

### Next steps

- For more information read: *Rights To Notice And Reasons For Dismissal (PL707)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

## Constructive dismissal

**An employee may be entitled to resign and make an unfair dismissal claim to an employment tribunal if you breach a fundamental term of their employment contract — perhaps by cutting their salary or failing to provide a safe place of work**

An employee may be entitled to resign if you breach a fundamental term of their employment contract. This is known as constructive dismissal. If the employee considers the constructive dismissal unfair and has at least one year's service with you, they can make an unfair dismissal complaint to an employment tribunal. From October 2004 the employee must first raise the matter with their employer in writing, unless the case involves harassment or bullying. Breaches of contract that may give rise to constructive dismissal claims might include anything which makes it impossible or intolerable for the employee to continue doing the job.

Examples include:

- cutting — or attempting to cut — an employee's wages or

## How I set out the rules for staff conduct

Vic Bussey is managing director and co-founder of Award International Holdings, a promotions and incentives business. The company started trading in 1996 and now employs 32, turning over more than £6m a year



Staff can be your biggest cost and your biggest success at the same time. If you get the wrong person they can cost you a lot of money. But because we've implemented the right processes we haven't seen that many of the disadvantages of employment.

It's about getting it right in the first place because your people are your business.

I wasn't an expert by any means in employee legislation when we first took on people, but because I'd worked for large companies I was familiar with the concept of employee handbooks. So that was one of the first things I wrote when we needed staff.

Within the employee handbook it lays out very clearly the procedure of verbal warning, written warning and final written warning before dismissal. It explains what we class as gross misconduct and how our grievance procedure works, as well as the procedures if the employee has a grievance.



We had one instance where somebody who was already on a written warning borrowed a piece of company equipment over the weekend, without permission, and then lost it. That had to go to a final written warning.

It was very difficult in an instance such as that one, which involved somebody who was otherwise a very good employee. But you still have to give a final written warning. It was a serious offence and it's important to be fair across the board and treat every employee the same.

We had another incident where a young woman was downloading pornography from the Internet. Obviously that was gross misconduct so we didn't have to go through all the warning procedures and the woman in question was dismissed.

Another issue is email and its correct use. Our email is huge and we have a whole server holding it. But even as an employer you can't just go in and access somebody's email. You have to send out regular advice to your employees that you will, on

*Vic: Get it right because people are your business*

occasion and at random, inspect their email.

Every new employee gets the employee handbook and they also now receive a welcome pack. Their first hour with us is spent with our commercial manager. He sits down with them and goes through the fire and safety procedures, and basic familiarisation with the company. We've got an induction process too where we work to incorporate everybody into the business.

That's because our people are very important to us. When you find good people you really do want to hang on to them.



**Award International Holdings PLC**  
**Margate**  
**Tel 01843 295555**  
**[www.awardtp.com](http://www.awardtp.com)**

## Advice in Wales

Business Eye (08457 969798;  
www.busesseye.org.uk)

- salary or other contractual benefits
- transferring an employee to a different job or location in the absence of any stated or implied contractual right to do so
- failing to provide a safe place of work
- subjecting a supervisor or manager to unwarranted criticism or abuse in the presence of colleagues or subordinates

## Next steps

- The Acas Helpline can offer advice and information on constructive dismissal. Contact 08457 47 47 47; [www.acas.org.uk](http://www.acas.org.uk)

## Handling redundancy

**If there is a change in the way your business operates or you experience a reduction in business, there may no longer be a job for an employee to do, so their position becomes redundant. Redundancy can be one of the most intimidating aspects of running a business, but following established guidelines will ensure you follow the correct path**

Redundancy is when you dismiss an employee because:

- you close your business
- you close the employee's workplace



*When we first took on staff we used information from Acas. We also engaged an employment advisory service to make sure our people policies were absolutely clear*



Mark Baker  
Glevum Security Ltd  
security services  
Gloucester

- there is a diminishing need for the employee to do work of a particular type

Normally the job must have disappeared before you consider redundancy, for example through a decline in business or the introduction of automated equipment. You must take reasonable steps to avoid compulsory redundancies by considering alternatives such as short-time working, early retirement or shedding temporary or contract labour.

Selection should always be objective. If you base it on performance, you'll need to back it up with evidence — perhaps from an existing appraisal system.

People whose jobs are made redundant have the right to be offered suitable alternative employment wherever possible. And most employees who are made redundant have the right not to be unfairly dismissed. Employees with less than one year's service don't have the right to complain to an employment tribunal, unless the reason for dismissal is automatically unfair (see the sections above, Valid Reasons For Dismissal And Dismissals Which Are Automatically Unfair).

