NEATHOUSE PARTNERS

Guidance note

How to Undertake a Disciplinary Investigation

This guidance note will explain how to conduct a disciplinary investigation.

There may be occasions during an employee's employment where issues present themselves for which you need to undertake an investigation to determine how best to deal with the situation. Subject to what comes to light, this could lead to formal disciplinary action being taken, which could involve one or several employees. This guidance note will explain how to undertake an effective investigation and how to structure the process.

Process

Quite often, unless a matter is so clear cut that it would not be required, an investigation meeting will be necessary as an initial stage of any potential disciplinary process and failure to properly investigate a situation before commencing a formal disciplinary hearing could risk the process being deemed as legally unfair.

Your Neathouse advisor will be able to discuss and advise further on how best to structure this process.

Remember that an investigation meeting is **not** a formal meeting (unlike a disciplinary hearing), and so this is essentially a fact-finding meeting to determine how best to deal with a situation.

Unless you have a policy in place that states otherwise, an employee attending an investigation meeting **does not** have the legal right to be accompanied at the meeting, and the employer **does not** need to give any advance warning of the meeting should it not wish to.

An employer can therefore arrange an investigation meeting in one of the following ways:

1. Formally invite the employee into an investigation meeting by letter/email (your Neathouse advisor can provide this); or
2. Conduct what is known as an ambush meeting, and simply ask the employee into the office when on shift to discuss the issue.

Subject to the circumstances, and so long as your policies permit, option 2 may make for a more successful investigation meeting, as it does not allow an employee time to potentially construct a cover story and catches an individual off guard. It also avoids an employee attempting to delay their attendance at a pre-arranged meeting.

If an employee if off on sickness leave or some other form of leave, and an investigation meeting is required, then obviously option 1 would likely be more suitable.

Remember than an investigation is to:

1. establish the facts as much as possible;
2. see if there is a case to answer;
3. make sure everyone is treated fairly;
4. gather evidence from all sides; and
5. help the employer to see what should happen next.

At any stage of an investigation process an employer can decide to resolve the issue on an informal basis, for example perhaps issuing a letter of concern, or even opt to take no further action if further information has come to light to explain the circumstances, which would make it inappropriate to proceed to a formal disciplinary hearing.

If the employer does not carry out a reasonable investigation, any decisions they make in any subsequent disciplinary hearing runs the risk of being unfair which could lead to potential tribunal claims.

In a disciplinary investigation meeting, the person investigating should be finding out if there is an issue that needs to be addressed, not trying to prove guilt and so they should do their best to:

1. be fair and objective;
2. follow any policies or guidelines your workplace might have;
3. get as much information on the case as is reasonable; and
4. keep the case confidential as much as possible.

The person investigating should also be mindful not to say or do anything to suggest that that the individual **will** be issued with a disciplinary sanction as this would only be decided following a disciplinary hearing and this is only the investigation stage of the process.

Timing

Remember that an investigation process should be prompt and undertaken as soon as possible. If this process is unreasonably delayed, this can lead to the overall process and outcome being legally unfair.

Delaying an investigation can also cause issues from an evidence perspective, as memories can fade and evidence may be deleted, meaning that the findings of a delayed investigation will not be of as much value, and could make it impossible to proceed with disciplinary action.

Confidentiality

The process and any outcome should be kept confidential as much as possible. The person investigating should not discuss the investigation with other employees or with third parties, unless necessary to do so as part of the overall investigation.

Questioning in the meeting

The person undertaking the investigation should be able to ask questions that challenge and test the credibility of the information being given in a manner that is professional and does not intimidate an interviewee.

For example, if the employee admits to having done something, ask why they did this? If they deny this, and there is evidence to suggest they did do this, how do they explain the evidence etc.?

Questioning techniques

There are a number of different types of questions an investigator may use during an investigation meeting to help them control the meeting and gather the full facts of the matter from the interviewee, see some examples below:

Open questions:
Encourage an interviewee to open up. They can provide a rich source of information that an investigator can then go on to explore in more detail.

For example:
- Explain to me exactly what you saw...
- Describe exactly what happened...
- Talk me through what you heard...

Closed / specific questions:
Usually give a Yes, No or definite answer. They can be helpful to gather specific facts and can help focus an overly talkative interviewee.

For example:
- What time did you leave your workplace?
- How many times did that happen?
- Did you speak to your manager about that?
- Who else was there?

Probing questions:
Can test the strength of an interviewee's account and challenge any inconsistencies. However, it is important to phrase these questions, so they are inquisitive rather than interrogative.

For example:
- When you say she was aggressive what exactly do you mean by aggressive?
- You mentioned earlier that X... tell me more about that.

Feelings questions:
Can help to focus an interviewee on what is important to them and reveal their beliefs. However, they should be used sparingly as the meeting is mainly to establish the actual facts of a matter.

For example:
- What was important to you about that?
- What is your main concern about what happened?

Asking "What else?":
Helps an investigator to probe deeper beyond the initial information provided. However, care needs to be taken to ask this sensitively.

For example:
- What else can you tell me about what happened?
- What else do I need to know about the matter?

Disciplinary process

A fair disciplinary process would be as follows:

1. An investigation meeting (if necessary, on the facts), to determine the facts of the matter and explore this further. Following this if it was believed there was enough evidence to progress this to a disciplinary;
2. Invite by letter to a formal disciplinary hearing, following the investigation which would include the following:
   a. The allegation(s) to be answered;
   b. Any specific evidence you intend to rely on so that the employee can be prepared and have chance to respond to this in the meeting;
   c. Be given the right to be accompanied by another employee or a trade union representative;
   d. Be given at least 48 hours' (working) notice of the hearing; and
   e. Be told within the letter what the potential sanction is if the allegations are found to be proven.
      i. Your Neathouse Advisor can provide all the necessary letters required for this process, and if you are an Elite package client, will draft the letter for you.
3. Any dismissal outcome letter would also need to give the right of appeal and advise of who to make that appeal to. The above points would then repeat for any subsequent appeal hearing.

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