**Disciplinary Policy**

December 2018

**Purpose**

The purpose of our disciplinary rules and procedures is to help and encourage all employees to achieve and maintain our desired standards of conduct and performance, to help our employees improve and develop their capabilities, and to ensure consistency and fairness in the treatment of all our employees in meeting these objectives.

In the majority of cases, the right word, at the right time, will be all that is needed to bring about the desired improvement and will often be a more satisfactory way of dealing with the matter than a formal interview. Our disciplinary procedures include the minimum standards required by law.

**Scope**

The policy is a guide only and not contractual and applies to all employees within the Thwaites group of companies.

**Reasons for Disciplinary Action**

**1. Conduct**

The following list of examples of misconduct would not normally lead to dismissal for a first offence except in serious cases where the Company no longer has enough trust and confidence in the employee:

* Acting in a way prejudicial to the Company's interests in dealings with its customers, suppliers or other outside contacts;
* Breach of the IT Policy e.g. unauthorised downloading of material;
* Conduct which brings the Company's good name into disrepute;
* Failure to meet the Company’s standards on matters over which employees have control e.g. timekeeping, dress standards, absenteeism;
* Inappropriate behaviour at a social or training event;
* Failing to meet the standards set in a coaching contract within the agreed timescale;
* Inappropriate behaviour or comments to other employees, visitors or customers which offends;
* Misuse of Company equipment and facilities, e.g. Company vehicles and computer equipment;
* Minor breaches of the Company policies procedures and rules;
* Posting or distributing unauthorised literature at work, to customers or on the Company’s premises;
* Presence at work in an unfit state to perform duties;
* Pursuing own private business on Company property or in Company time;
* Refusal to comply with a reasonable request, e.g. refusing to help an employee on another department, or assisting in another location;

**2. Serious Misconduct**

The following list of examples of Serious Misconduct would not normally lead to dismissal for a first offence except in serious cases where the Company no longer has enough trust and confidence in the employee:

* An incident or accident resulting from human error and without intent or undue risk which potentially has serious health and safety consequences;
* Where a Gross Misconduct offence has taken place and there are mitigating circumstances that reduces the level of disciplinary sanction.

**3. Gross Misconduct**

The following list of examples of Gross Misconduct is not exhaustive, as it is not possible to include every case which may arise:

* An act of misconduct so serious that we no longer have enough trust or confidence in the employee for a working relationship to be maintained;
* Acts committed outside of work or a conviction for a criminal offence, where the offence or act has an adverse bearing on the employee’s suitability for the job or makes the employee unacceptable to other employees and customers;
* Placing the Company in a position that could be considered to be a breach of statutory regulation or a violation of the laws of the land;
* Breach of petty cash handling or stock movement and delivery procedures;
* Employees who take drugs which have not been prescribed on medical grounds will, in the absence of mitigating circumstances be deemed to be committing an act of Gross Misconduct, as will any employee believed to be buying or selling drugs or to be in unlawful possession of drugs. This also includes selling, distributing or using drugs at a social event;
* Breach of the Company Drug and Alcohol Policy;
* Disregard of health and safety precautions, including smoking in an unauthorised area and a failure to follow safe working practices;
* Failure to disclose information to the Company, relating to serious or dangerous malpractice, including safety and security or dishonesty;
* Falsification of Company records;
* Fighting, physical assault or threatening behaviour towards, or serious provocation of any person on Company premises;
* Fraud or attempted fraud;
* Making an unauthorised or false claim which is in breach of the Company’s Expenses or Sick Pay policy;
* Offences regarding clocking / swiping in and out of work, falsification of timesheets including break times;
* Repeated or serious failure to follow instructions e.g. not wearing appropriate PPE;
* Sending inappropriate text messages or emails on Company or personal equipment to other employees, contractors, suppliers or customers;
* Making inappropriate phone calls to other employees, contractors, suppliers or customers;
* Serious breach of the Information Technology Policy, e.g. inappropriate or unauthorised use of computer systems including the downloading or distribution of offensive or indecent material via the Company network, the internet or email (irrespective of the owner of the PC);
* Serious harassment, discrimination or bullying of other employee’s, either generally or on the grounds relating to their sex, marital status, race, colour, nationality, ethnic origin, disability, religion, beliefs, age or sexual orientation;
* Serious misconduct at a social or training event;
* Serious neglect of or damage to Company property, e.g. frequency equipment, heavy good vehicles, manual handling equipment;
* Theft or attempted theft, either from the Company or its employees, customers or suppliers;
* Unauthorised disclosure of confidential Company information;
* Using hand held mobile phone or other electronic device while driving a Company vehicle or otherwise driving a car on Company business other than using an approved “hands free” set.

**NB. The above lists are not exhaustive and are intended to act as a guide only. The circumstances of each allegation will be considered.**

**Stages in the Procedure**

The stages in the procedure and the time that each warning will remain live are as follows:

|  |  |
| --- | --- |
| Stage | **Period warning is live** |
| Verbal Warning | 6 months |
| First Written Warning | 12 months |
| Final Written Warning | 12 months |
| Dismissal | - |

The manager holding a disciplinary hearing will always be more senior than the employee answering the allegation. The appeal, where possible, will be held by a more senior manager from a different area of the business. The manager conducting a hearing will be accompanied by a trained note taker or a member of the People Team.

