



## **Disciplinary Policy**

**Revised April 2013**

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## Disciplinary Rules and Procedures

### Gross Misconduct and Summary Dismissal

Gross misconduct is a single act of misconduct which is of such a fundamentally serious nature that it justifies immediate dismissal, known as 'summary dismissal'. Summary dismissal means the termination of an employee's employment without notice or pay in lieu of notice on the grounds of the employee's gross misconduct.

For summary dismissal to be justified, the actions of the employee must have fundamentally undermined the duty of trust and confidence between employee and employer, to the extent that the employer is no longer required to retain the employee in employment or be bound by any of the terms of the contract (including the requirement to give notice).

Care should be exercised as a summary dismissal can be an unfair dismissal if the correct procedures are not followed. Although the employer can dismiss the employee without notice following an incident of gross misconduct, the employer must first follow the normal disciplinary processes, for example the employer must properly investigate the alleged misconduct and conduct a disciplinary interview before concluding that dismissal is the appropriate response.

Some examples of gross misconduct include:

- theft
- fraud or deliberate falsification of records
- fighting or physical violence
- serious bullying or harassment, including threatening behaviour
- serious misuse of the Wellbeing Residential Group's resources
- deliberate, willful or malicious damage to property
- serious misuse of the Wellbeing Residential Group's computer facilities, including misuse of e-mail and Internet access
- serious insubordination
- deliberate or flagrant failure to follow the Wellbeing Residential Group's procedures and regulations
- being under the influence of alcohol or illegal drugs at work
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- raising a grievance or making an allegation maliciously
- driving a vehicle belonging to the Wellbeing Residential Group without permission
- criminal conduct outside of work that is relevant to the employment, or that might cause damage to the Wellbeing Residential Group's reputation
- disclosure without authority of confidential information to an outside person or Wellbeing Residential Group
- refusal to attend for a medical examination with an occupational doctor if reasonably asked to do so
- acting in any way that might reasonably bring the Wellbeing Residential Group's name into serious disrepute.
- In transport, tampering with equipment such as speed limiters and tachographs.
- For drivers, loss of driving licence for any reason.

The above list is not intended to be exhaustive.

There is no 'legal list' of what constitutes gross misconduct and it is up to each employer to devise their own rules and ensure that these are properly communicated to all employees. The list should state that it is not all-inclusive, but that other offences of similar gravity may be considered gross misconduct, depending on the circumstances.

### Disciplinary and Dismissal Process

The Wellbeing Residential Group aims to ensure that there will be a fair and systematic approach to the implementation of standards of conduct affecting all grades of employee within the Wellbeing Residential Group. To this end the following procedure will apply.

## Procedure

### Informal Warnings

1. Minor breaches of discipline, misconduct, poor time-keeping, etc may result in an informal oral warning given by the employee's immediate superior.
2. An informal warning will be recorded and retained in the employee's file and will remain active for disciplinary purposes for 12 months.
3. It is expected that in most cases an informal oral warning will resolve most difficulties. Where an employee commits a more serious act of misconduct or fails to improve and maintain that improvement with regard to conduct, behaviour or job performance, the formal steps detailed below may be taken.

### Formal Warnings

1. A disciplinary hearing conducted by the Home Manager will be held. In good time before the hearing the employee will be advised in writing of the reason(s) for thinking that the employee is guilty of misconduct or unsatisfactory job performance, provided with any evidence such as copies of witness statements and informed of the right to be accompanied at the hearing by a work colleague of his or her choice, or a trade union official. A trade union official means a full-time official or a lay official certified by the union as having experience of, or having been trained in, acting as a companion at disciplinary hearings. It should be noted that neither spouse/partner nor solicitor are suitable companions.
2. At the disciplinary hearing, the employee will be invited to state his or her case and to answer the allegations against him or her. If, following the hearing, it is decided that disciplinary action should be implemented; the employee will be told of the decision and given a letter in confirmation of this within 5 days.
3. In the case of minor offences the employee will be given a formal oral warning. Employees should be advised of the reason for the warning, that it constitutes the first stage of the disciplinary procedure and of their right of appeal.
4. In the case of a more serious offence, or if a further offence occurs within the currency of a prior warning, the employee may be given a formal written warning or, where the offence is sufficiently serious, a final written warning. The written confirmation will state:
  1. details of the misconduct or complaint that has occasioned the warning
  2. details of the action necessary to remedy the situation and any period of review
  3. the period of time the warning will remain active on the employee's file for disciplinary purposes
  4. that the employee has the right to appeal against the warning
  5. that any further misconduct of any kind will result in:
    1. dismissal with appropriate notice in the case of a final written warning, or
    2. a further disciplinary hearing and a final written warning which, if unheeded, may result in dismissal with notice.
5. The final decision to dismiss can only be taken by Bob Dhaliwal when satisfied with the facts of the case, the relevance of any mitigating factors and after interviewing the employee concerned.
6. Alternative disciplinary actions short of dismissal may be considered. These are:
  1. suspension without pay up to a maximum of seven days
  2. demotion to a suitable job, if one is available
  3. transfer to another section or department or to another unit or branch of the Wellbeing Residential Group
  4. loss of seniority, pay increment or discretionary bonus.

