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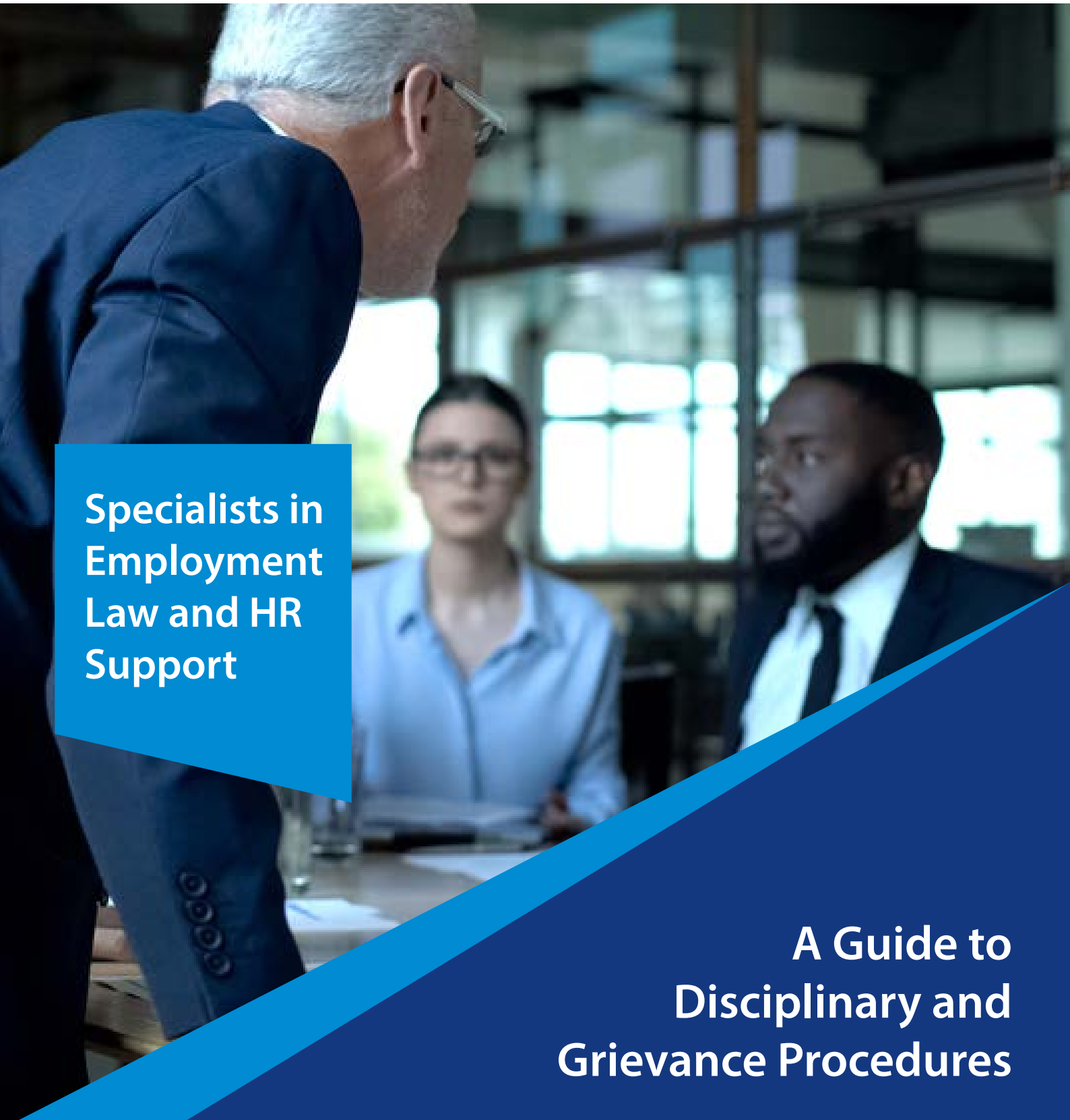

Specialists in Employment Law and HR Support

A Guide to Disciplinary and Grievance Procedures

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A Guide to Disciplinary and Grievance Procedures

Including valuable information on:

- **The ACAS Code**
- **Whistleblowing**
- **Disciplinary Matters**
- **Grievance Processes**

www.delphisupport.co.uk | Email: info@delphisupport.co.uk | Leeds Call: 0113 867 2815
Delphi Business Support Services, Princes Exchange, Princes Square, Leeds, West Yorkshire, LS1 4HY

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A Guide to Disciplinary and Grievance Procedures

Disciplinary Procedures

All employers should have a written disciplinary procedure that describes the general standards of behaviour expected at work. This should be available to all members of staff. It should set out the disciplinary action that could be taken if an employee fails to meet the standards of behaviour and performance required. It should also include details of how to appeal against a disciplinary sanction.

