



Rights of employee when going through disciplinary process and what a normal disciplinary process looks like

Rights of employees during disciplinary process:

Information	Employees must be given the information that the employer is relying on when considering dismissal or disciplinary action
Opportunity to comment	Employees should be given an opportunity to comment on that information, and to provide other information that may be relevant. This includes being given enough time to consider information to prepare a response. The employee should also be given an opportunity to comment on the outcome of any investigation and any proposed action before a final decision is made
Promptness	Any action should be taken as soon as practicable after the event
Representation	Employees should be told in advance that they can be represented (e.g. by a union delegate, friend or lawyer)
Open mind	The employer must listen to the employee's comments with an open mind
Even-handed treatment	Employers should treat similar situations in the same way. For example, if two employees engage in the same misconduct, they should receive the same treatment unless there is good reason not to
Access to the decision maker	The employee should be given an opportunity to address the person who is making the decision. The decision maker may appoint someone to 'fact find' and investigate the facts but must personally consider what the employee has to say. The decision maker should also personally inform the employee of his or her decision

What a disciplinary process looks like:

[This](#) flow chart sets out what a normal disciplinary process looks like.

Three key principles that govern any decision to investigate or take disciplinary action against an employee are:

1. Good faith;
2. Good reason; and
3. Fair process.

The minimum steps for a disciplinary process are:



1. As soon as an employer can reasonably name a suspected person and act, a disciplinary investigation can be started.
2. The employer must hold a reasonable belief of general or serious misconduct (the issue cannot be about performance).
3. At the outset, the employee must receive notice of:
 - a. The investigation;
 - b. The specific allegation;
 - c. The proposed process of the investigation, which includes opportunities for them to participate and/or comment;
 - d. The likely consequences should the allegation be upheld (e.g. a warning or dismissal); and
 - e. That they have a right to representation (perhaps by a union delegate or lawyer) and a right to have a support person at any meetings held.
 - f. If the employer is considering whether to suspend the employee (this will not apply to every situation).
4. The employee must be given a reasonable opportunity to respond to the allegations and refute evidence against them. This will mean:
 - a. Providing the investigation report and any witness statements to the employee, and enough time for them to consider those documents; and
 - b. Meeting with the employee to give them an opportunity to comment.
5. The employer must provide the employee with a 'preliminary decision', including details of any proposed disciplinary action, and allow the employee to comment on that before a final decision is made.
6. Once the investigation is completed, the employer should meet with the employee, and the employer should communicate the decision and explain it. At this point also, the employee should have the opportunity to have a support person and/or representative present. The decision should also be confirmed in writing.
7. The company's own policies and procedures must be adhered to throughout this process.



Additional steps to ensure fairness:

1. Prior to a disciplinary investigation, a general investigation might be carried out.
2. The employee should be notified of the investigation in writing, at least 24 hours prior to the disciplinary meeting. The notice should be given to them in person, and the contents should be talked through.
3. If the employer needs to speak to or interview anyone else as part of the investigation, they should advise the employee in advance who they will be speaking to and should speak only to those people it is necessary to speak to. Further, if the employer needs to interview people, they should do so promptly, while their memories are fresh.
4. The employer should also co-ordinate meeting times around the availability of any support people and/or representatives the employee wants present at the meetings.