Employees who are made redundant have the right to reasonable time off on full pay for job-hunting or to arrange training. There are minimum levels of redundancy pay that employees may be entitled to



(see Qualifying For Redundancy Pay below).

If you are making more than 20 employees redundant within a 90-day period, you must consult with employees' representatives (or a trade union that the employees belong to which is recognised to negotiate on their behalf). You must also notify the Department of Trade and Industry by letter or using form HR1 (see **Next steps** below).

When the consultation begins, you must give employees, their representatives or the union written details of:

- the reason for the redundancies
- numbers and types of the employees involved
- the total number of employees of each of these types you employ at the establishment
- how you plan to select the employees to make redundant
- how you'll carry out the redundancies
- how you'll calculate redundancy payments

Consultation with employees or unions does not have to end in agreement, but it must be properly carried out. And while consultation is not a statutory requirement if fewer than 20 employees are to be made redundant, it is advisable as best practice.

Acas provides comprehensive guidance on handling redundancy that is strongly recommended (see **Next steps** below).



*We first used Business Link to help us expand. We knew about engineering but not so much about other aspects of business. Now we're using them to help us achieve Investors in People.*



John Burke  
JEB Contractors  
electro-mechanical  
contractor  
Sunderland

#### Next steps

- See *Valid Reasons For Dismissal*, page 82
- See *Dismissals Which Are Automatically Unfair*, page 83
- For more information read: *Redundancy Handling (ACAS/B08)*. Contact 08702 42 90 90; [www.acas.org.uk](http://www.acas.org.uk)
- Redundancy Entitlement: *Statutory Rights (PL808)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)
- If you make more than 20 people redundant within a 90-day period, you should obtain form HR1 available from the Redundancy Payments Office or your local Jobcentre Plus. Contact Redundancy Helpline 0845 145 0004 or [www.dti.gov.uk/er](http://www.dti.gov.uk/er)
- For more on consultation read: *Redundancy Consultation And Notification (PL833)*. Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

### Qualifying for redundancy pay

**You are required to pay certain minimum amounts to employees who qualify for redundancy pay when they lose their jobs**

Employees are entitled to statutory redundancy pay if they are made redundant and have at least two years' continuous service since their eighteenth birthday and are under 65 or the normal retiring age for the job.

Payments are based on the length of the employee's continuous service and their weekly pay — though you can pay more if you wish:

- service is counted up to a maximum of 20 years
- service between the ages of 18 and 22 counts for half a week's pay
- every year's continuous service between the ages of 22 and 41 is worth one week's pay
- every year's continuous service from the age of 41 onwards entitles the redundant employee to 1.5 weeks' pay

A week's pay is based on actual income or average weekly earnings, but is currently capped at £270.

Statutory redundancy pay is free of tax and National Insurance contributions; any additional severance pay can usually be paid tax-free up to a current total of £30,000, though this may depend on the terms of the employment contract.

#### Next steps

- *For more information read: Redundancy Entitlement: Statutory Rights (PL808). Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)*
- *The Acas Helpline can offer advice and information on redundancy issues. Contact 08457 47 47 47; [www.acas.org.uk](http://www.acas.org.uk)*

## Sale or transfer of a business

**Employees' rights are protected when the business they work for is sold or given to another member of the owner's family to run. They cannot be fairly dismissed unless you can prove there are good economic, technical or organisational reasons for doing so**

Regulations protect employees' terms and conditions of employment when the business they work for is transferred to a new owner (often known as the transfer of an undertaking). This can be when all or part of a business is sold as a going concern or given to another member of your family to run.

An employee's period of continuous employment isn't broken by the transfer.

If you're the new owner of a transferred business, you can't pick and choose which employees to take on. You take over the contracts of all employees who were employed in the business immediately before the transfer — and those who would have been employed if they hadn't been unfairly dismissed for a reason connected with the transfer.

If you're transferring your business to someone else, you must let employees who will be affected know and consult their representatives. These can be

officials of a recognised trade union or representatives elected by the employees.

Neither the old employer nor the new one can fairly dismiss an employee because of the transfer unless there's an economic, technical or organisational reason that involves making changes to the workforce. You'll need to be able to show that you acted reasonably in using one of these justifications.

You can't change the terms and conditions of transferred employees unless their contracts allow you to do so.

The only contractual rights which aren't transferred relate to occupational pensions. However, if you don't provide very similar overall terms and conditions — including pension arrangements — an employee may have a claim for unfair dismissal. You also take over any collective agreements made on behalf of employees.

#### Next steps

- *For more information read: Employment Rights On The Transfer Of An Undertaking (PL699). Contact [www.dti.gov.uk/er](http://www.dti.gov.uk/er)*