

Guidance Notes For Disciplinary & Grievance Procedures During The COVID-19 Pandemic

It is important to remember that employment law and the ACAS Code of Practice still apply during the coronavirus (COVID-19) pandemic; this includes while social distancing measures are in place.

As those involved in a disciplinary or grievance procedure may be affected by the pandemic, employers should consider how to proceed in a fair and reasonable way, this may require consultation with all involved. *Our advice team is on hand to discuss your situation and to provide advice.*

If someone's on temporary leave ('furlough'), they can still:

- raise a grievance
- take part in a disciplinary or grievance investigation or hearing

Should the disciplinary or grievance go ahead?

In line with the ACAS Code of Practice disciplinary and grievance procedures must always be fair and reasonable. During the coronavirus pandemic, they must also be carried out in a way that follows public health guidelines around social distancing and the closure or phased re-opening of certain workplaces. There may be practical challenges to holding meetings, but procedures must still be taken forward without unreasonable delay.

If a safe, fair and reasonable way of going ahead with procedures is not possible, employers should consider if it might be fair and reasonable to suspend/defer the procedure until a later date.

Consider the circumstances

It's important to consider the individual circumstances and sensitivity of each case when deciding how to proceed. For example, consider if it may be something urgent, such as a disciplinary allegation of gross misconduct or a grievance about unlawful harassment. Or, for relatively minor disciplinary issues it might be appropriate to consider if it can reasonably be dealt with at a later date.

If it's a grievance or disciplinary issue about an ongoing situation, it's important to consider whether a delay might make matters worse.

For example could delaying the case result in an employment tribunal claim being made, which might otherwise have been avoided? If in doubt please contact the advice line to discuss.

The employer should consider talking through the options with everyone involved before deciding whether and how to proceed. This includes:

- the employee involved in the procedure

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- the employee's representative or companion, if there is one
- any other people involved, for example the manager chairing the meeting or witnesses who may need to attend

This will help to make an informed decision based on everyone's circumstances.

When talking through the options it's important to consider if anyone:

- has a good reason for wanting the procedure to either go ahead or be suspended
- has concerns about holding the meeting either in person or remotely
- has concerns about how the employee can be fairly accompanied at the meeting

Going through a disciplinary or grievance procedure can be stressful in normal times, and employees might be facing other stressful circumstances during this time. Employers should give careful consideration to the health and wellbeing of employees when deciding whether and how to proceed.

Face-to-Face meetings

If all those involved in the procedure can go to the workplace, the employer should firstly consider whether a face-to-face hearing can be safely arranged. The employer must follow the government's guidelines on working safely during coronavirus, including carrying out a risk assessment of the workplace.

If the employer goes ahead with a face-to-face meeting, it's important that the employee's chosen companion can also attend the meeting in person if the employee wishes.

If a face-to-face meeting cannot be safely arranged, or if anyone has another reasonable objection to holding the meeting in person, it should be considered whether it's possible to carry out the procedure remotely in a fair way. If this is not possible, it may be appropriate to suspend the meeting.

Remote/Virtual Meetings

Video meetings may need to be used; this is acceptable, as long as the procedure is still fair and reasonable.

It's important to consider if:

- everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection

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- anyone involved has any disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed
- it's possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office
- any witness statements or other evidence can be seen clearly by everyone involved during an interview or hearing and provided in advance where appropriate
- it will be possible to fairly assess and question evidence given by people interviewed during a video meeting
- it's possible for the person under a disciplinary investigation or who raised a grievance to be fairly accompanied during the hearing

Recording/Minutes

Employers should keep a written record of any disciplinary or grievance cases they deal with in the form of minutes. Disciplinary or grievance meetings held by video may be digitally recorded with the agreement of everyone involved.

If there's agreement to digitally record a meeting, this must be done in line with data protection law.

Right to be accompanied

The right for an employee to be accompanied at a disciplinary or grievance hearing still applies during the coronavirus pandemic. The employee's chosen companion must be able to attend the hearing and fully participate in it.

Any hearing must be set up to allow the employee's chosen companion to:

- put and sum up the employee's case, if the employee wishes
- talk privately with the employee at any point

If a hearing is being held face-to-face, the companion should be present in person if the employee wishes.

The employer should talk to the individual and their companion to understand their circumstances and any concerns they may have about the procedure. For example, the employee and their companion might prefer a face-to-face meeting if the issue raised by a grievance is very serious, or if a disciplinary hearing might result in the employee's dismissal.

It's also important to consider the availability of an employee's companion might be more limited than usual. For example, they may have caring responsibilities or have difficulties travelling.

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If the employee's chosen companion cannot attend at the time or date of the hearing, the right to be accompanied allows the employee to suggest another time and date. This is as long as it's reasonable and not more than 5 working days after the original hearing date. If the companion is not available for a longer period, the employer should consider if a delay of more than 5 days may be reasonable. This is especially important if the hearing might result in dismissal, as the employer must always act fairly to avoid an unfair dismissal.

Procedure

The employer should explain the decision on whether and how to proceed to all those involved in the procedure, so everyone is clear what's been decided and why.

The employer should regularly review any decision to suspend a procedure. They should do this in consultation with those involved in the procedure. The procedure should be taken forward as soon as this can be arranged in a safe, fair and reasonable way.

If the employer decides to continue or start a procedure, they must follow the laid down procedures. If a disciplinary or grievance case reaches an employment tribunal, judges will look at whether the employer has followed the ACAS Code of Practice in a fair and reasonable way.

Should you have any queries or require further information, please contact us on **01455 444222** or email support@hr4uk.com. We'll be happy to discuss your circumstances and agree the best approach.