

EMPLOYMENT – DISCIPLINARY PROCEEDINGS

As an employer, you will likely encounter situations where an employee's behaviour warrants disciplinary proceedings being brought against the employee. This may result from interactions between the employee and another employee (e.g. bullying) or between the employee and employer (e.g. capability (lack of) or conduct (theft)). There are many reasons why an employer may need to commence disciplinary proceedings. As an employer, you must ensure such proceedings are fair and reasonable. The benchmark that disciplinary proceedings are measured against is the "ACAS Code of Practice on Disciplinary and Grievance Procedures". The Code can be downloaded from the ACAS website and we strongly advise you to follow the Code when conducting disciplinary proceedings or ensure your own disciplinary proceedings reflect what is stated in the Code. The Code carries great weight when an Employment Tribunal is considering whether an employee has a claim for unfair or wrongful dismissal.

Unfair dismissal is where an employee has been dismissed from employment following disciplinary proceedings however the reason for the dismissal is not fair. It may be that the disciplinary proceedings were conducted in a fair and reasonable manner however the actual decision to terminate employment was not fair (that a lesser punishment would have been appropriate). For both employers and employees, it is very important to remember that an employee must have been employed (with the employer concerned) for at least two years before a claim can be brought in the Employment Tribunal for unfair dismissal. An employer needs to think carefully about what action it should take against an employee who is found lacking; dismissal should be the last resort and steps to help the employee should be first explored.

Wrongful dismissal is where the disciplinary procedure itself is not considered to have been fair. Such a claim can be brought at any time following the commencement of the employment (employers must be aware that a "probationary period" at the beginning of the employment does not permit an employer to simply dismiss an employee at the end of the probationary period without cause or not having to follow some form of disciplinary procedure). It is probably fair to say that wrongful dismissal is where employers are at greatest risk. As an employer, you must ensure that you properly investigate any complaint against an employee (being either a complaint from another employee or a complaint from the employer) to get all the facts and ensure that no decision is made regarding the employee's future until such investigation has been completed. Following the ACAS Code of Practice referred to above (if the employer does not have its own disciplinary procedure) will be of great assistance to an employer faced with having to conduct disciplinary proceedings.

Where disciplinary proceedings are necessary, ensure such proceedings are conducted in a fair and reasonable manner; we suggest you follow the **ACAS Code of Practice on Disciplinary and Grievance Procedures** for guidance.

If you need advice in respect of dismissal, either as employee or employer, please contact Andrew Stokes at Alison Fielden & Co Solicitors.