

How can I dismiss an employee?

In the unfortunate event that you must dismiss an employee for misconduct or poor performance, there are certain steps and measures to be followed in order to avoid the risk of disputes and litigation.

Never act on impulse

Never fire an employee impulsively, even for gross misconduct, as this can leave you vulnerable to unfair dismissal claims. Dismissing an employee should be a last resort, after following the procedures discussed below. Importantly, a solicitor specialising in employment law should be consulted before taking any action. This will ensure that the conflict is properly managed and that you comply with the Advisory, Conciliation and Arbitration Service (ACAS) guidelines on how to dismiss an employee.

Follow the ACAS Code of Practice

The ACAS statutory Code of Practice (Code) on disciplinary and grievance procedures outlines the fair and proper steps for taking disciplinary measures before dismissing an employee. Although the Code is not legally enforceable, it will be taken into account by employment tribunals when considering cases.

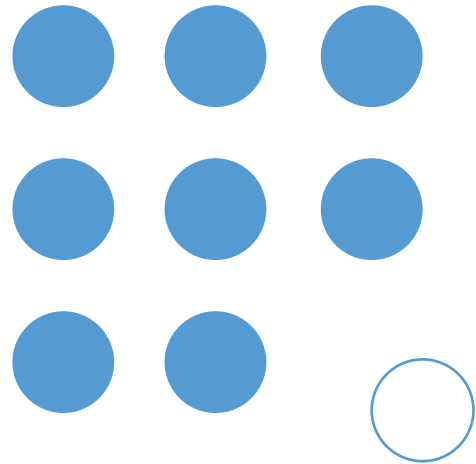
Be consistent

Firstly, the Code stipulates that when any disciplinary situations arise, employers should handle them in a consistent and timely manner, without unreasonable delays or varying procedures for different employees.

Inform the employee

Before the employer takes action, employees must be informed in writing of the issue at hand. This notification should outline the details of the disciplinary matter, including possible consequences. Copies of written evidence, such as witness statements, should also be given to the employee prior to any disciplinary hearing.

Investigate the facts



Upon receiving the written notification, employees should be given the opportunity to plead their case. Together with this step, employers should also conduct investigations to determine the facts of the situation before making a decision. This may entail holding an investigatory meeting with the employee and his/her representative where applicable.

Hold a formal disciplinary meeting

Prior to the decision for dismissal, a disciplinary meeting must be held with the employee and, if requested, the employee's representative or 'companion'. Although the employee should be given time to prepare, the meeting should be held without undue delay. During the meeting, the employer must explain the grievance against the employee and go through any evidence, referring to the employee's contract and the employee handbook. Employees must be free to ask questions, respond to allegations, present evidence, and call on relevant witnesses. If either the employee or employer intends to call on witnesses during the meeting, advance notice should be given.

Consider a written warning

Following the disciplinary meeting, if the employee has not been able to disprove his or her misconduct or unsatisfactory performance, it is common for an initial written warning to be given. In the event of further misconduct or poor performance, a second, final written warning should be given before deciding on dismissal. Note that if an employee repeatedly fails to attend a disciplinary meeting, a final decision can be made based on existing evidence.

Dismissal

If, after the disciplinary meeting, the employer decides that the employee's actions or performance warrant dismissal, the employee should be informed as soon as possible in writing. The employer must also confirm the reasons for dismissal, and inform the employee of the end date of the employment contract, giving a suitable notice period.

Prepare for an appeal

Note that employees do have the statutory right to appeal their dismissal or disciplinary actions against them. Employers should consequently be prepared to hold an appeal hearing, which should be requested by the employee in writing. Whatever their decision, employers must inform employees of the hearing's outcome promptly.

Seek expert counsel

As mentioned above, an experienced specialist solicitor should always be consulted before taking disciplinary action against an employee.

For more information or for expert advice on business or personal legal issues, call us on 020 3475 6751 or via email at info@carterbond.co.uk

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