



chapter 10

Managing employee discipline

Introduction

Disciplinary *rules* and *procedures* are designed for promoting orderly employee relations as well as fairness and consistency in the treatment of employees. *Rules* set standards of conduct and performance, whereas *procedures* help to ensure that the standards are adhered to and provide a fair method of dealing with alleged failures to observe them.

Rules of behaviour

Every organization has rules, for example rules about time-keeping, quality standards, safety and personal hygiene. Rules of behaviour in the workplace should be clear, readily understood and no more than are sufficient to cover all obvious and usual disciplinary matters. The UK Employment Rights Act 1996 requires employers to provide written information for their employees about certain aspects of their disciplinary rules and procedures. In particular, employees should be given a clear indication of the type of conduct, often referred to as 'gross misconduct', that may warrant summary dismissal, that is, dismissal without notice (Selwyn, 2011). Workplace rules will be shaped by national cultures and subcultures.

Penalties

The employer can impose a number of penalties for infractions, such as:

- rebuke
- warnings
- transfer or demotion
- suspension
- dismissal.

A *rebuke* may be, for example, a simple 'Don't do that.' For most employees, the rebuke may be sufficient to change behaviour. Formal *warnings* should not be given lightly because the manager is making some sort of commitment to action if the behaviour is repeated. Furthermore, the legislation on dismissal in Western countries has made the system of warnings an integral part of disciplinary practice, which has to be followed if the employer is to succeed in defending a dismissal decision. All written warnings should be dated, signed and kept on record for a period agreed by rules known to both sides. Disciplinary *transfer* or *demotion* is a penalty that is substantial but falls short of dismissal. *Suspension* involves a penalty that is serious but avoids the disadvantage of being long lasting. If all other penalties fail to modify the employee's behaviour, the employee may be *dismissed* with 'just cause'. There is an array of legal statute and precedent intended to safeguard the individual employee against unreasonable dismissal, the point of legal intervention varying from one country to another (Torrington, 1998).

Workplace disciplinary procedures

Across Britain, formal disciplinary procedures are the norm even in the smallest workplaces. A formal procedure provides a framework that avoids the risk of inconsistent ad hoc decisions. Torrington (1998) identifies four key features of a disciplinary procedure:

1. fairness
2. facilities for representation
3. procedural steps
4. management rules.

The disciplinary process must be conducted in a fair manner, *fairness* being best ensured by even-handedness in the disciplinary hearing. The employee should be entitled to know the nature of the charge in sufficient detail to enable her or him to prepare a case (*Hutchins v. British Railways Board* [1974]). Employees should always be given an opportunity to state their case (*Tesco (Holdings) Ltd v. Hill* [1977]) no matter what the circumstances are. Fairness will also be enhanced if there is an appeal stage. Due process should allow for the employee to be informed of her or his right to appeal to a higher level of management that has not previously been involved in the disciplinary decision or to an independent arbitrator (Selwyn, 2011).

To help the errant employee explain her or his case, the disciplinary procedure should allow *facilities for representation*, which means that another employee or representative should be allowed to accompany the employee (*Rank Xerox (UK) Ltd v. Goodchild* [1979]). In the UK, Section 10 of the Employment Relations Act 1999 creates a new right for a worker, when invited by the employer to attend a disciplinary hearing, to make a reasonable request to be accompanied by a single companion. The representative can be either an official of an independent trade union or a co-worker (Selwyn, 2011).

Procedural steps should be limited so that there are sufficient for justice to be done but not so many that matters become long and drawn-out. The steps are typically associated with *progressive discipline*, which means that the employer notifies the employee of unacceptable conduct and provides her or him with an adequate opportunity to correct the behaviour.

An employee who has committed an infraction is verbally warned and informed that if the same infraction is repeated (within some specified time period), the degree of disciplinary action will be increased. If the employee commits the same or a similar violation (or possibly an unrelated infraction) within the specified period, the employee will then be given a *written warning*, which will be placed in her or his personnel file. An employee who again transgresses will be suspended from employment for a period of time without pay and will be given a final warning. This warning will normally specify termination of the employment contract as a result of another such infraction. If the employee is again guilty of misconduct, the employee may be discharged for '*just cause*'. The legal notion of just cause means that there is a factual basis to warrant the dismissal, and/or the nature of the penalty was justified, taking into account all the relevant circumstances (Centre for Labour-Management Development, 2001).

Management rules pervade every workplace. Rules underscore management's prerogative to design work, to make decisions and to take actions to manage the workplace. Management rules typically cover six aspects of workplace activity and behaviour:

- *insubordination*
- *negligence*
- *safety*
- *theft*
- unacceptable behaviour (e.g. harassment of co-workers or fighting)
- unreliability

Management rules provide guidelines on employee behaviour as long as the rules are clear, understood and supervised.

In the UK, the ACAS Code of Practice on disciplinary and grievance procedures provides practical guidance on how employers and managers should deal with disciplinary issues in the workplace. In Britain, the Employment Act 2002 created a new prescribed procedure for handling discipline in the workplace. The 'three-step' disciplinary procedure requires:

1. the employer to specify the concerns in writing
2. the employee to attend a formal meeting with the manager
3. a right to appeal on the part of the employee.

Survey data show that 71 per cent of workplaces in Britain have implemented this three-step statutory procedure, and these formal procedures tend to be more prevalent in larger workplaces, in the public sector and in unionized workplaces (Kersley et al., 2006).