



Briefing Papers

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HANDLING DISMISSALS

For a small charity, employing and managing a team of staff can be thoroughly rewarding, but it's not without difficulties, particularly when it comes to the tricky task of disciplining or dismissing a member of staff.

AFVS is regularly involved in staff issues and the most frequent requests for help we get are around disciplinary and dismissal

Often it's about a new member of staff who is underperforming and the manager is unsure of how to deal with this. Sometimes an informal chat is all that's needed; nevertheless employment situations are a minefield and it's important that you have an understanding of where the mines might be lurking and take advice where necessary.

Some guidance to keep you headed in the right direction:

DISCIPLINE ISSUES:

Dealing with potential disciplinary issues in a timely and effective manner can often nip bad behaviour in the bud and reassure other members of staff before things become a major issue. Get it wrong however and it can be demotivating, and even result in legal action with significant costs.

- **Make your policy clear from the start** – Tell each employee as soon as possible and definitely within 2 months of them starting work about your disciplinary procedures and who they can appeal to. These procedures should also be included in your staff handbook.
- **Be proportionate:** The process should be proportionate to the seriousness of the offence, or the presenting issues.
- **Employee shouldn't be on their own.** You should allow an employee going through the disciplinary process to be accompanied to any disciplinary meetings by either a work colleague or a trade union representative.

- **Don't be in denial:** Don't bury your head in the sand hoping the problem will go away. It almost never does. Deal with performance or conduct issues as soon as they arise; don't wait until they become critical.

- **ACAS:** Follow the correct procedures set out in the ACAS code of practice on disciplinary and grievance procedures as a minimum requirement. In the case of disciplinary procedures, should it develop to a tribunal situation, evidence that these have been followed will be required and if you fail to follow these, a tribunal could increase any resulting compensation to an employee by up to 25%.

DISMISSAL:

In some instances, where the employee's performance or conduct do not improve, or where their actions constitute gross misconduct, then you may be faced with the decision to dismiss them. This is not a decision to take lightly and without careful consideration.

- **Be Fair:** If you do have to dismiss a member of staff make sure that it's done 'fairly', this means that you have a fair reason for doing so. Common reasons can include, but are not limited to capability, conduct, illegality or redundancy.

- **New Employees:** You don't have to take employees with less than 24 months' service through a full disciplinary process in order to be dismissed, but you should still seek specialist advice to ensure that you are not in breach of employment law.

- **Proper Notice:** In most dismissal situations, employees are entitled to notice either under their contract of employment or to statutory notice depending on the length of service.

- **Redundancy:** If you need to make staff cuts due to changes in the way in which your business operates, or due to a reduction in demand for your services, you can consider redundancy as an option. You should ensure that you pay an employee what they're entitled to including pay up to the date of termination of employment, pay for any unused holidays, pay in lieu of notice and any other contractual benefits after going through the correct redundancy process. It is also worth noting that any redundancy process, cannot include the 'first in last out' option.

- **References:** Don't feel pressured to give a reference to an employee who has had their employment terminated. There is no legal obligation to do so. If you do, you should ensure that it is true, accurate and fair and based on documentary evidence to avoid any potential legal action. You should have a clear policy on giving references; if you provide a reference for a favoured employee it might be difficult to refuse to give one to someone who wasn't favoured.

- **Settlement Agreements:** This is often an appropriate solution for ending a situation that's never going to work and there has to be a parting of the ways. You must have it properly drawn up, so HR advice is essential.

• **You must have a rationale to dismiss:** An employee who has a 2-year's continuous service has a legal right to request written reasons for the dismissal within 14 days.

These are complex issues and a wrong move can be costly in terms of time and money. **3 key recommendations to end on:**

1. **Make sure you have a paper trail:** We find so often that poor performance and warnings have never been properly documented. This makes it hard to deal firmly with a situation that has escalated to the point where dismissal is needed. I recently had a case where poor performance of a manager was damaging a charity, only to find that none of the performance issues had ever been discussed with the manager despite them having existed for some years. Bland meaningless appraisals are not worth doing.
2. **Take advice:** It's essential that you act carefully and seek specialist advice before dismissing somebody. We have professional and legal advisers available to help and advise whenever needed, at reasonable and affordable costs.
3. **Trustee Involvement is Crucial:** In the process of writing this I took a call from a trustee who had discovered that their manager had instituted a disciplinary procedure without involving the board of trustees. It's imperative that if a situation arises that's sufficiently serious to involve disciplinary or other procedures, the board of trustees must be involved. This isn't normally something that can be delegated. It's your heads on the line if it goes wrong.

Daryl Martin – April 2017

www.afvs.org.uk

Advice For the Voluntary Sector CIC
Sovereign Centre, Poplars, Yapton Lane, Walberton, West Sussex BN18 0AS.
Email: support@afvs.org.uk – Web: www.afvs.org.uk