How do disciplinary procedures work?

Disciplinary procedures should be even-handed and treat all employees consistently, so if you need to take disciplinary action against an employee for being late for work, you should do the same for any of their colleagues who behave in a similar fashion.

Ideally, performance issues should be dealt with under a separate capability procedure.

What is the ACAS code?

Disciplinary procedures should follow the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Disciplinary action should not be taken until matters have been investigated. This usually involves discussing the situation with the employee, interviewing possible witnesses and collecting any relevant evidence.

If an employee is accused of serious misconduct, they could be suspended on full pay. Any period of suspension should be kept to a minimum. If a formal disciplinary hearing is required, an employer should write to the employee confirming the time and place of the hearing, which should be arranged promptly, while giving the employee sufficient time to prepare.

Employees have a right to be accompanied to a disciplinary hearing by a colleague or trade union representative, who can speak on behalf of the employee but cannot answer questions. You should explain the charges against the employee and allow them to respond to the allegations, ask questions, call witnesses and present any relevant evidence.
After the hearing, you should write to the employee as soon as possible, confirming what, if any, disciplinary action is to be taken.

Examples of disciplinary action could be:

- No action
- First written warning – generally given for a first offence
- Final written warning – where an employee has already had a first written warning and their conduct or performance has not improved. A first and final written warning can be issued in cases of more serious misconduct
- Demotion – sometimes used by employers as an alternative to dismissal
- Dismissal with notice pay
- Summary dismissal. Theft, fraud, violence, etc, are regarded as gross misconduct – and serious enough to justify dismissal without notice pay for a first offence.

What happens if an employee appeals disciplinary action?

Employees should be given an opportunity to appeal in writing against any disciplinary sanction. An appeal hearing should be chaired by a manager without previous involvement in the case. Employees have a right to be accompanied to an appeal hearing by a colleague or trade union representative, who can speak on their behalf but cannot answer questions. After the appeal hearing the employer should write to the employee as soon as possible, confirming the outcome of the appeal.

Is it compulsory for employers to follow the ACAS code?

It is not compulsory for employers to follow the ACAS code. If you fail to do so and the matter becomes the subject of an employment tribunal hearing, any compensation awarded to the employee can be increased by up to 25%.

Delphi can advise employers on disciplinary hearings and procedures. If you need advice regarding a disciplinary problem, we can help.
We specialise in employment law and with many years of experience, we are highly qualified to assist you with disciplinary issues you may have. **Contact us for a complementary consultation today on 0113 867 2815**

Grievance Procedures

A grievance is a work-related complaint. If an employee has spoken informally to you about a workplace problem but is not happy with the outcome, they may further bring it to your attention by raising a formal grievance. Grievance procedures offer a way of resolving a dispute whilst ensuring staff are treated fairly and consistently – whether they wish to clarify pay, working practices or address bullying or discrimination.

How does a grievance procedure work?

If an employee raises a formal grievance, you have a duty to give serious consideration to the issues raised and attempt to resolve it quickly and effectively – regardless of your employee's seniority.

You should have a written grievance procedure – available to all members of staff, usually in the employee handbook – which explains how they can raise a grievance and what happens at each stage of the process.

It should follow the ACAS Code of Practice on Disciplinary and Grievance Procedures, and include these key points:

- Grievances should be raised in writing. If your employee does not do so, they can still bring an employment tribunal claim, but any compensation payable may be reduced by up to 25%.

- The issues raised should be properly investigated and the person investigating the grievance must be independent – not the subject of the grievance.

