



*Managers Guidance Notes*  
*Discipline and Appeals*  
*Suspension from Work*

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## ABOUT THE AUTHOR

I am an experienced HR Manager with 25 years experience gained predominantly in stand-alone roles within a mixture of small localised businesses and large multi-site organisations. I am used to taking the lead on HR projects, ensuring that all HR policies and procedures are legally compliant and being the first point of contact for managers and employees in the full range of HR issues including disciplinary and grievance matters, absence management and performance management.

I have set HR departments up from nothing, have built up a wealth of expertise in company restructures and intensive recruitment programmes and I have closed businesses down. During those experiences I have seen things done well and have seen things done badly!

I've worked in large and small businesses but my preference is for small businesses and I formed Kea HR Solutions in 2006 so I could specifically use my experience and expertise in Human Resources to help owners of SMEs across South Yorkshire and the surrounding counties manage their people. I understand all aspects of human resources and am able to apply that knowledge to provide a solution for your business that firstly meets the legal requirements but also fits your needs, goals, and business style.

My professional and personal approach means I will work closely with you to come up with the ideal HR solution for your company's specific needs. I will slot into your business seamlessly, a natural people person, your staff will connect with me. I believe in giving my customers honest and straightforward advice, free from confusing legal jargon. I will clearly explain all your options with their risks and benefits so you can make an educated and informed decision that is right for your business.

I understand that all businesses are unique so I don't believe in offering my customers a one-size-fits-all solution to HR. All my services will be tailored to fit your company and its individual challenges and budget. Whether you want me to provide your company with long-term HR management or you simply want one-off advice with a situation that is happening in your business today, I am here to help you.

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## INTRODUCTION

In some cases, it may be appropriate for the employer to suspend the employee from work pending the completion of an investigation. However, given the serious implications of suspension for an employee, including for their morale and professional reputation, the Investigator must ensure that the circumstances of the case justify it, and that it is necessary to ensure a fair investigation. Suspension will not be necessary in every case.

It is important to advise the employee that suspension does not constitute disciplinary action and does not itself imply any presumption of guilt on the part of the employee.

Suspension is part of the investigation process and the employee should receive normal pay whilst they are suspended from work. The situations where suspension may be appropriate include those involving physical violence, harassment, fraud, theft, where there is a genuine risk to the business or where the employee may interfere with witnesses or the collection of evidence.

A recent court appeal has shown that it can be dangerous to be hasty in suspending someone from work without preliminary investigations. The court decided that the employer was in breach of contract, duty of trust and confidence, even though the employee received full pay. There is a stigma attached to being suspended and some preliminary investigations, even very brief, should have been undertaken, particularly where third parties make allegations about the employee's conduct. Suspension without pay would certainly be construed as breach of contract. Suspension even with pay should be for as short a period of time as possible. It is still a serious step to take and should not be used for minor situations.

The aim of these Managers Guidance Notes and the supporting Resource Materials is to take some of the anxiety out of suspending an employee.



There are a range of sub-folders that contain detailed guidance about each stage of the discipline and appeals process:

- Legal Requirements and Developing the Model Policy
- Investigations
- The Disciplinary Meeting
- Appeals

### Need Clarification?

If you require advice or support with this or on any other employment matter I would be happy to assist you. You can contact me on 0114 360 0626 alternatively you can email me at <mailto:kathryn@kea-hr.co.uk>.

#### Disclaimer

Whilst every effort has been made to ensure that the contents of the toolkit are accurate and up to date, no responsibility will be accepted for any inaccuracies found. This guidance should not be taken as a definitive guide or as a stand-alone document on all aspects of employment law. You should therefore seek legal advice where appropriate. The material produced here is the property of Kea HR Solutions and may not be reproduced without permission.

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## *The Acas Code Of Practice*

The ACAS Code of Practice on Disciplinary and Grievance Procedures provides practical guidance on dealing with disciplinary and grievance issues in the workplace. It has statutory force, and an employment tribunal considering a relevant case will take into account whether or not the employer has complied with its provisions. The tribunal can adjust any compensation awarded by up to 25% for an unreasonable failure to comply with the code.

