Code of Practice –
Disciplinary and Grievance Procedures

Introduction

This code of practice has been prepared by the Minister for Social Security (the 'Minister') in order to assist both employers and employees deal with matters related to discipline and grievance in a fair and appropriate way. It recognises that, while employees have a right to be treated reasonably, employers also have a right to manage their businesses and to ensure that employees conduct themselves in a way that contributes to business success.

While larger businesses are likely to have more detailed and extensive procedures, it is important to recognise that the obligation to behave reasonably applies to businesses of all sizes and in all sectors. In deciding cases of unfair dismissal, the Jersey Employment Tribunal (the 'Tribunal') must take into account the employer's size and administrative resources, but this does not mean that small businesses are entitled to behave unreasonably. The principles set out in this code of practice are designed to apply to employers with just one or two employees just as much as they apply to larger businesses with hundreds of employees.

In preparing this code of practice, the Minister has had careful regard to the need not to burden employers with excessive bureaucracy. It is hoped that this code of practice can contribute to the success of businesses in Jersey by setting out a clear framework of reasonable and fair treatment. This will help employers deal effectively with issues that arise in the workplace and help employees to raise their concerns in a constructive and proportionate manner and to act reasonably throughout the process.

The principles set out in this code of practice are designed to be as straightforward as possible. Employers who are unsure as to how a particular case should be handled can seek free advice and guidance from the Jersey Advisory and Conciliation Service (JACS).

Status of this code of practice

This code of practice has been approved by the Minister under Article 2A of the Employment (Jersey) Law 2003 (the 'Employment Law'). Breach of the terms of this code of practice does not of itself amount to a breach of the Employment Law, but in cases where it appears to the Tribunal or a court that any provision of this code of practice is relevant to a question arising in any proceedings, then that provision must be taken into account in determining the question (Article 2B of the Employment Law).

Note: For further guidance and example policies please go to www.jacs.org.je

Code of Practice on Discipline and Grievance Procedures

When this code of practice applies

1. Part 1 of this code of practice applies in disciplinary situations which can include misconduct and poor performance. If employers have a separate capability procedure, they may prefer to address performance issues under that procedure. If so, however, the principles of fairness set out in this code of practice should still be followed, although they may need to be adapted. This code of practice is not intended to be followed in cases of redundancy dismissals or the non-renewal of fixed term contracts on their expiry. Nor is it intended to cover dismissals based on the fact that the employee is unable to work because of sickness or injury. It is important to remember however that in all such cases the employer will still be under an obligation to behave reasonably in making a decision to dismiss.

2. Part 2 of the code of practice applies in grievance situations which arise where employees raise concerns, problems or complaints with their employer.

Part 1 - Handling disciplinary issues

Behaving reasonably – fundamental principles

3. The fundamental requirement in dealing with issues of discipline is to behave reasonably. What is reasonable will vary depending on the circumstances of the case including the size and administrative resources of the employer. However employers of all sizes should be in a position to observe the basic standards of reasonableness. In practice, this means that:

    - action should not be taken in the heat of the moment, but only after appropriate consideration and reflection

    - before taking action, the employer should carry out an investigation aimed at discovering the facts

    - the employee should always be fully informed of the grounds on which the employer is considering disciplinary action

    - the employee should have a reasonable opportunity to put his or her side of the story

    - any explanation put forward by the employee should be considered by the employer with an open mind

    - any disciplinary penalty should be proportionate to the offence committed and appropriate in the circumstances

    - where the employer has taken disciplinary action, the employee should have the right of appeal.

4. The provisions of this code of practice are designed to ensure that these fundamental principles of fairness are followed by employers of all sizes. In determining any complaint, the Tribunal or a court will take this into account, along with any other information that is relevant to the case. A failure to observe any of the above fundamental principles may result in the Tribunal or a court deciding that a dismissal was unfair.

Dealing with matters informally

5. Many low level problems of misconduct can be dealt with informally without the need for a hearing. Often a 'quiet word' with the employee is all that is needed to solve the problem.

6. Dealing with matters informally is a normal part of everyday management and there is no need to follow a particular procedure. However it is a good idea for managers to make a note of when such interventions occurred for future reference.

7. Where an employer considers there to be a possibility that disciplinary action might be taken in any particular case (e.g. a written warning or dismissal), it is important that a formal disciplinary process is followed to ensure that the matter is dealt with fairly.

Taking formal action

8. Where serious misconduct has occurred or where attempts to change behaviour through informal means have failed then it will be appropriate for the employer to take formal disciplinary action. Where there is a written disciplinary procedure (see the JACS Model Disciplinary Policy) then this should be followed. However the following standards should be observed whether there is a written procedure in place or not.

Conducting a fair investigation

9. Formal disciplinary action should not be taken against an employee without a fair investigation first taking place. See the JACS guide to Disciplinary Investigation.