### Summary Dismissal

1. Employees may be summarily dismissed if it is established, after investigation and hearing the employee's version of the matter, that there has been an act of gross misconduct, major breach of duty or conduct that brings or might bring the Wellbeing Residential Group's name into disrepute.
2. Gross misconduct includes (but is not limited to):
  1. serious acts of insubordination
  2. serious breaches of health and safety rules
  3. theft

4. fraud and deliberate falsification of records
5. being under the influence of alcohol or drugs during working hours
6. serious negligence (even a single error where the actual or potential consequences are extremely serious), which causes, or is likely to cause, unacceptable loss, damage or injury
7. flagrant failure to follow the Wellbeing Residential Group's documentary procedures and regulations
8. breach of duty regarding non-disclosure of confidential information
9. deliberate or negligent damage to the Wellbeing Residential Group's property
10. disorderly or indecent conduct
11. fighting on the Wellbeing Residential Group's premises or threatening physical violence
12. acts of incitement or actual acts of discrimination or harassment on the grounds of sex, trans-gender status, marital status, civil partnership status, pregnancy, colour, race, nationality, national origins, ethnic origins, religion or belief, religious practices, sexual orientation, disability or age.
13. misuse of the employer's computer system, including misuse of e-mail and internet access.

## Suspension

1. The employee may, at the employer's discretion, be suspended with pay while the circumstances of any complaint or allegation are investigated.
2. In cases of potential gross misconduct, suspension with pay will be automatic.
3. Such suspension does not constitute a disciplinary sanction but is instigated in order to allow the Wellbeing Residential Group to investigate the conduct in question properly.

## Appeal

1. The employee may appeal in writing to Bob Dhaliwal against any disciplinary action within 5 days of receipt of the letter confirming the action taken.
2. An appeal hearing will be held.
3. The employee will have the right to be accompanied at the appeal hearing by a work colleague of his/her choice or a trade union official. A trade union official means a full-time official or a lay official certified by the union as having experience of, or having been trained in, acting as a companion at disciplinary hearings. It should be noted that neither spouse/partner nor solicitor are suitable companions
4. Following the hearing, the appeal decision will be confirmed in writing.
5. The decision at the end of the appeal is final.
6. The decision may include:
  1. the original decision is upheld
  2. the original decision is withdrawn
  3. suspension without pay
  4. demotion
  5. re-instatement where the employee has been dismissed.

## Disciplinary and Dismissal Appeals

The Wellbeing Residential Group wishes to implement its requirements of standards of performance and conduct by its employees as fairly and consistently as possible. To further this aim, where an employee has received a formal oral or written warning or has been dismissed in accordance with the Wellbeing Residential Group's disciplinary procedure, the appeals procedure will apply.

## Procedure

1. An appeal against a formal oral or written warning, or dismissal should be made within 5 working days of receipt of the disciplinary or dismissal letter. An appeal may be considered outside this time limit if the employee has good reasons for the delay which were outside his or her control.
2. The appeal should be made in writing, stating the ground(s) on which the employee believes the disciplinary penalty should be reviewed.
3. The letter of appeal should be sent to Bob Dhaliwal. The appeal hearing will normally be held within 5 working days of receipt of the letter.

4. The appeal will normally be heard by a manager senior to the disciplining manager, who was not previously involved in the disciplinary procedure. In circumstances where this is not possible, alternative arrangements will be agreed with the employee and his or her companion.
5. An employee will have the right to be accompanied at the appeal hearing by a work colleague of his or her choice or a trade union official. A trade union official means a full-time official or a lay official certified by the union as having experience of, or having been trained in, acting as a companion at disciplinary hearings. It should be noted that neither spouse/partner nor solicitor are suitable companions.
6. A representative of management will be present at the appeal hearing to keep a record of proceedings.
7. The employee will be given full opportunity to state the ground(s) on which the appeal is made. Should there be any new evidence, the employee or his or her companion must be allowed to comment on it. The disciplining manager will have the opportunity to explain his or her decision to impose the given penalty. The manager conducting the appeal may exercise discretion as to whether or not the two parties will be present together or separately during the proceedings.
8. When all the evidence has been heard, the appeal hearing will be adjourned. The manager conducting the appeal will consider the merits of the appeal, in private, before reaching a decision.
9. The manager of the appeal hearing will, whenever possible, inform the employee orally of the decision reached, and the reasons for it. The decision will be confirmed in writing, no later than 5 days after the hearing. If the decision is final, then this will be made clear to the employee.
10. The manager of an appeal hearing has the authority to quash or reduce a disciplinary penalty.
11. Employees should note that an appeal hearing is not intended to repeat the detailed investigation of the disciplinary hearing, but to focus on specific factors which the employee feels have received insufficient consideration, such as:
  1. an inconsistent, inappropriate or excessively harsh penalty
  2. extenuating circumstances
  3. bias of the disciplining manager
  4. unfairness in the conduct of the hearing
  5. new evidence subsequently coming to light.
12. Where an appeal against dismissal fails, the effective date of termination is the date on which the employee was originally dismissed.
13. If an appeal is on the grounds that the disciplinary action taken constitutes potentially unlawful discrimination, or that it was not genuinely on grounds of conduct or capability, then the appeal can be treated as a grievance, under the Wellbeing Residential Group's grievance procedure.

Signed:

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Date:

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Policy review date:

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