

The Enchanted Wood Day Nursery Ltd: Managing Behaviour

Grievance / Disciplinary Procedure

Policy statement

The Company always tries to deal with disciplinary issues fairly and promptly. This procedure sets out the framework under which allegations of misconduct will be investigated and considered. While the procedure set out in this policy will be appropriate in most cases, there may be situations in which it is not practicable to comply with a particular requirement of it. When this happens, the Company will do its best to deal with the matter fairly and will pay particular attention to the need to give the employee every opportunity to explain their version of events.

The Company reserves the right not to follow this procedure in full for employees who are within their first two years of employment with the Company.

Definition of Misconduct

Behaviour which is disruptive, disrespectful to colleagues, or which falls short of the requirements set out in this handbook will be treated as misconduct under the disciplinary procedure. While employees will not usually be dismissed for a first offence a failure to remedy the behaviour or to adhere to required standards may ultimately lead to dismissal once appropriate warnings have been given.

Definition of Gross Misconduct

Gross misconduct is behaviour which is fundamentally at odds with the employee's duty to the Company and their colleagues. In accordance with the disciplinary procedure, gross misconduct will usually result in dismissal without notice, or payment in lieu of notice, even in cases of a first offence.

It is not possible to list every example of gross misconduct which may arise, but the following provides an illustration of the sort of conduct that will normally fall into this category – some of which are then explained in more detail below:

- Theft;
- Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets;
- Unlawful discrimination, harassment, including sexual harassment, or victimisation;
- Refusal to carry out reasonable instructions;
- Violent or intimidating behaviour;
- Wilful damage to property;
- Causing loss, damage or injury through serious negligence;
- Serious misuse of our property or name;
- Serious insubordination;
- Reckless behaviour posing a risk to health and safety;
- Any act or omission constituting serious or gross negligence/or dereliction of duty;
- Sleeping on duty;
- Bringing the organisation into serious disrepute;
- Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- Recording audio and/or video of any meeting, conversation or discussion with another person or people without the express prior consent of the person or people being recorded;

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- Making untrue allegations in bad faith against a colleague;
- Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- Any illegal act during working time or on Company premises; and
- Any act described as gross misconduct elsewhere in this handbook.

Informal Action

Most minor acts of misconduct can be dealt with informally through discussions between an employee and their line manager. This may consist of management guidance or an informal warning given orally or in writing. These steps are an everyday part of the management process and no formal procedure needs to be followed in respect of them.

Where informal action of this kind fails to resolve an issue, or where the misconduct alleged is considered too serious, then the matter will be dealt with formally under this procedure.

Investigation

If it is alleged that you have committed misconduct, an appropriate investigation will be carried out aimed at gathering all of the relevant evidence. You may be interviewed as part of this investigation and will have the opportunity to point the investigator towards any evidence that you feel is relevant. The right to be accompanied (see below) does not apply to any investigatory interview.

Suspension

If an allegation of misconduct is made against you, then you may be suspended from your duties on full pay while the matter is being dealt with. The Company will make every effort to ensure that any period of suspension is kept as short as possible. The purpose of a suspension is either to allow an unhindered investigation to take place, or to protect the interests of the Company and its employees. During any period of suspension, you may be instructed not to contact other members of staff except for the purposes of preparing for any disciplinary hearing, where specific arrangements will be made with you. This is not a disciplinary sanction and should not be seen as a predetermination of any disciplinary process.

Hearing

Once the investigation has been carried out, the investigating officer will make a decision about whether there is sufficient evidence to warrant a disciplinary hearing. If there is you will be informed of this and an appropriate date for the hearing will be arranged. This will take place within normal working hours wherever possible.

To ensure that you have adequate time to prepare for the hearing, the Company will provide you in advance with a copy of all of the written evidence that will be considered at the hearing. In exceptional cases the Company may need to withhold the identities of certain witnesses or hold back sensitive items of evidence. This will only be done where it is considered necessary to protect individuals or the essential interests of the Company and every effort will be made to ensure that you are given as much information as possible so that a fair hearing can be conducted.

You will be given sufficient notice of any hearing to allow you to prepare for it. While this will vary from case to case, the Company will generally try to give at least two days' notice of any hearing and in complicated cases a longer period of notice may be given.

The purpose of the hearing will be to consider the evidence gathered during the investigation and to consider any representations made by you or on your behalf. The hearing will be conducted by an

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appropriate manager who, wherever possible, has not previously been involved in the case and who was not responsible for carrying out the investigation.

The Right to be Accompanied

Employees are entitled to be accompanied at any disciplinary hearing by a fellow employee or trade union official of their choice. The Company will provide any chosen companion with appropriate paid time off to allow them to attend the hearing. It is, however, up to the employee in question to arrange for a companion to attend the hearing.

If your chosen companion cannot attend on the day scheduled for the hearing then the Company will agree a new date. This will usually be within 5 working days of the date originally scheduled. If your companion is not available within that timescale then you may need to find someone else to take their place.

The companion's role is to advise you during the hearing and make representations on your behalf; it is not to answer questions for you. However, both you and your companion are required to cooperate in ensuring a fair and efficient hearing. The companion cannot answer questions on your behalf.

Evidence

The hearing will consider any evidence you choose to present. Should witnesses be prepared to appear on your behalf they will be permitted to do so provided that their evidence is relevant to the issues that need to be decided. The Company will not compel or require any employee to appear as a witness on your behalf and in most circumstances, evidence arising from the investigation will be presented in written form. You will be entitled to challenge any of the evidence presented but will not be entitled to cross-examine witnesses.

