

ATTENDING THE HEARING

DISCIPLINARY FACTSHEET 5

Attending the disciplinary hearing

Although attending a disciplinary hearing can be difficult you should do your best to go. If you don't, you are more likely to be disciplined and dismissal is a more likely outcome. Also, it will probably make it harder to win a claim for unfair dismissal in the future.

You might feel that whatever you say at the hearing will not make any difference because your employer has already made their decision. It is still important for you to attend to put forward your defence and ensure that there is an accurate record of what you said. The minutes from the disciplinary hearing are an important document at any future employment tribunal hearing.

The appeal should be heard by somebody who has not been involved in the investigation or disciplinary process. Usually it should be somebody who is senior to the person who took the decision to dismiss you. However, in smaller organisations that is not always possible.

Putting forward your case

Before attending the hearing you should think about the points you want to make to show that the allegations against you are not true, or why you should not be disciplined or dismissed.

If the allegation against you is misconduct it is important to understand that your employer does not have to prove that you committed the misconduct. It is enough that they genuinely believe you did so, there were reasonable grounds for holding that belief and a proper and an adequate investigation was carried out.

CONTACT US

If you have any questions about the contents of this factsheet or you would like more information please contact us. We can be contacted by phone on 07972 437396 or 0121 6631224, email trevor@bhampc.co.uk, via our website www.bpcentre.org.uk or in person at Room 118 Gazette Buildings, 168 Corporation Street, Birmingham B4 6TF (please ring beforehand to ensure we are available).

Be honest and open. Where criticisms of your performance are justified it is best to accept them and explain why the problems arose and what you will do to prevent them arising in the future. Try not to get angry as you want to create a positive impression and show your employer that you are a good employee and an asset to the organisation.

You might want to make some of the following points:

- You have a good disciplinary record
- You have a good work record and received good performance reviews
- The amount of time you have worked for the employer
- There is insufficient evidence to reasonably conclude that you were guilty of the alleged offence
- You haven't received adequate training or support which contributed to the problem occurring
- You were not aware of the policy or procedure that you should have followed
- It was usual practice for the policy not to be followed and management were aware of this
- There are personal factors that explain what happened such as domestic problems, health issues
- You were provoked
- Other employees have been treated differently for committing the same offence

Dismissal due to long-term sickness

If your employer has invited you to a meeting and told you that dismissal is a possibility because you have been absent from work due to long-term sickness the following points may be relevant:

- If you believe that you will be fit to return to work in the foreseeable future you should tell your employer when you believe you will be back at work.
- It would help if you provide a letter or report from your doctor confirming when you should be able to return. Your doctor might be able to recommend steps your employer could take to support you back into work, such as a phased return or lighter duties for a period of time.
- If you are a disabled person as defined by the Equality Act 2010 your employer is under a duty to make reasonable adjustments to help you back to work. What is a reasonable adjustment can vary greatly, depending upon your circumstances and the nature of the work you do. You could ask to be seen by occupational health to help identify possible reasonable adjustments.
- It is likely to be unreasonable for your employer to dismiss you without basing their decision on proper medical evidence.

The definition of disability in the legislation is not necessarily the same as you might use in everyday conversation. A worker is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Long-term means it has lasted or is likely to last for at least 12 months. **Contact us if you need further information about disability issues.**

The record of the hearing

Your employer should make a note of the disciplinary hearing. The record does not have to be word-for-word (verbatim) but it should include the main things said by you and your employer. If somebody attends the hearing with you then you can ask them to write down the important points. At the end of the meeting your employer might ask you to read through the handwritten minutes and sign them as a true record. If the minutes do not include something you said which is relevant then you should ask for it to be included. Also, if you believe something is wrong then ask for it to be corrected. Some employers will send you a typed copy of the minutes after the hearing which you should carefully check and return with any amendments you would like made.

The record of the disciplinary hearing is an important document and will be a key piece of evidence if you have to attend an employment tribunal at a later date. Only sign the minutes as being a true record once you accept them as being an accurate record.

If you are not sure if the minutes are accurate and need time to study them, you do not have to sign them at the end of the meeting. You should ask for a draft to be given to you to take away. It is best to check them as soon as possible, while what was said is fresh in your mind.