

## Chamber Legal Expenses Employment Manual

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### Introduction

This manual provides guidance and assistance to employers in producing the documentation required for employees by current employment legislation, and in handling disciplinary and dismissal matters as they arise providing maximum protection for your business.

The manual should be followed closely to ensure full compliance with the standards required by the courts and industrial tribunals. Do not hesitate to contact the Legal Advice Helpline Service for any additional guidance or assistance you require.

To benefit from cover you must;

- (a) observe the rules contained in this manual and
- (b) seek and follow the advice of the Legal Advice Helpline Service before taking any disciplinary action which might result in dismissal or resignation.

The Legal Advice Helpline service can be contacted by calling (029) 20349610

### The insurers

You will normally be entitled to claim indemnity under your Legal Protection policy in respect of legal expenses incurred in disputes arising out of or relating to employment.

It is essential that you observe the following conditions in order to make a valid claim for indemnity.

### Recruitment

Care must be taken in placing advertisements for new staff to ensure that these advertisements do not import any element of discrimination. This would include discrimination against any prospective employee on the grounds of race sex, colour, marital status or ethnic origin, disability or sexual orientation. You should also record your reasons for not offering the job to any unsuccessful applicant and ensure this information is retained safely for at least six [see note 1] years and that it could not be interpreted as showing any intention to discriminate. Contact the Legal Advice Helpline Service if you require any advice on discrimination.

### Application form

Candidates should be asked to complete a job application form as these documents are useful in originating personnel records and assisting with the objective selection of suitable candidates and providing a guide to interviewing. You should try and adopt a systematic approach to interviewing and be in a position to advise prospective employees of precise terms and conditions that are on offer and the main terms and conditions that will apply.

NB Once an offer has been made and accepted you cannot unilaterally change those terms and conditions of employment.

### Dismissal

Seek and obtain the advice and approval of The Legal Advice Helpline Service BEFORE dismissing any employee.

### Written statement of reasons for dismissal

If requested by an employee with 1 year's continuous employment, the law requires such a statement to be provided within 14 days of the request.

### Dismissal request

If the employee is dismissed whilst pregnant or on maternity leave, whether she requests a statement or not and regardless of the period of her employment, she is entitled to such a statement upon her dismissal.

This statement must be approved by the Claims Department before it is issued.

### Industrial tribunal

You will be informed of a claim to the Industrial Tribunal by means of Tribunal Form ITI. You must immediately contact the Legal Advice Helpline Service so we can arrange

- (a) representation and
  - (b) reply to the claim within 21 days as required by law.
- Form 1T3 will be completed by your Appointed Representative.  
Please refer to the wording of your insurance policy for full details.

#### Statements of Terms and Conditions of Employment

All employees must receive a written statement of their terms and conditions within 2 months of commencement of employment, even if they are employed for less than 2 months.  
Any change in the terms and conditions as stated must be notified to the employees within one month of such change, in writing and copies of the statement and amendments retained.  
The statement should lay out fully the following matters (referring the employee to other readily available documents if necessary);

- 1) Name of Employer and Employee
- 2) Date employment began
- 3) If previous employment is to be counted as part of the employees 'continuous employment' i.e. work for a previous employer the date on which that period of 'continuous employment' began must be stated.
- 4) Scale and Rate of remuneration method and frequency of payment
- 5) Hours of work (see above and below)
- 6) Holiday information (see below)
- 7) Sickness pay (see below)
- 8) Notice periods (see below); give date contract expires if for a fixed term.
- 9) Job title and description
- 10) Place of work
- 11) If not a permanent employee, the length of employment, or if on a fixed term contract the date of expiry of the fixed term.
- 12) Any terms included in the contract under a collective agreement with a trade union
- 13) Details of work outside the UK (see below)
- 14) Disciplinary Rules and Procedures (see below)
- 15) Grievance Procedures (see below)
- 16) Pensions; details of company Pension Scheme whether a contracting-out certificate under the Social Security Pensions Act, 1975 is in force.

We will provide copies of a standard Contract of Employment Statement for a small charge, or will, if required draw up completed statements for an agreed fee.