The code states that an employer should: pay a suspended employee during the period of suspension; keep the suspension as brief as possible; and keep the suspension under review. The employer should make clear that the suspension is not disciplinary action in itself.

## *Grounds For Suspension*

Suspension pending the outcome of the investigation might be necessary:

- Where relationships have broken down;
- In cases where serious misconduct has been alleged, and which, if proven, would result in summary dismissal, for example where the employee is suspected of theft or fraud;
- Where there are grounds to believe that the employee might deliberately cause damage to company property, for instance to the company's computer network, if they remained in the workplace;
- Where there is a clear concern that the employee or others may be placed at risk by the employee remaining in the work place.
- Where the employee's continued presence at work might prejudice the investigation in some way, for example where there is a risk that he or she might intimidate witnesses or interfere with evidence;
- Where the employee has maliciously damaged the property of the company, colleagues or a third party such as a supplier or customer;
- Where the employee has acted in a violent manner or has threatened violence;
- Where the employee has been accused of serious bullying or harassment;
- Where the matter under review is of a highly sensitive nature; or
- Where the employee is being charged with a serious criminal offence.

Alternatives to suspension from work, such as temporary redeployment to another section or work base or working from home, should be carefully considered before initiating suspension. It is advisable to record why any such alternatives to suspension are not considered appropriate.

### **Notes:**

In cases of personal harassment or bullying, it will be the alleged harasser who is suspended or temporarily redeployed to a different work location or asked to work from home; where such actions are considered necessary.

A decision to suspend an employee should be taken only after careful consideration of all the circumstances. The Investigator should consider alternatives to suspension, for example temporarily relocating the employee or assigning new duties to them. It is advisable for the

Investigator to keep written records of any alternatives considered, including why they were not thought appropriate.

## *General Principles*

While it is preferable for an employer to have an express contractual right to suspend an employee, where the circumstances justify it, it can still suspend without one. The employer should ensure that the employee suffers no detriment as a result of its decision to suspend, and as such, the employee should be fully paid and benefit from the same terms and conditions of employment throughout the suspension.

If the contract of employment contains a procedure that applies to the suspension of an employee, the employer should ensure that it complies with it, as a failure to do so may enable the employee to claim breach of contract, and/or to resign and claim constructive unfair dismissal.

An employer should not suspend an employee without just cause. It is not appropriate to suspend simply because investigative enquiries are being made, where the particular circumstances do not require it. If it is necessary to remove the employee from, for example, contact with particular colleagues or clients, the employer should consider if suspension can be avoided by using a less drastic measure, for example a temporary change to the employee's duties or department.

Where the circumstances of a case justify suspension, the employer should advise the employee of the reason for the suspension, how long it is likely to last, and that it is a neutral act that does not indicate guilt. The employer should make clear to the employee that the suspension is not disciplinary action in itself, and that disciplinary action will not necessarily follow.

The employer should, as far as possible, keep the suspension, and the reason for it, confidential so as not to cause damage to the employee's reputation, particularly as the investigation will not necessarily result in disciplinary action. Where it is necessary to explain the employee's absence, the employer may consider discussing with the employee how he or she would like this to be communicated to clients and colleagues; this may be appropriate particularly if the employee holds a senior position. Where the employee's colleagues are aware of the suspension and/or the disciplinary issue, for example if they are witnesses or involved in the investigatory process, the employer should explain that the suspension is a precautionary measure while the matter is being investigated, and that it will not necessarily result in disciplinary action.

Employees should be encouraged to treat the matter as confidential. The employer may wish to provide managers with a statement confirming how to respond to queries relating to the suspended employee's absence, to ensure that a consistent message is communicated.

## **The Terms of Suspension**

If the Investigator determines that suspension is necessary, they should meet with the employee to discuss the terms of the suspension and why it is considered necessary. This should be followed up in writing to the employee. It will be necessary for the Investigator to explain:

- why the employee is being suspended;
- when the suspension will start;
- how long the suspension is likely to last;
- that the suspension is on full pay and benefits;



- that the suspension is not a penalty or tantamount to disciplinary action;
- that the suspension does not mean that the employee has been judged guilty of any offence, or that the outcome of the investigation has already been determined;
- that the employee will have a full opportunity to put across his or her version of events, explain his or her conduct, or answer any allegations; and
- that the line manager will keep the employee updated as to the progress of the investigation and will stay in touch.

