

**Grievance, Mediation &**

**Disciplinary**

**HR Guide**

**Grievance, Mediation & Disciplinary – HR Guide**

# Introduction

This guide covers a range of information which includes:

* Grievance procedure
* Mediation
* Disciplinary procedure
* Right to be accompanied

**See below for more detail**

# Grievance procedure

Once the informal approach to correct minor workplace issues has been exhausted, employers are encouraged to use their formal processes in order to move with the matter forward.

In these situations having a well written and above all compliant grievance and disciplinary policy is important. Following these processes should allow you to address the issue without falling foul of the law.

Employers should ensure that a grievance procedure is in place which follows the basic practical guidance outlined in the revised ACAS Code of Practice on Discipline and Grievance.

Although a failure to follow the Code does not, in itself, make an employer liable to proceedings, Tribunals will take the code into account when considering relevant cases, and are also able to adjust any awards by up to 25 per cent.

This procedure must include the right for the employee to be accompanied in grievance hearings. It must give the employee the right to appeal against the initial decision.

Employers are encouraged, wherever possible, to attempt to resolve all grievances informally to avoid a formal grievance being presented. What should employers do if a formal grievance is presented?

In the event of a formal grievance being presented by an employee, employers should arrange a meeting without reasonable delay in order to discuss the complaint.

Employees have the right to be accompanied by a workplace colleague or a Trade Union Official at all formal grievance hearings.

Once the complaint has been fully investigated the employer should take one of the following routes:

* If a grievance is upheld, the employer should confirm in writing the result and then take the appropriate corrective action.
* If a grievance is partially upheld, the employer should confirm in writing the outcome, giving the employee the right to appeal and then take appropriate action.
* If the grievance is refuted, the employer should confirm in writing the outcome, giving the employee the right to appeal.
* If the employee appeals against the decision, the employer should arrange for the next level of the grievance procedure to be implemented.

# Mediation

Mediation is increasingly being used to resolve disputes in many areas of life and is becoming particularly prominent in employment. It is one of the processes within the alternative dispute resolution (ADR) spectrum and often involves a neutral third party bringing two sides together with the aim of reaching a mutual agreement.

Workplace mediation is used when an employer has a dispute with an employee. Mediation is an informal, confidential and entirely voluntary process in which an impartial third party mediator assists the parties involved in a dispute to try and reach a mutually agreeable solution, with a view to preserving the parties’ relationship. The process can only take place if both parties have agreed to it.

During the process, each party can speak openly about what has caused the disagreement and how they think it can be best resolved to find an alternative dispute resolution. Concessions from each party may have to be given to enable the process to move forward. There is not a resolution unless both parties agree to it.

Our mediation policy advises employees of the existence of mediation as a method of resolving workplace disputes.

# Disciplinary procedure

The aim of any disciplinary procedure is to ensure consistent and fair treatment for all. Most discipline procedures will be constructed to follow the guidelines set out in the ACAS Code of Practice on the subject.

The Code of Practice is designed to help employers, employees and their representatives deal with disciplinary situations in the workplace. Disciplinary situations include misconduct and/or poor performance.

If employers have a separate capability procedure they may prefer to address performance issues under this procedure. However, the basic principles of fairness set out in the Code should still be followed.

The Code emphasises that fairness and transparency will be promoted by developing and using clear and consistent rules and procedures for handling disciplinary situations.

They should be set down in writing, be specific and clear.

Ensure that your employees and managers understand what the rules and procedures are.

It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used.

Where formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case.

Employment tribunals will always take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in the Code.

However, in all cases:

* Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
* Employers should carry out any necessary investigations, to establish the facts of the case.
* Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
* Employers should allow employees to be accompanied at any formal disciplinary meeting.
* Employers should allow an employee to appeal against any formal decision made.

Wherever possible, when an appeal is held, this should be heard by another person not connected to the original disciplinary hearing. Only in exceptional cases should the same person to hear both the disciplinary and the appeal hearings.

# Right to be accompanied at a disciplinary

Workers have a statutory right to be accompanied by a fellow worker or Trade Union official when they are required to attend disciplinary or grievance hearings and may request to exercise this right either verbally or in writing. This right applies to all workers regardless of their length of service and specifically includes agency and home workers. Casual, temporary and part-time workers are also covered.

The choice of companion is for the employee to decide and is not for the employer to comment upon, provided that the chosen employee falls into one of the two categories above. It is possible for contractual provisions under the Contract of Employment to extend the categories of person who may accompany workers, for example to include partners, spouses or legal representatives; although this is not often recommended.

The person whom the worker chooses does have the right to refuse to accompany the worker but, if they consent to attend, the companion should be given a reasonable amount of paid time off during working hours to participate in and prepare for the hearing.

During hearings, the companion has the right to address the hearing, to confer with the employee, to put across the case, to sum up the case and to respond on the employee’s behalf. However, the companion has no right to answer questions on the employee’s behalf, address the hearing if the employee does not want that to happen or to prevent the employee from explaining their case.



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