10. A fair investigation will require the collection of evidence about the alleged misconduct which might include appropriate documentation and the holding of investigatory meetings with relevant individuals within the business. Where reasonably practicable, this will require an investigatory meeting with the employee who is the subject of the allegation.

11. A fair investigation is open-minded. The employer must be looking for evidence which tends to show that the employee is innocent just as much as evidence tending to show that he or she is guilty.

12. A fair investigation should be reasonable given the circumstances and sufficiently thorough, particularly when key facts are in dispute. A failure to

pursue a plausible line of inquiry or speak to witnesses who are likely to have relevant evidence may be sufficient to render any subsequent dismissal unfair.

Arranging a disciplinary hearing

13. If it is decided that there is a disciplinary case to answer and a hearing is to be held, the employee should be given adequate notice of the hearing in writing, including the date, time and place of the hearing.

14. The notice to the employee should contain sufficient information about the alleged misconduct or poor performance and its possible consequences, as well as copies of all the written evidence that the employer intends to rely on. This should be given to the employee within sufficient time before the hearing to enable the employee to answer the case. The same written evidence should be provided to the person who will lead the hearing.

15. In straightforward cases, one or two days' notice of a hearing may be appropriate. However the more complicated the allegations, and the more detailed the evidence, the longer an employee will need to prepare for the hearing. The period of notice will also give the employee time to find a representative. The law governing the right to a representative is explained in the JACS Model Disciplinary Policy.

16. The hearing will usually be held in the employer's offices or some other suitable location. The hearing should be conducted in private, away from other employees. More information is provided in the JACS guide to Disciplinary Investigation.

Conducting a fair hearing

17. A fair hearing is one with no prejudged outcome. Whoever conducts the hearing must do so with an open mind. Wherever possible the hearing should not be conducted by the same person who conducted the investigation. Where the size of the employer means that this is not practicable then the employer needs to be especially careful to maintain an open mind.

18. At the outset of the hearing the employer should explain the purpose of the hearing and the details of the allegation that have been made.

19. The evidence that has been gathered in the investigation should then be examined and the employee invited to comment on any aspect of it.

20. There is no requirement for witnesses to be brought into the hearing in person. It is usually sufficient for witness statements to be presented and discussed. However, where witnesses are invited to attend the hearing in person, the employee should be allowed to put questions to them about their evidence.

21. The hearing must be conducted in a way which allows the employee to answer the case. If questions are asked of anyone present during the hearing, the questions should genuinely be aimed at discovering the facts.

22. The employee should be given the opportunity to be represented at the hearing by an appropriate representative. The law governing the right to a representative is explained in JACS guidance.

23. The employer should make a written note or minute of the hearing which should be agreed by all parties who were present at the hearing. If agreement cannot be reached on the content of the note or minute, then both versions of the account should be placed on file.

Making a decision

24. Once the evidence has been heard, the person conducting the disciplinary hearing should adjourn the hearing to consider what findings to make and what, if any, action to take. This involves reaching a conclusion as to what has happened and the extent to which this constitutes misconduct.

25. Before deciding what action to take, the employer should consider all the surrounding circumstances including whether there are any particular circumstances or other facts that should be taken into account which may make the conduct less serious.

26. Although the results of the disciplinary hearing may be explained orally, they should always be followed up in writing.

27. The employer should set out the findings that were made and whether any disciplinary action is to be taken.

28. Disciplinary action will normally take the form of a warning or a decision to dismiss. Unless specifically provided for in a contract of employment, sanctions, such as demotion, a reduction in salary or a loss of seniority should be agreed with the employee, otherwise such action might amount to a breach of contract which could result in a claim to the Tribunal or a court. where contracts permit such sanctions. If the contract does not permit demotion or salary reduction the employer may be in breach of contract unless the employee agrees to the sanction being imposed.

Warnings

29. In most cases where the employer finds that misconduct has occurred, it will be appropriate to issue a written warning to the employee.

30. A warning should identify the misconduct that has been found to have taken place and warn that further misconduct on the employee's part will lead to further action.

31. A warning should be time-limited. Typically a written warning will last for either six months or one year and should be kept on the employee's personal file for that period.

32. Once that time period has expired then the warning should be disregarded in any future disciplinary proceedings.

33. Where further misconduct is found to have taken place within the period specified in the warning, then it will usually be appropriate to impose a 'final written warning'. A final written warning may also be imposed for a first offence if the conduct is sufficiently serious to warrant it.

34. A final written warning should identify the misconduct and warn that further misconduct will lead to dismissal.

35. A final written warning should also be time limited and should not normally last for longer than 12 months.

36. It will usually be fair to dismiss (with notice) an employee who has an active final written warning in place and who then commits an act of further misconduct even if that misconduct would not justify dismissal on its own.

Gross misconduct

37. Where an employee commits an act of gross misconduct then it will usually be fair to dismiss him or her without notice even if no previous instances of misconduct have occurred.

