

**Issues to consider when dismissing for misconduct**

*You should take advice before planning any dismissal and at every stage throughout the disciplinary process.*

*The following points are not exhaustive but provide an indication of the factors you may need to take into account when terminating an individual’s employment.*

**The basics: establishing a fair dismissal**

1. Do you have a **potentially fair reason** for the dismissal (i.e. misconduct?)
2. Have you acted **reasonably** in treating that reason as sufficient to justify dismissing the employee?

**In deciding whether you have acted reasonably, always ask**

* 1. Do you **honestly believe** that the employee is guilty of misconduct or not?
  2. Have you **reasonable grounds** to dismiss?
  3. Have you carried out a **reasonable investigation**?
  4. Does your decision fall within **the band of reasonable responses** a reasonable employer might make?

**The practical side: planning a misconduct dismissal**

**Step one: a reasonable investigation**

1. What is/are the allegation(s)?
2. Have you investigated fully?
3. Have you ensured that the investigating officer is not also involved in the disciplinary procedure or with the allegations themselves?
4. Have you considered all relevant documents in detail?
5. Have you interviewed all the relevant witnesses?
6. Have you allowed the employee to put questions to the witnesses?
7. Have you heard both sides of the story?
8. Have you considered all relevant company procedures?
9. Have you followed all lines of enquiry?
10. Have you made enquiries of regulatory bodies where appropriate?
11. Have you considered mitigating evidence?
12. Have you considered the effects of a dismissal on the employee’s future career?
13. Have you been even-handed in the investigation?
14. Were any allegations of bias investigated?
15. Overall, have you carried out a reasonable investigation?

**Step two: reasonable grounds**

1. What is the evidence for and against believing the employee’s story?
2. Is the evidence convincing either way?
3. Is the employee’s story consistent?
4. Is the accuser’s story consistent?
5. Do the other witnesses’ stories match up?
6. Why do you believe one account over another?
7. Overall, do you have reasonable grounds to dismiss?

**Step three: honest belief of guilt**

1. Is the conduct defined as misconduct or gross misconduct in the contract or handbook?
2. Did the employee know what was required of them (were there clear procedures, policies etc)?
3. Have the processes and procedures changed over the years? If so, have they been communicated to the employee?
4. Was the employee given authority (whatever the relevant procedure or documents say) to act in this way?
5. Was the misconduct intentional?
6. Has the employee been warned about the conduct in the past? If so, what action was taken? Was it different to the action being taken now? If so, why?
7. Has the employee admitted the offence?
8. Have you been consistent throughout the process in respect of the allegations made against the employee? If not, why not?
9. Have any of the allegations made against the employee turned out to the unfounded?
10. Have allegations of bias or victimisation been raised by the employee?
11. Can you counter any allegations that you wanted to dismiss the employee whatever the allegations?
12. If the employee’s account of events is consistent, why is it that you have decided not to believe him or her (if that’s the case)?
13. Overall, do you honestly believe that the employee is guilty of misconduct or gross misconduct?

**Step four: a reasonable response**

1. Have you followed your disciplinary process accurately?
2. Is dismissal a proportionate response (does the punishment fit the crime)? Generally, something that could be dealt with adequately with a written warning should not be dealt with by a dismissal.
3. Does the employee expect to have his or her employment terminated?
4. How have you reacted to similar incidents in the past? Are you being consistent in your approach? If not, why not?
5. Could company procedures or processes be seen to encourage the employee’s misconduct?
6. Has the employee clearly acted contrary to company procedures?
7. Taking into account the employee’s length of service, does the offence still justify dismissal?
8. Does the employee have an otherwise good employment record?
9. Did the employee apologise immediately? Does he/she understand that the action was wrong and why?
10. How senior is the employee? Are they responsible for a team who might now struggle to take instructions or follow the poor example the employee has set?
11. Does or could the misconduct amount to a criminal act?
12. Did or could the misconduct have caused personal injury?
13. Have you had to notify your insurers about the misconduct or rely on your insurance policy?
14. Has the employee admitted the offence?
15. Were there any other mitigating circumstances, for example, pressure, stress, depression, bullying or harassment? Had the employee told you of this before the event in questions?
16. Does the employee hold a position of responsibility or authority? Do others follow his/her instructions for example?
17. What damage was done (or could have been done)? What was the damage to the organisation?
18. Could the employee have taken alternative action?
19. Has the employee mitigated any damage done?
20. Have you been able to deal with the offence and repair any damage done?
21. How serious was the breach? Was it an intentional, obvious breach of the rules?
22. Does the employee understand the impact and seriousness of the breach?
23. Has the employee lost the respect of his/her colleagues?
24. Have you seriously lost trust in the employee?
25. What was or could have been the PR exposure for the organisation?
26. Is the employee still able to do their job?
27. Is this a first offence, or first offence of this type carried out by the employee? Should you give the employee a second chance or was the matter too serious?
28. Have you considered measures short of dismissal:
    1. oral/ written/ final warnings;
    2. suspension and/ or retraining;
    3. demotion (if contract allows) or alternative employment;
    4. reduction in salary or requirement to repay any damage caused?
29. Do you have an obligation to notify regulatory bodies? Will the regulatory body require termination of the employment?
30. Will notification to any regulatory body have a negative impact on your organisation?
31. Have you considered the effect dismissal for misconduct will have on the employee’s future career (if any)?
32. Is the dismissal consistent with other disciplinary issues dealt with of this nature?
33. Has it happened before? Had steps been put in place to prevent it happening again?
34. Overall, does your decision fall within the band of reasonable responses a reasonable employer may make?