The procedure will follow the stages above, but acts of Gross Misconduct will result in summary dismissal, or in the presence of circumstances which the Company accepts to be mitigating, or in cases of Serious Misconduct, a final written warning, without stages one or two being used.

**Stage 1 – Verbal Warning**

If counselling has failed to generate an improvement and the employee's conduct still does not meet acceptable standards, or if the issue is too serious to consider counselling to be appropriate, then a verbal warning will be issued. A copy of the warning will be placed on the employee's personal file and will include details of:

* The specific allegation regarding conduct;
* The improvement required;
* The duration of the warning;
* That Stage Two will be considered if there is no improvement or a further breach of any rule.

**Stage 2 – First Written Warning**

If the employee's conduct does not improve or if there is a further breach of rules while Stage One is live, then a first written warning will be issued. A copy of the warning will be placed on the employee's personal file and will include details of:

* The specific allegation regarding conduct;
* The improvement required;
* The duration of the warning;
* That Stage Three will be invoked if there is no improvement or a further breach of any rule.

**Stage 3 – Final Written Warning**

Again, if the employee's conduct does not improve or there is a further breach of rules, a final written warning will be given. The details are as in Stage Two but it is vital that the employee is clearly informed that failure to improve or a further breach of rules will lead to dismissal.

In cases of Serious Misconduct, a final written warning can be issued without having issued a warning at Stage One or Stage Two. In this event, it is vital that the employee is clearly informed that failure to improve or a further breach of rules will lead to dismissal.

**Stage 4 – Dismissal (with notice)**

If the employee is in receipt of a final written warning and their conduct has not improved or they continue to breach rules, or if the individual circumstances of the case justify it, they will be dismissed and the relevant period of notice will be given to terminate their contract.

**Summary Dismissal**

If an employee commits an act of Gross Misconduct, the normal penalty will be summary dismissal i.e. dismissal without notice or pay in lieu of notice. In a case of Gross Misconduct, if the Company accepts there to be mitigating circumstances the manager may pull back from summary dismissal and issue a final written warning if they consider that dismissal would be too harsh in the circumstances.

Note that the Company may use a shorter Disciplinary Process for any employee with less than 2 years’ service.

**Investigation**

An employee's supervisor or manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Company’s policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

There may be instances where suspension with pay is necessary while investigations are carried out. The organisation has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with or destroyed, or that witnesses may be pressurised before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at a formal investigatory interview. The organisation reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

**Suspension**

Sometimes it may be necessary for an employee to be suspended. It is important to understand that by suspending the employee we are not pre-judging the outcome of any disciplinary action that may follow.

An employee may be suspended:

* To allow a full and detailed investigation to take place;
* To allow employees to cool off if there has been an emotional or heated situation, e.g. fighting;
* If the employee is in an unfit state, e.g. suspected or found to be under the influence of drink or drugs;
* If there is a possibility that the outcome may be summary dismissal, e.g. if it is a potential Gross Misconduct offence.

An employee should:

* Have the purpose of the suspension clearly explained to them;
* Have the reasons for their suspension clearly explained;
* Be informed of the next stage e.g. asked to attend an investigatory hearing on – date, time, and venue;
* Be informed that they will be suspended on full pay, defined as their basic rate of pay;
* Receive a letter confirming their suspension and the reasons for it either at the time of the suspension or shortly afterwards.

Suspension will be kept to a minimum. The length of time will clearly depend upon the circumstances of each particular case and will be regularly reviewed. It may also become necessary to suspend an employee during an investigatory hearing if it becomes apparent during an investigation for alleged misconduct that the matter is more serious and potentially falls within the Gross Misconduct reasons outlined within this procedure.

**Rights of Representation**

Employees have a statutory right to be accompanied at a disciplinary hearing by any work colleague or a trade union representative. Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not formal disciplinary hearings. If it becomes clear during the course of an investigation that a disciplinary hearing may be called, the investigation will be concluded and a formal disciplinary hearing will be arranged, at which the employee will have the right to be accompanied.

When choosing a representative, the Company reserves the right to deny the request for that representative if they feel that their presence would prejudice the hearing or may cause a conflict of interest. We also advise against managers representing employees and visa versa as there could be a conflict of interests at a later stage.

Before the disciplinary hearing, the employee should let the appropriate manager know who they have chosen as their representative.

The representative can:

* Put the employee’s case;
* Make representations on behalf of the employee;
* Sum up the employee’s case;
* Ask for an adjournment to confer with the employee during the hearing;
* Ask witnesses questions.

The representative cannot:

* Answer questions on the employee’s behalf;
* Address the hearing if the employee does not wish it;
* Prevent the Company representative holding the hearing from explaining the case against the employee.