38. However, even in cases of gross misconduct, the employer should still follow a fair procedure because an act of gross misconduct does not necessarily make a dismissal fair. The fact that the employee is accused of gross misconduct makes it even more important that the principles outlined in paragraph 3 of this code of practice are adhered to.

39. Gross misconduct is an act of misconduct which is so serious that it can be said to fundamentally undermine the trust and confidence that should underpin the employment relationship. Examples are:

    - Theft and dishonesty
    - Violent or threatening behaviour
    - A refusal to obey the employer's reasonable instructions
    - Serious bullying or harassing of colleagues
    - Working while under the influence of drink or drugs
    - Operating a business in competition with the employer

40. This is not an exhaustive list. The employer's disciplinary rules and procedures may set out further examples particular to the business concerned. Ultimately whether conduct amounts to gross misconduct is a matter which depends on a wide range of circumstances and needs to be judged on a case by case basis.

The right to be represented

41. An employee has a right under Part 7A of the Employment Law to be represented at a disciplinary hearing by either a colleague or a trade union official. Full details of the right are explained in JACS guidance.

42. From the point of view of reasonableness, the right to be represented is essential in allowing the employee to state his or her case. The representative must be

allowed to make representations to the employer and to confer with the employee. On the other hand, the representative should not answer questions put directly to the employee – although he or she may make representations about them.

The right to appeal

43. An employee who has been subject to disciplinary action should be given the right to appeal against the decision.

44. The appeal should be conducted by a more senior level of manager than presided over the disciplinary hearing, if possible, or at least someone who has not previously been involved in the case.

45. This may not be possible, but an appeal should still be offered so that the employer (or the person nominated by the employer) has a chance to reconsider the action that has been taken and listen to any fresh arguments that may be presented. Once the appeal has been heard, the person conducting the appeal should adjourn the hearing to consider the information before making a decision.

46. An appeal should essentially abide by the same principles of fairness as a disciplinary hearing – including the right of the employee to be represented. It may amount to a complete rehearing of the case, if appropriate, but it is also acceptable to focus on particular grounds of appeal raised by the employee.

Part 2: Dealing with grievances

Raising a Grievance

47. Grievances are concerns, problems or complaints that employees raise with their employers. A reasonable employer will seek to deal fairly with grievances raised by an employee. See the JACS Model Grievance Procedure.

48. An employee who has a grievance should seek to resolve the matter informally wherever possible by discussing the issue with his or her manager. An employer should encourage employees who are unhappy to raise this with them at an early stage rather than allow problems to grow and fester.

49. Where the employee believes that an informal resolution is not possible then he or she should put the grievance in writing and give that to the appropriate manager. The grievance should be clearly and concisely stated and should set out what action the employee wants the employer to take in response.

50. On receiving the grievance, the employer should organise a hearing with the employee to discuss his or her concerns. This should be arranged as quickly as possible and take place at a reasonable time and place.

51. The employee has the right to be represented in this hearing in the same way and on the same basis as in a disciplinary hearing.

Conducting a grievance hearing

52. At the hearing, the employee should be asked to put forward his or her complaint. This may be done by the representative on the employee's behalf, although the employee should be prepared to answer direct questions from the employer.

53. It may become clear during the hearing that an investigation is needed to discover what has actually happened. In such a case, the hearing should be adjourned and an investigation should then take place.

54. If possible, the investigation will be carried out by a manager who will not be conducting the grievance hearing itself, but this is less important in the case of a grievance hearing than it is in relation to a disciplinary matter. In smaller businesses, the investigation will often be carried out by the same manager who will eventually conduct the hearing.

55. When the investigation is concluded, the grievance hearing can be reconvened.

56. If the grievance is upheld, the employer will need to decide what action to take. This can be as simple as offering an apology to the employee, or it may involve reversing a decision or agreeing to changes in working practices.

57. If the grievance is rejected, this should be clearly explained to the employee along with the basis for the decision. While this may be done orally, it should also be confirmed in writing.

58. The employee should be informed of the right to appeal if he or she is not content with the decision.

The right to appeal

59. An employee who feels that their grievance has not been satisfactorily resolved should advise the employer in writing of the grounds for their appeal. An appeal should essentially abide by the same principles of fairness as a grievance hearing – including the right of the employee to be represented.

60. The person conducting the appeal should consider carefully the points made by the employee and should adjourn the hearing to consider the information before reaching a decision.

61. When a decision has been reached this should be communicated to the employee and confirmed in writing. The letter to the employee should indicate that the decision is now final.

After the grievance

62. Once a grievance has been concluded, the employer may want to give consideration to what actions could be taken by the employer and/or the employees to improve relationships in the workplace.

Collective grievances

63. This code of practice does not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union where there is a trade union recognition agreement in place with the employer. These grievances should be dealt with in accordance with the employer's collective grievance process or the recognition agreement, as appropriate.

📞 Need Help? Contact JACS for advice:
- Phone: (01534) 730503
- Email: jacs@jacs.org.je

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