It might be necessary for the Investigator to remove items such as the employee's access pass, computer password and company laptop and mobile phone, if the Investigator considers that it could undermine the investigation if the employee retained these items.

## The Length Of Suspension

In line with the "ACAS code of practice on disciplinary and grievance procedures", the period of suspension should be kept as brief as possible, and its continuance kept under review. Where possible, the employer should advise the employee of how long the suspension is expected to last, and update him or her as to the progress of the investigation. The employer should advise the employee if the investigation is delayed, and inform him or her of the reason for the delay, and what steps it is taking to ensure that it is completed as soon as possible. The suspension should be lifted immediately if the circumstances of the case no longer justify it.

## Pay And Benefits

Any suspension from work pending the result of an investigation should usually be with full pay and benefits. This is because suspension without pay would, in most cases, be a breach of the contract of employment and create the impression that the Investigator had judged the employee at the centre of the investigation "guilty" without having investigated the facts.

Where there is a clear contractual right to suspend without pay, the ACAS guidance provides that the suspension must not be unreasonably prolonged, as, if it is, this may give the employee grounds to resign and bring a complaint of constructive unfair dismissal, or take action for breach of contract.

All other benefits should also continue unless the contract states otherwise.

## The Risk Of Constructive Dismissal

If an employer imposes an unjustified period of suspension, it may amount to a breach of the implied term of trust and confidence, entitling the employee to resign and claim constructive unfair dismissal. Whether or not the employer is in breach of this implied term will depend on the circumstances of the particular case. Suspension of an employee may put the employer at risk of such a claim if, for example:

- the suspension is imposed without reasonable and proper cause;
- it is imposed in an unreasonable way;
- the suspension is unpaid, in the absence of a contractual right for it to be without pay;
- there is an unnecessarily protracted period of suspension; or
- the employee who is suspended is permanently replaced.

An example of a case where an employee succeeded in a claim for breach of the implied term of trust and confidence, arising from the unreasonable exercise of the right to suspend is *Gogay v Hertfordshire County Council [2000] IRLR 703 CA*. In this case the employee, a care worker, was suspended pending investigation of an allegation of sexual abuse of a child with learning and communication difficulties. The Court of Appeal held that the suspension had been imposed without reasonable and proper cause, as it was not clear that an allegation of abuse had actually been made, and that further investigations had been necessary. Further, to advise the employee she was suspected of sexual abuse had been unjustified, and the council should have considered more measured steps, for example a temporary transfer to other work or a short period of leave.

## The Availability Of Injunctive Relief

The civil courts have the power to grant an injunction preventing the suspension of an employee where this is potentially in breach of the employment contract. A court is most likely to grant an injunction for an employee in a professional role, where the suspension would cast doubt over his or her competence, and where financial compensation is unlikely to be an adequate eventual remedy for loss suffered as a result of the damage that suspension would cause to his or her reputation. Determining whether or not it is appropriate to grant an injunction in a particular case involves a balancing exercise of the competing interests of the parties.

The Court of Appeal confirmed that the power exists to grant an injunction to prevent suspension in *Mezey v South West London and St George's Mental Health NHS Trust [2007] EWCA Civ 106 CA*. The Court stated that suspension is not a "neutral act preserving the employment relationship", and that the High Court had been entitled to grant an interim injunction restraining the employer, pending trial, from suspending the employee, who was employed as a consultant psychiatrist.

## The Conclusion Of The Disciplinary Investigation

On completion of the investigation, the employer must decide whether or not there is sufficient evidence to justify disciplinary action. If there is, the employer should follow its disciplinary procedure, and the "Acas code of practice on disciplinary and grievance procedures", without undue delay. It may be appropriate for it to keep the employee suspended until the disciplinary procedure is complete if the circumstances still justify it.

