Guide for Employees Accused of Misconduct

HR Advice for Employees

Purpose

Misconduct is taken seriously by the Council. Accusations of misconduct have to be investigated. If alleged misconduct is found to have happened warnings or dismissal may result.

Being accused of misconduct is not disciplinary action.

This guide explains the basics of the disciplinary process. It will help you understand your role in the process. It will explain what you can do to help you get a fair hearing.

Who Can Help?

If you are a member of a recognised trade union you can contact it for help. Your union is there to help you understand your rights. Your union can also arrange for a union representative to accompany you at a hearing. The union representative will have had training in handling disciplinary situations.

If you are not in a union you still have the right to be accompanied. The person accompanying you is there to support you through the process.

The person accompanying you is called your “companion”. There is a section in the Discipline Policy and Procedure that describes the role of the companion.

Employee Counselling Service

You can use the employee counselling service for counselling about any issue, including being accused of misconduct. Should you wish to access this service, contact your line manager in the first instance.

The Discipline Policy and Procedure

You should read the policy and procedure.

The procedure is there to encourage proper standards of conduct and behaviour. There is a section on examples of gross misconduct and misconduct. Gross misconduct means behaviour that you might be dismissed for. Misconduct means behaviour that you might receive a warning for.

The reason gross misconduct might lead to dismissal is because it covers serious incidents that most people would know are wrong. If someone commits gross misconduct he or she may be dismissed. This is because the misconduct has been so serious it means the Council can no longer trust the person as an employee.

Other misconduct might lead to a warning. A warning is intended to improve behaviour. Repeated misconduct and warnings can also lead to dismissal.
Remember though, just because you have been accused of gross misconduct or other misconduct, this does not mean that dismissal or a warning is the inevitable outcome. The matter will have to be investigated and mitigation will be considered. This is explained in the next sections.

**Investigation**

An investigation means a balanced look at the facts surrounding the accusation. In some situations this will mean collecting factual evidence such as details found in work records, emails, or flexi-time records and so on. In some situations it will mean statements collected from witnesses. Usually, if you are accused of misconduct, you will be interviewed too.

**What Happens Next?**

The next stage will be to decide whether a disciplinary hearing needs to happen. Sometimes the investigation alone will show managers that there is no need for a hearing. In other words the investigation has shown that no significant misconduct seems to have happened.

On other occasions a hearing will be arranged.

**Evidence**

Before a hearing you and your representative will be given a copy of the evidence. Usually, this will be a copy of the investigation report. You should use this to prepare your explanation of what happened.

**The Hearing**

The hearing is intended to consider the evidence. The point of the hearing is to come to a conclusion based on the facts. It is your chance to explain what happened from your perspective. You should also use it to challenge any evidence about you. Your union representative or companion can help you do this.

At the end of the hearing management have to come to a decision about what happened. The hearing will also consider any mitigation you can offer.

If the hearing decides that the incident requires a warning or other action, including dismissal, you will be given the right to appeal. This will be explained to you.

**Mitigation**

Mitigation means extra factors that might excuse what happened. Mitigation has to be relevant and reasonable. An example of mitigation might be that you did not understand the rules. But if the rules were explained or the misconduct was something that any reasonable person would know was wrong that mitigation may not be accepted. Mitigation can include things happening in work or outside of work if these might help explain why the incident occurred.

**Witnesses**

You should not speak to other witnesses before the hearing to try to get them to change what they might say about an incident. Trying to get a witness to change his or her statement might cause management to think that you have something to hide.
Trying to get a witness to change his or her statement could, in itself, be regarded as misconduct.

You will get the chance at the hearing to challenge anything that a witness says that you think is wrong. This includes the chance to ask the witnesses questions about what they say happened.

Suspension

If you are suspended from work because of an accusation of misconduct this does not mean that you are guilty. Paid suspension during an investigation is not a form of disciplinary action. You are not being punished.

You will be paid normally. You must remain available during normal work hours. If you work shifts you might be asked to attend meetings at times during the day when you don’t normally work.

Cooperating With the Process

It is usually in your best interests to cooperate as fully as you can with the process. This means attending meetings, replying to letters promptly and letting management know about any difficulties you have in taking part in the investigation or hearing.

It is part of management’s job to make sure you understand the process. It is also their role to ensure you are treated fairly. If you are not clear about what something means or why the process happens in a particular way you can ask for it to be explained.

You cannot be forced to answer a question, but it is usually best to try to explain your view of the incident as fully as you can.

If a disciplinary hearing is arranged your union representative or companion is there to help you. You should agree with your companion how you will explain yourself and what facts you need to raise. During the hearing you can discuss the case with your representative.

Preparation

A hearing is your chance to explain yourself. The hearing is your chance to question the evidence.

Make sure you prepare in advance.