#### Terms and conditions of employment

The law requires that a written statement of the terms and conditions of employment be issued to employees within 2 months of commencement of employment (see also Statement of Terms and Conditions of Employment (above)).

Set out below is a guide to defining these terms and conditions. Please contact The Legal Helpline Service if you have any questions or require further advice.

#### 1. Hours of work

Normal start/finish times: meal breaks; whether overtime voluntary required.

#### 2. Holidays

Number of days annual allowance and statutory or bank holidays and rates of pay applicable; how holiday pay is accrued and calculated; timing and approval of holidays; effect of termination entitlement, conditions applying to part-time staff. The company should reserve the right to pay for holiday accrued but not taken on termination, and conversely the right to withhold pay for holidays taken in excess of entitlement.

#### 3. Sick pay

Under the government Statutory Sick Pay Scheme, the employer is responsible for paying sick pay. If the company has a scheme providing more generous payments than the government scheme, you must elucidate the following:

- (a) Eligibility for and limits on sick pay entitlement.
- (b) The fact that
  - (i) State sickness benefit will be set off against company sick pay and
  - (ii) Company sick pay is discretionary upon the approval of the company's Directors.

Employees are required to provide a self-certificate for absences if between 1 and 7 calendar days. Absences beyond 7 calendar days require the production of a Medical Certificate and further certificates will be required until a final certificate allows him to resume normal dates.

#### 4. Notice periods:

By Statute, an employer is required to give an employee

- i) with one month or more continuous service - 1 week
  - ii) with two years continuous service - 2 weeks
- plus one week for every additional year of service up to a maximum of 12 weeks after 12 years.

If a longer notice period is agreed this must be stated clearly in writing.

In the absence of an express provision to the contrary employees may terminate their contract by one weeks notice.

If you require more than 1 weeks notice this MUST be specified.

## 5. Company rules, disciplinary and grievance procedures

Strictly speaking the obligation to notify the disciplinary procedure is only binding if there is such a procedure in place. We would always recommend that the disciplinary and grievance procedure, and indeed any other extraneous company rules, form part of the contract either by being specifically inserted in the contract itself, or preferably by reference in the contract or the statement, to a separate staff handbook.

The important point is that the contract, at the place where it is signed, should contain a provision whereby the employee specifically acknowledges receipt and notification of the staff handbook if appropriate.

## 6. Work outside the UK

Where the employee is to work outside the UK for over a month, the period of employment outside the UK, the currency the employee will be paid in, any extra pay and benefits the employee will be entitled to and any terms relating to the employee's return to work in the UK.

### Company/work rules

Company rules should be so designed that employees understand the standards of behaviour required of them by the company. Rules should be divided into those which may lead to a warning and eventual dismissal (if there is no improvement), and those which may result in summary dismissal.

#### Misconduct

If certain rules are breached this will result in

- (i) an official warning and, if there is no improvement,
- (ii) possible dismissal. These rules (which are not intended to be an exhaustive list) include the following:

- (a) Absence.
- (b) Time-keeping
- (c) Damage to company property
- (d) Smoking, drinking, gambling, use of drugs and general social misbehaviour
- (e) Observance of safety rules and regulations.

#### Gross misconduct

If certain rules are breached this will result in summary dismissal, without notice, or payment in lieu of notice. These rules (which are not intended to be an exhaustive list) include the following:

- (a) Fighting, physical assault, theft or other criminal acts.
- (b) Refusal or failure to carry out a reasonable instruction.
- (c) Wilful damage of company property.
- (d) Disclosure of confidential company information
- (e) Falsification or abuse of the health and safety of the employee and/or others.
- (f) Serious endangerment of the health and safety of the employee and/or others.

Summary dismissal must only take place following the suspension on full pay of the employee, enabling advice to be obtained from the Legal Helpline Service.

#### Note

For summary dismissal to be effective it is essential that the misconduct committed by the employee is sufficient, irrespective of any warnings the employee may have received, to be classed as gross misconduct warranting summary dismissal in its own right. Dismissals which follow a series of warnings MUST be instituted with either

- i) notice, or
- ii) pay in lieu of notice.

If you are in any doubt as to the correct course of action to follow telephone the Legal Helpline Service for advice and guidance.