Disciplinary Action

After considering all of the evidence, including any submissions made by you or on your behalf, the manager conducting the hearing will decide on the outcome. If misconduct is found to have taken place then the usual outcome will be a **written warning** which will be placed on your personnel file.

A warning will stay active for a period of one year, after which it will not be taken into account in any future disciplinary action.

If however a further instance of misconduct is found to have occurred (in accordance with this procedure) during the currency of a warning – or if any misconduct is considered to be serious enough to warrant it – then, subject to the formal process above being followed, you will be issued with a **final written warning**.

A **final written warning** will usually remain active for one year, but a longer period may be specified if the manager conducting the hearing feels that the circumstances warrant it.

An employee who is found to have committed further misconduct during a period covered by a final written warning will, following a hearing conducted in accordance with this procedure, generally be dismissed.

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Dismissal

An employee will not normally be dismissed under this procedure for a single instance of misconduct unless a final written warning is already in place. However, where gross misconduct is found to have occurred then dismissal without notice or payment in lieu will be the usual outcome.

Gross misconduct is misconduct that is so serious that it fundamentally undermines the relationship between employer and employee. If you are accused of gross misconduct this will be made clear when you are invited to a disciplinary hearing. A wide range of behaviours can amount to gross misconduct but the most common involve dishonesty, violent or aggressive behaviour, the wilful destruction of Company property or a deliberate refusal to obey a reasonable instruction.

Appeal

An employee may appeal against the outcome of a disciplinary hearing by doing so in writing stating your full grounds of appeal within one week of being notified of the outcome. The person to whom an appeal should be directed will be detailed in the disciplinary outcome letter. An appeal hearing will be convened and conducted by an appropriate member of the senior management team.

The appeal will consider any grounds the employee chooses to put forward and they will have the same right to be accompanied as at a disciplinary hearing. The result of the appeal hearing will be final.

Employee Absence

It is important that disciplinary issues are dealt with promptly. The Company may therefore need to proceed with a disciplinary hearing even if the employee is absent due to ill health or simply does not attend. Before hearing the matter in an employee's absence, the Company will attempt to arrange the hearing in such a way that the employee will be able to attend or to submit written representations to the hearing and/or to arrange for an appropriate representative to attend the hearing on their behalf.

Grievance Procedure

The Company aims to be responsive to concerns raised by employees and if you are unhappy with something affecting you at work you are encouraged to raise this with your line manager. If that is not possible then you should speak to a member of the management team who will try to assist you in resolving any issue you may have. The following procedure is designed to be used when these informal attempts to resolve any dispute have not been successful.

Examples of issues that could be dealt with under the grievance procedure include:

- a. terms and conditions of employment;
- b. health and safety;
- c. work relations;
- d. bullying and harassment;
- e. new working practices;
- f. working environment;
- g. organisational change; and
- h. discrimination.

The Grievance Procedure should not be used to complain about issues which do not directly relate to, or impact on, you and your work/ working environment.

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The Grievance Procedure should not be used to complain about disciplinary action, reasonable action taken under the Performance Management Procedure or Sickness Absence Procedure. Any such complaints should be dealt with under the relevant appeal procedure.

Raising a Grievance

If you feel that the matter needs to be raised formally you should raise a grievance by making a written complaint, stating that it is being made under this procedure. You should give as much information about your grievance, including any relevant dates and times, as you can, so as to allow for any investigation into your concerns to take place.

A grievance will normally be dealt with by your line manager and should be addressed to them directly. Where the grievance is directly concerned with your line manager's behaviour, however, you should submit your grievance to another member of the management team who will arrange for somebody who is not directly involved in the issue to deal with it.

Grievance Hearing

A grievance hearing will then be arranged so that you can explain the issue and suggest how it can be resolved. There may be some cases where your grievance can be dealt with in writing, subject to your agreement. You will have the right to be accompanied by a fellow employee or trade union official to any grievance hearing. The manager conducting the hearing will consider what you have said and may either deal with the matter immediately or decide to carry out further investigations. In that case the hearing will be adjourned until the investigation has been completed.

Once the investigations are concluded, if new information comes to light, if it is considered appropriate, you may be invited to a reconvened meeting, to have the opportunity to consider and respond to the findings of the investigation. Following this a decision on the outcome of your grievance will be made.

Allegations of Misconduct

Where an employee is making allegations of misconduct on the part of other employees then the Company may need to carry out an investigation into the allegations and pursue the matter through the disciplinary procedure. Where this happens the grievance will be held over until the disciplinary process has been concluded and it may not be possible for the Company to provide you with specific detail in relation to what disciplinary action, if any, has been taken.

Relationship with Other Procedures

Where your grievance relates to the conduct of other procedures such as the disciplinary or performance management procedures then the Company may choose to either delay the consideration of the grievance until that procedure has been completed or to deal with the grievance in the course of that procedure or by way of appeal if that appears to be a fairer or more straightforward way of dealing with the issue.

Appeals

If you are dissatisfied with the outcome of a grievance then you may appeal. You should submit your appeal in writing stating your full grounds of appeal within one week of being informed of the outcome of your grievance. Your appeal should be directed to the person named in the grievance outcome letter. An appeal hearing will then be convened and conducted by an appropriate member of the senior management team. You will have the right to be accompanied at the appeal by a fellow employee or trade union official. The outcome of any appeal will be final.

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