

## OUTCOME AND APPEALING

### DISCIPLINARY FACTSHEET 6

## The outcome and appealing

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You should check your employer's disciplinary policies and procedures to see the stages that should be gone through. It is common for an employer to have the following stages:

- Verbal warning
- First written warning
- Final written warning
- Dismissal

However, it might be reasonable to skip a stage if the offence is sufficiently serious. If the allegation is of gross misconduct (such as theft, assault, drunkenness), even if it is a first offence, then dismissal is likely to be reasonable. The disciplinary policy should give examples of what acts are considered to amount to gross misconduct.

### Appealing

If you believe that you should not have received a disciplinary sanction you should consider appealing the decision. It is important to appeal within the time period set by your employer. This should be done in writing and either sent by recorded delivery or hand delivered and a receipt obtained. Your employer might be willing to accept your appeal by email, in which case you should check who you should send it to.

### 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](mailto:trevor@bhampc.co.uk), via our website [www.bpcentre.org.uk](http://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).

If you have not been dismissed but received a warning that you think you should not have received you should consider appealing the sanction. If you don't the warning may make it more likely that you will be dismissed if you face disciplinary action in the future.

Your letter of appeal should explain why you believe the decision was wrong. You will be able to go through your appeal letter at the appeal hearing and expand on what you have written.

In most cases the appeal meeting is not a rehearing of your entire case. Instead you should concentrate on why you believe the original hearing got the decision wrong.

Depending on what's happened, when you appeal against the decision you can:

- **Challenge the way the disciplinary action was taken against you.** For example, if your employer did not follow their own disciplinary policy or the ACAS Code of Practice.
- **Challenge the evidence on which your employer based their decision.** For example, if they believed something to be true without evidence or without enough evidence to support it.
- **Challenge the decision your employer took.** For example, if they have acted differently in the past in similar cases or the disciplinary action they're proposing is too harsh.
- **Give new evidence or reasons why disciplinary action shouldn't be taken.** For example, you may want to point out your clean disciplinary record, work record and length of service, or explain that you need training or adjustments to your work to avoid the problem happening again.

If you have been dismissed and your appeal is successful, it is as though the dismissal never happened. You will return to work and receive arrears of pay for the period from your dismissal up to your reinstatement. If your appeal is successful it is unlikely that you will be able to argue that you have been unfairly dismissed at an employment tribunal.

If you believe that the decision to dismiss you was unreasonable but you do not feel able to return to work you should **not** appeal. We suggest you contact us for advice before deciding not to contest your dismissal by appealing.

## **Time limits for making a claim to the employment tribunal**

You usually have to have been employed for at least 2 years to be able to make a claim to the employment tribunal that your dismissal was unfair. When your employment started and ended are important dates and it is essential that you know the exact details. If you believe that the reason for

your dismissal is because of your age, disability, gender reassignment, marriage or civil partnership, nationality, pregnancy or maternity, race, religion or belief, sex, sexual orientation then you can make a claim for discrimination regardless of how long you have been employed. The 2 year rule does not apply if your dismissal is due to whistle-blowing. **Please contact us for further information if you think this is the case.**

There are strict time limits for making a claim to the employment tribunal for unfair dismissal or discrimination. You first have to contact ACAS and go through the Early Conciliation process. You must start the Early Conciliation process within 3 months less one day from the date of your dismissal.

The “clock” doesn’t stop because your appeal has not been heard or you have not been informed of the outcome. Therefore, if you were dismissed on 12<sup>th</sup> March you must have contacted ACAS by 11<sup>th</sup> June. **Contact us for further information about the time limits about making a claim to the employment tribunal and the ACAS Early Conciliation process.**