These are some of the items which should be included in a set of rules. Additional rules will depend on the nature of the company's business.

We strongly recommend that no matter how many employees are engaged in the employers business, a set of disciplinary rules should be in place. We may be able to provide assistance with the drafting of specific terms and conditions of employment.

The disciplinary rules should set out the procedure for the company to follow in the event of suspected misconduct. This includes the procedure where the employer proposes to give the employee an oral or written warning. The content of disciplinary procedures can be drawn from the guidance below under the headings, Dismissal and Breach of health and safety rules or some other substantial reason. It should make provision for the following safeguards (amongst others):

- specifying who will make the decisions on disciplinary matters
- informing the employee as soon as possible of impending disciplinary action, with full details of the misconduct he or she is alleged to have committed,
- notifying the employee well in advance of any disciplinary hearing,
- informing the employee of their right to be accompanied by a work colleague, and
- (if dismissal is being considered) notifying the employee in advance of the hearing that dismissal is an option.

If in doubt about how to draft the disciplinary rules, contact the Legal Advice Helpline.

### Grievance procedure

The procedure to be undertaken by an employee with a grievance against the company is as follows:

- i) verbally communicate the grievance to their immediate Manager/Supervisor. The employee should give full details of the grievance and sufficient opportunity for the Manager to examine the case and take any appropriate remedial action.
- ii) If the Manager is unable to resolve the grievance, it should be referred by the employee to a Company Director. The reference or the appeal should be made after the decision and in writing.
- iii) If the Company Director is unable to resolve the grievance, the employee may refer the matter in writing to the Board of Directors (or other management body responsible for the business affairs of the company).
- iv) All such grievances are to be dealt with in the strictest confidence.
- v) The employee may be accompanied if he so desires, by a friend, colleague or union representative at all of the above stages.

This procedure is set out as a guide. If you have a more developed management structure the next line of defence might be a personnel manager, and only then would the matter be referred to a Director.

### Rights of appeal and procedures

The company management is responsible for ensuring that employees are aware of their rights of appeal when disciplinary action is taken against them. The following points must be borne in mind in regard to appeals procedures.

- a) An appeal must be notified to the employee's Manager/Supervisor either verbally or in writing within three working days of the disciplinary action being taken.
- b) The appeal should be heard within five working days.

NB Any appeal hearing must be before an independent person, who had no dealings with the disciplinary decision which is under appeal. This is particularly important, since otherwise the decision to dismiss may be challengeable on the basis of an irregular procedure.

At the appeal hearing:

- i) the employee's own Manager/Supervisor may be present,
- ii) the employee may if he wishes be accompanied by a friend, colleague or union representative at all stages of the appeal, and
- iii) the result of the appeal and copies of all correspondences should be retained.

### Employees rights

Listed below are various situations in which an employee has various statutory rights with which the company must comply. You should contact the Legal Helpline Service if any of the following arise:

#### Guarantee pay

A laid off employee may be entitled to payment, unless employed on a fixed term contract for less than 3 months.

#### Maternity

- i) if an employee leaves the company and claims it is because of pregnancy, she may be entitled to maternity pay.
  - i. an employee may be entitled to additional maternity leave following the end of her ordinary maternity leave.
  - ii. if an employee seeks to return to work following confinement, and the company does not wish her to do so, this may amount to unfair dismissal.

#### NB

Whether an employee is entitled to the above rights depends on her length of service and the amount of leave she takes. An employer commits a criminal offence by allowing an employee to work during the 2 weeks after giving birth.

If there is any doubt about a question involving a pregnant employee or about maternity leave it should be referred to the Legal Advice Helpline.

#### Parental leave and care of dependants

If an employee with over 1 year's service cares for a child who was born or adopted after 15 December 1999, he or she is entitled to parental leave. Employees also have the right to reasonable time off to deal with emergencies involving dependent children or adults.

It is in employers' interests reach collective agreements with their employees about parental leave. Such agreements can make the procedures much more suitable for the company than the existing statutory framework. Help in negotiating collective agreements can be obtained from the Legal Advice Helpline.