If no disciplinary action is warranted, the suspension should be lifted and the employee advised to return to work without delay. It may be that the employee feels aggrieved by the period of suspension, therefore it is advisable for the employer to have a return-to-work meeting to enable the employee to discuss any concerns that he or she may have and allow the employer to address these concerns. The employer should assure the employee that the period of suspension has not affected his or her position, or continued employment, and that he or she will not suffer any future detriment as a result of the suspension.

## *The Suspension Process*

### **Stage 1 - The Decision To Suspend**

Dependent upon the nature and seriousness of the allegations there may be a need to consider the immediate suspension of the employee concerned. In such circumstances the Investigator will consider the matter with the appropriate HR Adviser.

### **Stage 2 - Practical Arrangements**

Where it has been agreed to proceed with suspension and following a preliminary investigation, the Investigator should agree with the HR Adviser the practical arrangements on how to implement the suspension to include:

- Locating suitable office space to ensure the suspension meeting takes place in private
- Safeguarding of relevant documents, records and other items of Company property
- Handing over keys and other equipment, e.g. a work mobile or IT equipment and where these could potentially be used inappropriately, ID and access cards
- Accompanying the employee back to the workplace to collect personal belongings if required or arranging for these to be delivered to/collected by the employee
- Limiting or removing access to IT systems
- Guidance about contact with other employees whilst suspended, e.g. it may be necessary in some circumstances for a suspended employee to be prohibited from contact with particular named employees.
- Escorting the employee off the premises
- How the employee's absence from work will be communicated to internal and external colleagues and customers

#### **Access to IT systems and networks**

When a decision to suspend has been taken the management team should also consider the implications of maintaining the individuals access to their e-mail account and the Company's IT systems and networks.

A letter confirming the suspension will need to be prepared and sent to the employee. This includes:

- A statement confirming that suspension is not a disciplinary action
- The reason for suspension
- The length of the suspension and arrangements for review
- Actions that will be taken during the suspension
- Impact on pay, leave and sickness
- Contacts within the Company and fellow employees during suspension
- Support mechanisms available

## Stage 3 - The Suspension Meeting

When the above arrangements are in place, the Investigator should convene a suspension meeting. The meeting should take place as soon as possible after the alleged misconduct.

Under normal circumstances, the Investigator should ask the employee to attend a suspension meeting, giving a brief outline of the reasons for the meeting; advising the employee that they have the right to have a work colleague present.

Those present in the suspension meeting would normally be:

- The Investigator
- HR Adviser, if required
- The employee being suspended
- A work colleague of the employee

The Investigator will explain the reasons for the suspension; reminding the employee that suspension is not a disciplinary action and does not itself imply any presumption of guilt on the part of the employee. The employee should also be advised that suspension is on contractual pay. The employee should be advised that notes of the meeting will be made.

Where the employee decides not to have a work colleague present at the suspension meeting, this will be noted by the Investigator for the record.

There is no legal right for the employee to be accompanied at a suspension meeting, therefore if a work colleague cannot be located at short notice then the meeting should not be delayed. Where the meeting takes place without an employee representative present, the Investigator should inform the employee why the suspension is proceeding without such representation and note these reasons in the minutes of the meeting.

During the suspension meeting the employee is entitled to:

- be told the reason that have led the company to consider suspension;
- give an initial response to any allegations;
- the opportunity to be accompanied by another person;
- be told of any conditions that apply during the suspension;
- have any suspension confirmed in writing;
- be paid in full as if they were not suspended, provided that they remain available to assist with or respond to the disciplinary process.

The Investigator should also inform the employee what will be communicated to colleagues to explain their absence from work, and how the Company will respond to any external enquiries from customers or suppliers about the employee's absence from work.

At the conclusion of the suspension meeting, the Investigator will prepare and post a letter of notification and associated documents, including a copy of the Company's Disciplinary Policy.

Investigators need to be sensitive to reactions from the employee including shock, stress or distress and may need to consider offering the employee support to their home.

Although suspension from work should not lead to social isolation it may be necessary in some circumstances for a suspended employee to be prohibited from contacting particular named employees. This should be made clear to the suspended employee.



See the Resources Material tab for a letter notifying an employee of a period of suspension from work.