- A grievance meeting should be arranged without unreasonable delay. The aim of the meeting is to establish the facts and look at how your employee's concerns might be resolved. They have a right to be accompanied by a union representative or work colleague only.
- At the meeting, you should go through the details of the grievance, taking any evidence into account and giving your employee the chance to make comments, present their case and call witnesses. It is important that the person chairing the grievance meeting is independent and not involved in the case.
- A final decision on the grievance can be verbally provided at the meeting, unless there is a need to adjourn for further investigations.
- Following the grievance meeting, you should write to your employee with your decision as soon as possible – giving details of any action to be taken, such as training or mediation. Their should also be informed of their right of appeal.
- Any grievance appeal meeting should be arranged without unreasonable delay and heard by someone who has not had any previous involvement in the matter. Again, the employee in question has a right to be accompanied to the appeal by a colleague or union representative.
- After the appeal meeting, you should write to your employee as soon as possible with your final decision.

Am I required by law to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures?
You are not legally required to follow the ACAS code, but if you do not and you subsequently lose an employment tribunal case regarding the issues raised in the grievance, any compensation awarded can be increased by up to 25% if you have 'unreasonably' failed to follow the code.

Delphi can advise employers on grievance procedures. If you need advice regarding an employee grievance, we can help. We specialise in employment law and with many years of experience, we are highly qualified to assist you with staff grievances. **Contact us today on 0113 867 2815**

Whistleblowing

If a worker suspects serious mismanagement at work – for example, if somebody is committing a criminal offence – the law protects them from being sacked or treated unfairly if they report the incident or 'blow the whistle'. This is to encourage people to speak out if they come across illegal, negligent and underhand practices in the workplace.

Who is protected?

Whistleblowing legislation protects your staff from dismissal or other unfair treatment, providing they:

- Are an employee, agency worker, trainee or a member of a Limited Liability Partnership
- Report wrongdoing that falls within certain qualifying categories
- Disclose the information to the right person and in the right way, thereby making it a 'protected disclosure'.

Concerns can be reported at any time, whether the malpractice is in the past, present or something they suspect will happen in the future.

The worker must genuinely believe that the information is substantially true and that they are telling the right person. If the worker breaks the law themselves when making the disclosure, or if the information being disclosed is protected under legal professional privilege, the worker is not protected.

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What constitutes whistleblowing?

Only disclosures that are in the public interest count as whistleblowing.

The term 'public interest' is not defined, but the worker has to have a reasonable belief that the concern they are raising is in the public interest. The law provides protection for 'public interest disclosures' in any of the following categories:

- Criminal offences, such as fraud
- If the company is breaking the law
- Miscarriages of justice
- Threats to a person's health and safety
- Damage or risk of damage to the environment
- A deliberate attempt to cover up any of the above.

Personal issues regarding matters such as workplace bullying, harassment and discrimination do not count as whistleblowing, unless they are in the public interest.

Who should a complaint be made to?

A protected disclosure should be made by following the procedure set out in the whistleblowing policy contained in your staff handbook. If there is no handbook or relevant policy, a worker should speak to a more senior member of staff.
In the occasion that the worker feels unable to do this, or their complaint is ignored, they should make their disclosure to 'a prescribed person or body' such as a relevant regulatory organisation. A concern about wrongdoing in a school should be made directly to Ofsted, for example.

Workers can make protected disclosures anonymously but as an employer, you might not be able to fully investigate matters where further information is needed. The worker may also find it harder to argue that any unfair treatment was as a result of their whistleblowing, if reported anonymously.

What legal action could be taken against my company?

Workers are protected from any detrimental treatment as a result of making a protected disclosure, provided the relevant criteria are met. So, if they have been bullied or treated unfavourably after making a protected disclosure, they could claim victimisation.

Only employees are protected from unfair dismissal under the legislation, so if you sack someone for whistleblowing – irrespective of their length of service – they could claim unfair dismissal in an employment tribunal.

If they resign in response to any detriment suffered after blowing the whistle, they could have a claim for constructive dismissal.

Delphi can advise employers on whistleblowing.
If you need advice regarding a matter of whistleblowing, we can help.

We specialise in employment law and with many years of experience, we are highly qualified to assist you with an issue of whistleblowing. **Contact us today on 0113 867 2815.**