#### Pay statements

All employees must be provided with written pay statements containing the following:

- i) Gross Pay
- ii) Deductions
- iii) Net Pay

#### Trade union membership or activities

Statute gives employees the right to, or in certain circumstances abstain from, trade union membership. Moreover, protection is provided to employees in regard to dismissal and disciplinary measures short of dismissal (see below). Protection is provided to employees if action to dismiss or disciplinary measures

short of dismissal are taken, if such action is taken for a trade union reason.

#### Time off

The company may be obliged to give time off to employees who have

- i) Trade Union duties to fulfil, or
- ii) Wish to take part in Trade Union activities, or have
- iii) Public duties to fulfil, or
- iv) Who are pregnant and receive ante-natal care.

#### Working time

There are now strict regulations governing employees' working hours. You should ring the Legal Advice Helpline if any of your employees work long or irregular hours, or if you have any doubts about whether you are complying with the regulations.

#### Suspension from duty

If for any reason the company wants to suspend an employee on less than full pay, you MUST contact the Legal Helpline Service: unless there is a contractual right to suspend, you risk being in breach of contract.

#### Termination of employment

For cover to apply under your Legal Protection policy for any dismissal carried out, you MUST follow the steps laid down in this manual AND contact the Legal Helpline Service.

The employment relationship may be terminated in a number of ways, and the steps which are needed to ensure that such dismissal is dealt with correctly differ according to the type of termination under consideration.

#### Resignation

Obtain the resignation in writing and file in the employee's Personnel File.

Beware of creating a situation in which an employee might resign and claim that he has been "constructively dismissed".

This concept equates with a Summary Resignation when an employee seeks to claim that he has resigned because of some fundamental breach of contract on the part of the company.

To succeed in such a claim however the employee must show a breach of contract which must be substantial in nature and strike at the root of the contract. The employee must resign and make clear that he is resigning as a direct result of the company's breach; and he must leave quickly.

The following are examples of situations where Constructive Dismissal has been established.

- i) telling an employee he must resign or be dismissed
- ii) unilaterally varying the terms and conditions of an employee's contract (especially those relating to pay or place of work)
- iii) making unwanted sexual advances
- iv) sexual harassment
- v) denigrating or abusing an employee in front of colleagues
- vi) risking an employee's health

All employees should be asked to explain specifically the reason why they resign.

#### Discrimination

Employees have wide statutory rights not to be discriminated against because of their race, sex, colour, marital status, ethnic origin or disability. This includes rights not to have to see racist or pornographic material in the workplace and for disabled workers to have the workplace adapted for them. Promotion decisions should not be carried out in a way which might be considered discriminatory. Any question of discrimination should be referred to the Legal Advice Helpline.

#### Part-time workers

Part-time workers now have the right to be treated on a par with full-time workers. This means that a part-time worker can complain to the employment tribunal if his or her terms and conditions are not as favourable as those of a full-time worker. If you employ part-time workers in the same establishment as full-time workers and are in doubt about how the regulations affect you, ring the Legal Advice Helpline.

#### Redundancy

A redundancy situation will only exist in the following circumstances;

- i) The company has ceased, or intends to cease carrying business.
- ii) The company has ceased, or intends to cease, carrying on business at the place at which the employees were contracted to work.
- iii) The employees particular job has ceased to exist or diminished, or is expected to do so.
- iv) The employees particular job has ceased in the place at which they were contracted to work, AND the business of the Company is not being sold as a going Concern in which case if the redundancy is due to a change or a proposed change in the ownership of the business, employees are entitled to be taken on by the buyer of the business on the same terms and conditions as they were employed by the seller of the business. If employees are made redundant on the transfer this is automatically an unfair dismissal for which both the buyer and the seller may be liable.

Employees should be informed long enough before such a sale for a consultation to take place.

Employees must be informed in writing of any proposed change in their terms and conditions of any planned redundancies before the consultation.

The consultation must be carried out with a view to reaching an agreement between the employer and

the employees, with a suitable representative of the work force, who may be shop steward. It may be a defence to an unfair dismissal claim if you can show that the dismissal was carried out for an economic, technical or organisational reason. In the event of your selling or buying a business as a going concern (whether it is a limited company or not) you should contact the Legal Advice Helpline.

IN ANY OTHER CASE there is not a redundancy situation.

