



# *GUIDANCE ON* **THE CONTRACT OF EMPLOYEMENT**

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**Introduction**

**Deciding on the best procedures**

# What are disciplinary procedures?

If an employee is not meeting their employer's standards, the employer should investigate the situation before deciding on the next step to take (for example, dismissal).

The standards expected by the employer should be in the employee's written terms of employment, or in a workplace policy booklet.

An employer might consider an investigation for possible disciplinary action if an employee:

- i. keeps taking sick leave or being late (some HR systems have 'trigger' points to keep track of attendance records)
- ii. is absent without permission – some might call this 'unauthorised absence' or 'absent without leave' (AWOL)
- iii. seems to have trouble doing their job

# Deciding on the best procedure

The employer must decide whether a disciplinary or a capability procedure is most appropriate.

The employer should meet with their employee to find out more on whether the issue is due to either:

- i. conduct; or
- ii. capability

Issues of unacceptable or inappropriate behaviour ('misconduct') or performance ('capability') should be handled in line with the Labour Regulating Authority Code of Practice on disciplinary and grievance procedures which can be found on the [Labour Regulating Authority](#) website

## If it's a conduct issue

Conduct is about an employee's behaviour at work.

Usually it's a conduct issue if the employee has control over their actions. For example, calling in sick when they're not genuinely ill.

To deal with a conduct issue, the employer should follow a disciplinary procedure, guidance for which can be found on the .....website.

## If it's a capability issue

Capability is about an employee's ability to do their job.

Usually it's a capability issue if the employee has no control over it. For example, if an employee becomes unable to do their job due to an illness and adjustments or support cannot help.

For a capability issue, the employer should follow either:

- i. a capability procedure, if they have one
- ii. a performance management procedure

## If it's not clear

It's not always clear whether an employee's poor performance is due to capability or conduct. But the employer should always carry out a full and fair procedure before deciding on any action like dismissal.

## Managing capability issues

To deal with a capability issue, the employer should follow a procedure based on encouraging their employee to improve.

This is to give the employee the chance to get better and to stop any further problems arising.

The employer could provide their employee:

- i. support, for example making changes to their work or arranging counselling sessions
- ii. training to help them do their job better

In some workplaces, this might include a performance management procedure

### **If the employee is absent or sick**

Even if the employee is ill, they should cooperate as much as they can if their employer is investigating as part of a disciplinary or capability procedure.