

Disciplinary and Lack of Capability Procedure

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This procedure is a policy document only and is not intended to be contractually binding.

The Employer aims to help and encourage all employees to achieve and maintain acceptable standards of performance and conduct while at work. However, it recognises that problems occur from time to time. If the Employer considers it appropriate, minor problems will be dealt with informally. Where the matter is more serious, the Employer will normally follow the procedures set out below, which may lead to dismissal or other disciplinary sanction.

General

1. In this document references to a "Personnel Director" means M.B. Langmuir, or such Partner or Partners who subsequently take on the personnel responsibilities currently assumed by the individual named in this paragraph.
2. All action under this procedure will be exercised as quickly as practicable.
3. No action will be taken under this procedure until there has been an investigation into the relevant facts and, where appropriate, witness statements have been taken.
4. The Employer may suspend an employee (with basic pay) at any stage of the procedure in order to carry out a disciplinary investigation. While on suspension, employees may not visit the Employer's premises without the Personnel Director's written consent. This suspension is a precautionary measure and will not prejudice disciplinary interview.
5. The Employer will consider alternatives to disciplinary action, such as counselling, training and additional supervision wherever possible.
6. In the event of action under this procedure becoming necessary the employee will be notified of the date, time and purpose of the disciplinary interview, the right to be accompanied (see below) and will be given full details of the allegations to be considered at the interview.

7. The interview shall be chaired by a Partner (who shall not have been involved in the investigation) and who will decide on the appropriate action. An employee nominated by the Partner chairing the interview shall also attend as an independent observer and to take a note of the proceedings.
8. At the interview, the employee will be given details of the allegations (including all the evidence) and will be given an opportunity to state their case. Wherever possible, witnesses will attend the bearing and may be cross-examined by the employee.
9. All employees are entitled to be accompanied by a colleague or friend at the disciplinary interview who will attend purely as an observer. In appropriate cases, an interpreter will be provided. Attendance by a solicitor will not be permitted unless the allegations could give rise to criminal prosecution.
10. The interview shall be adjourned to give the Partner chairing the interview an opportunity to make a decision having taken in account all of the facts and circumstances, including the employee's age, disciplinary record, position and length of service, the gravity of the offence, any special circumstances and whether this procedure indicates the likely penalty for the offence.
11. If any disciplinary action is taken under this procedure. The employee will be told the reason for the action being taken and (if appropriate) any improvement required. the timescale and the penalty if there is no improvement. This information will be given in writing unless it is a formal oral warning. The employee will also be told that it is a stage in the formal disciplinary procedure and that there is a right of appeal (see below).
12. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct where the penalty will be dismissal without notice or a payment in lieu.

Misconduct or Incapacity

The following procedure will generally apply in cases of misconduct or incapacity. In more serious cases, one or more of the stages may be omitted:

Stage 1: Formal Oral Warning

If conduct or performance does not meet acceptable standards, an employee will normally be given a formal oral warning by the immediate manager. A brief note of the warning will be kept on the employee's personnel file. The warning will be disregarded for disciplinary purposes after 6 months, subject to satisfactory service in the meantime.

Stage 2: First Written Warning

If the offence is more serious, a further offence occurs or a performance does not improve to the required level, a first written warning will normally be given by the manager. A copy of the warning will be kept on the personnel file but will be disregarded for disciplinary purposes after 6 months, subject to satisfactory service in the meantime.

Stage 3: Final Written Warning

If there is still a failure to improve or the offence is sufficiently serious, a final written warning will normally be given by the Personnel Director and will include a warning that dismissal may result if there is no satisfactory improvement or if further offences occur. A copy will be kept on the personnel file but will be disregarded for disciplinary purposes after 12 months subject to satisfactory service in the meantime.

Stage 4: Dismissal

If service is still unsatisfactory the employee will be dismissed with notice or a payment in lieu of notice. The decision to dismiss will not be taken without reference to the Personnel Director. The employee will be notified of the decision to dismiss in writing.

As an alternative, consideration may be given to transferring the employee to another position or demoting him/her (either of which may include a reduction in pay and/or benefits) and/or imposing a disciplinary suspension without pay for up to 20 working days.

The following are examples of behaviour which may be regarded as misconduct or incapacity:

- bad timekeeping
- unreasonable or unexplained absence
- minor breaches of Employer rules or procedures
- abusive behaviour
- poor performance

Gross Misconduct

Gross misconduct will normally result in immediate dismissal, without notice or a payment in lieu. The decision to dismiss will not be taken without reference to the Personnel Director. The dismissal will be notified to the employee in writing.

The following are examples of behaviour which may be regarded as gross misconduct. It is not exhaustive and serious incidents of misconduct referred to under Stage 4 above may also be regarded as gross misconduct:

- theft, fraud or dishonesty falsification of documents
- wilful or negligent damage to or misuse of Employer property serious negligence leading to loss, damage or injury smoking in any part of the firm's premises gross insubordination
- unauthorised possession of Employer property or facilities
- racial or sexual discrimination and/or harassment. For the purposes of this Procedure, sexual harassment shall be regarded as being the making of remarks or comments of a sexual nature and/or the making of unwanted and unnecessary physical contact (whether or not it is of an intimate nature) which the recipient finds offensive violent, dangerous or intimidatory conduct
- unacceptable behaviour resulting from the influence of alcohol or non- medicinal drugs
- serious breach of the Employer's rules or procedures contained in the Staff Handbook, the employee's contract of employment or otherwise serious breach of safety regulations

Right of Appeal

Employees have the right of appeal against every disciplinary decision. Notice of appeal must be submitted in writing to the Personnel Director within 5 working days of the employee being notified of the decision. The appeal will normally be heard by a panel consisting of the Partners of the other M.B. Langmuir & Hay and whose decision is final.

There will be no appeal against dismissal during the probationary period of employment.