If there is a redundancy situation, the company is obliged to provide the following:

Redundancy Consultation

Redundancy Pay

Department of Employment Notification (in appropriate cases) Redundancy Consultation

All employees should be consulted prior to any dismissals.

- i) If 100 or more employees are being made redundant at one establishment within a period of 90 days or less, consultations must occur at least 90 days before the anticipated date of the first dismissal.
- ii) If 20 or more employees are being made redundant at one establishment within a period of 90 days or less, consultations must occur at least 30 days before the anticipated date of the first dismissal.
- iii) If there are less than 20 employees fair selection must take place. Employees must NOT be selected on grounds of pregnancy, maternity, complaints about health and safety, trusteeship of a pension scheme, Trade Union or employee representation, threats of legal action against the employer, disclosure of company information in good faith and in the public interest, formal complaints about working hours, or, if a shop or betting worker, refusal to work on Sundays. Failure to carry out fair selection may result in an accusation of unfair dismissal.

In all cases, consultation should take place either with an elected representative of the employees or, if there is a Trade Union recognition agreement in place, the Trade Union representative or both as you choose. Consultation should be accompanied by a disclosure in writing to the representative giving;

- a) the reasons for the redundancies
- b) the number and description of employees to be made redundant, as well as the total number of employees of that description employed
- c) the proposed methods of
- i) selecting employees to be made redundant
- ii) carrying out the redundancies
- d) proposals for redundancy pay

NB. A failure to consult a represented Trade Union may give rise to a claim against the company for a Protective Award. A failure to consult an employee (i.e. where there is no Trade Union representation) will make that dismissal unfair, whether or not redundancy applies.

Redundancy pay

The legislation requires redundancy pay to employees where the employee fulfils all the following conditions:

- i) the employee is at least 18 years old, and less than the normal retirement age,
- ii) the employee had at least 104 weeks continuous employment after the age of 18,
- iii) the employee is NOT one of the following; a share fisherman paid solely by a share of the catch merchant seaman, a crown servant in a public office, a government employee of an overseas territory, a husband/wife employed by his/her spouse in a business on his/her own account, a self-employed person in business on this/her own account as an independent contractor, or a freelance agent, or a partner, or a person under a contract for services, or a domestic servant, or a worker dismissed whilst working abroad.

Under the Redundancy Payments Legislation an employer must make a lump sum redundancy payment to an employee under normal retirement age made redundant after at least 2 years Continuous Service since aged 18.

The payment is calculated via the following scale (with a maximum Continuous Service of 20 years and any weekly pay in excess of an upper weekly limit being disregarded)

Per Year of Continuous Service

Age

41-65 1\_ weeks pay

22-41 1 weeks pay

18-22 \_ weeks pay

The redundancy payment may also be claimed in certain circumstances, by a laid off employee or one kept on short time for a specific period.

You must provide the employee with a written statement showing how the redundancy payment was calculated.

All disputes about entitlement payments or about claims for rebate are referred to employment tribunals. Department of employment notification

The DOE must be notified of redundancies, unless less than 20 employees are being made redundant, on the following Schedule;

- i) 100 or more employees within a period of 90 days or less notify DOE via Form HR1, at least 90 days before first dismissal.
- ii) 20 or more employees within a period of 90 days notify DOE via Form HR1, at least 30 days before first dismissal.

If the company is in Northern Ireland, the Department of Manpower Services must be notified,

Form HR1 is available from the Department of Employment, 2 Duchess Place, Hagley Road, Birmingham B16 SNS.

#### Dismissal

In all cases of dismissal the following conditions must be followed;

- i) Prior consultation with the Legal Helpline Service and adherence to the advice given
- ii) Ensure that all steps laid down in the company's Disciplinary Procedure have been followed (NB failure to follow the procedure correctly will amount to an unfair dismissal, notwithstanding that the decision to dismiss was reasonable.)
- iii) Prepare and retain a written record of all matters relating to the dismissal. (NB Minutes of all meetings should be made, and statements of witnesses obtained where appropriate.)
- iv) Ensure that an official of the company who has the authority to dismiss actually carries out the dismissal. (The decision to dismiss must be taken by a Director or a Personnel Manager or a person with the appropriate authority in accordance with the company handbook).
- v) Ensure that dismissal is the appropriate remedy for this case;
  - a) If not, issue and record an appropriate warning.
  - b) If so, follow any advice given by the Legal Advice Helpline and inform the employee of the right of appeal
- vi) If your company has a recognition agreement with a trade union, then;
  - a) If the employee to be dismissed is a shop steward
    - i) consult the employees full time trade union official and
    - ii) consult with the Legal Advice Helpline
  - b) If the employee is not a shop steward
    - i) inform the employees shop steward of all the facts of the case, and inform the employee of his right to be accompanied by a shop steward or trade union representative, and
    - ii) inform the employee and shop steward of the right of appeal.
  - vii) If the employee requires written reasons for dismissal, this must be provided within 14 days.

Contact Composite Legal Expenses immediately.

viii) To avoid possible claim for constructive dismissal

Contact the Legal Helpline Service as soon as any grievance is expressed.

Dismissal involving any of the following must not occur without first contacting the Legal Helpline Service. Insurance cover cannot apply for dismissals on any of the following grounds without express written authority from the Legal Helpline Service.

Trade Union Membership of Trade Union activities.

Strike or any other Industrial Action.

Non Trade Union Membership

Dismissal of a Director.

Specific reasons for dismissal

If dismissal is due to one of the grounds listed below, certain additional matters must be considered.

Dismissal including:-

Legal disability or prohibition

- a) Under this heading dismissal is only allowed if;
  - i) the law would be broken if the employee continued to carry out his present job, and
  - ii) the work has ceased for all times
- b) If this is the result of a visit by a factory inspector or other similar official then follow the action required by him. Note, section above dealing with Redundancy Payments and Redundancy Consultation.
- c) If the disability has a time limit, the matters may depend upon whether you can wait for the limit to elapse.
  - i) if you can wait offer alternative employment during this period to the employee explaining the alternative is dismissal. If this is not acceptable, follow the procedure laid out above in the section on Dismissal.

If it is acceptable, employ the employee in the temporary position until the waiting period lapses. Do not change the terms and Conditions (see above) without the employee's consent.

ii) if you cannot wait; the job has therefore ceased, and the employee can be considered redundant.

Pregnancy

It is automatically unfair to dismiss a pregnant woman if her pregnancy is the reason for the dismissal.

Only in the following cases may dismissal occur, and only after consultation with the Legal Helpline Service.

- a) She has become incapable of fulfilling the requirements of her job because of her condition in this case;
  - i) There must be clear evidence that her condition is the cause of this, and clear examples of her failure to fulfil the requirements of her job must be recorded.
  - ii) The failure must be discussed with her, and she must be given every reasonable help to improve.
  - iii) If all of the above is answered in the affirmative, dismissal may be possible, but only after consultation with the Legal Helpline Service.
- b) She has produced medical evidence proving it would be harmful to her to keep her in her present job.

In this case;

- i) Obtain the Company Medical Adviser's opinion on this matter. If he does not agree, contact her doctor, explain the difference and obtain a further opinion, if possible from her doctor.
- ii) If the Company Medical Advisor agrees with her doctor then, if there is an alternative job which she can safely carry out, offer her the job in writing. If she accepts, retain her in that job until after her confinement. If she refuses, or if there is no alternative job she can safely perform, she may be dismissed, but only after consultation with and approval by the Legal Helpline Service.
- c) If she continues in her present job, she will place the company in breach of a statutory duty or restriction.

If there is an alternative job which she can perform which will not put the company in breach of any statutory duty or restriction, offer her the job in writing. If she accepts, retain her in that position until after the confinement. If she refuses to accept an alternative job, or there is no alternative job, then she may be dismissed, but only after consultation with and approval by the Legal Helpline Service.

Dismissal of an employee who:

- i) has complained about health and safety
  - ii) is a trustee of a pension scheme
  - iii) is a Trade Union or employee representative
  - iii. has threatened legal action against the employer,
  - iv. has made a formal complaint about working hours being illegal,
  - v. has disclosed company information in good faith and in the public interest or,
  - vi. if a shop or betting worker, has refused to work on Sundays,
- is automatically unfair if the employee is dismissed for that reason.

Breach of health and safety rules or other substantial reason

- a) If the employee has breached a written rule of the company, warn him in accordance with the company Disciplinary Procedure, filing a copy of the warning for reference purposes. If there is no improvement issue a final warning. Thereafter, follow the conditions specified in section on 'Dismissals'. Access to Medical Reports Act 1988

This imposes strenuous conditions in relation to a report obtained from a doctor who is treating an employee. Care must be taken if the medical report which is being sought is being obtained from a doctor who has treated the employee in question. If the employee has received such treatment by way of examination investigation or diagnosis or any other form of medical treatment, the employer will have to inter alia.

- 1) notify the individual of the intention to obtain a report and,
- 2) obtain the individual's consent for the same and;
- 3) inform him of his rights under the Act

In the event that the problem arises, it is recommended that you contact the Legal Helpline Service for advice on the mechanics of the Access to Medical Reports Act 1988.

- b) If the employee has behavioural problems;

- i) investigate the matter fully, obtaining facts and evidence, before,
- ii) informing the employee of the problem and giving a warning in accordance with company Disciplinary Procedure. Then,
- iii) provide the employee with sufficient opportunity to explain his side of the matter; with representation if he so desires;

If the company is willing to accept the explanation, ensure the employee fully understands why the problem arose and that it must not recur, record the details of all conversations and meetings for reference purposes.

If unwilling to accept the explanation then either:

- i) issue a final written warning in accordance with company Disciplinary Procedure, or
- ii) if it is reasonable in all the circumstances, and not inconsistent with other company disciplinary decisions, then the employee can be dismissed, but only after consultation with and approval by the Legal Helpline Service.

Suspension from duty

In any case of an alleged offence there must first be very thorough investigation to obtain all necessary facts. There are two options available in any case of an alleged offence:

- a) i) suspend the employee on full pay (unless you have a written agreement to suspend without pay).
- ii) keep the suspension to as short as time as possible
- iii) do not reach any final decision without hearing the employees' version of events
- iv) contact the Legal Helpline Service
- b) i) do not suspend and
- vii. allow the employee to continue to work while the investigation is conducted.

If:

- i) the suspected offence is one of 'gross misconduct', warranting instant dismissal, then follow option (a) as above
- ii) the suspected offence is one of less than 'gross misconduct', follow option (b) above
- iii) there is a need to lower tension in the department or area, or await the arrival of more senior

management, follow option (a) above

iv) it would be unsafe to allow the employee to continue in the job, follow option (a) above

v) you wish to suspend in order to await the result of a police prosecution, follow option (b) above.

Even a guilty verdict will not make a dismissal automatically fair, so you must conduct your own full investigation in accordance with the company Disciplinary Procedure. In all cases, telephone the Legal Helpline Service for advice.

#### Conduct of an appeal

Always first contact the Legal Helpline Service. The following points must be borne in mind:

i) The appeal must be conducted by a director or similar person, other than the person who made the decision to dismiss the employee.

ii) The director or similar person conducting the appeal must be of equal or senior status to the person who made the decision.

iii) All the necessary and available facts must be obtained, and the employee given the opportunity

a) to cite all the reasons he believes the decision to dismiss or warn is unfair, and

b) to be represented if he so desires.

If either of these points is ignored the appeal is invalid.

iv) a) if the person conducting the appeal believes that the decision to dismiss or warn is fair and reasonable in every respect, then he must confirm this in writing to the employee/appellant and his representative.

a. If the person conducting the appeal believes that the decision to dismiss or warn is not fair and reasonable in every respect, then he must quash or amend the decision in the light of the facts he has, confirming the decision in writing to all concerned parties.

Some employers use the appeal as an opportunity to examine all the evidence completely afresh, in other words, to conduct the appeal as if it were the original disciplinary hearing. This has the advantage that if there were any procedural flaws in the original disciplinary hearing, they may be "cured" if the company adopts a correct procedure in the appeal. [see note 2]

NB. The person conducting the appeal must be independent of the dispute.

#### NOTES

1. Time for presenting a complaint of sex discrimination was extended by 6 years by an employment tribunal during August 2000.

2. Whitbread & Co plc v. Mills [1988] IRLR 501.