If the employee’s chosen representative will not be available at the time and date proposed for the hearing then the employee will need to propose an alternative time and date which is reasonable and within 5 days of the first date they were asked to attend the hearing.

**Non-attendance**

Once the employee has been advised of the time, date and venue for their disciplinary hearing, we understand that sometimes, due to the employee’s representative not being able to attend on that day or due to unforeseen circumstances, the employee may not be able to attend on the proposed date. In this event, the employee will be advised of an alternative date time and venue for their disciplinary, grievance or appeal hearing.

However, if the employee has been asked to attend 2 hearings and fails to do so, the second hearing will go ahead and be heard in their absence. In these circumstances, the Company will appoint a representative on their behalf. The employee will then receive the disciplinary findings by letter.

**Informal Counselling**

Counselling may often be a more satisfactory way of resolving problems than a disciplinary interview and the right guidance at this time can often prevent the need for formal action. It is, therefore, not part of the formal disciplinary procedure, but an informal discussion carried out by the employee's manager would take place if there had been minor lapses in behaviour or a minor breach of rules. All counselling forms will remain live on an employee’s file for 12 months.

**Dismissal within Probationary Period**

All employees are placed on a 13 week probationary period. If the employee is not going to achieve the required standard to do their job, they will be dismissed with their contractual notice. In this circumstance we may pay the notice period in lieu.

We must have previously discussed with the employee:

* Areas where standards are not being achieved;
* A period of time for improvement to be allowed;
* The consequences of not achieving the required improvement.

If following these discussions the employee’s performance has not improved then they should be invited to a hearing. The employee can appeal against the decision to dismiss them.

**Extended Probationary Period**

The probationary period may be extended beyond that stated in the contract, in writing, in cases where the Company needs more time to assess an employee’s suitability, e.g. following absence due to honoured holidays. If the employee continues to fail to achieve the required standard, they will be dismissed with their contractual notice. In this circumstance we may pay the notice period in lieu. We must have previously discussed with the employee:

* Areas where standards are not being achieved;
* A period of time for improvement to be allowed;
* The consequences of not achieving the required improvement.

If, following these discussions, the employee’s performance has not improved then they should be invited to a hearing. The employee can appeal against the decision to dismiss them. An appeal letter must be presented to the People Team clearly detailing the reasons for the appeal, within 7 days of receiving written confirmation of the decision. An employee’s probationary period should not be extended beyond 6 months in total.

**References**

We take up references for every new employee. Should we receive one, (whether within the employee’s probationary period or later) which contradicts information the employee has provided, or which in our sole opinion is unsatisfactory, then the Company may terminate the employees employment immediately, observing the appropriate notice period.

If the above was applicable, the employee should be invited to a hearing as outlined in the disciplinary policy above. The employee can appeal against the decision to dismiss them. An appeal letter must be presented to the People Team clearly detailing the reasons for the appeal, within 7 days of receiving written confirmation of the decision.

**Temporary or Fixed Term Employees**

At the end of a temporary or fixed term contract and where the contract will not be renewed by the Company, a consultation process should take place. Only where the reason for not renewing the contract is performance related will the disciplinary procedure apply.

**Other Types of Dismissal**

There may be other instances where the Company terminates the employee’s employment, e.g. redundancy and restructuring exercises, re-rostering, immigration irregularities (i.e. the employee has no right to work in the UK). However, the Company will always consult with employees using the relevant Policies and Procedures. Employees will always be given a right to appeal against the Company’s decision.

**Appeals Procedure**

Employees have the right of appeal against any formal disciplinary decision. The employee, the employee’s representative or the trade union representative, acting on the employee’s behalf, must normally present an appeal.

An appeal must be presented in writing for the attention of the Manager stated in the appeal letter, clearly detailing the reasons for the appeal, within 7 days of receiving written confirmation of the disciplinary decision. Appeals will be heard as soon as reasonably practicable.

The reasons for appeal should set out clearly stating what is believed to be wrong with the decision made. The employee should also summarise any new evidence or information that they believe may have affected the outcome of the disciplinary hearing.

Employees have the right to:

* Be heard personally at an appeal;
* Be accompanied by an employee representative, any work employee or a trade union representative of their choice;
* Call witnesses (unless anonymity has been assured – if this is the case questions can be put to the witness in writing);
* Comment on any new evidence arising at the appeal.

The appeal manager will consider:

* Specific reasons for the appeal;
* Any new evidence that has come to light;
* The circumstances leading to the disciplinary sanction;
* If the Company procedures have been followed;
* If the allegation was fully investigated;
* The fairness and reasonableness of the disciplinary decision in relation to the information and evidence available;
* The fairness and reasonableness of the disciplinary decision in relation to the Company’s policy.

The appeal manager has the authority to uphold or decrease the original disciplinary decision depending on the facts of the case. They cannot change the decision to give a harsher penalty.

If the appeal manager decides that the original allegation was incorrect then they can dismiss the current hearing and send the case back to be re-investigated or re-heard.

The appeal manager can also:

* overturn a dismissal and offer to re-instate or re-engage an employee; this may have conditions attached;
* Re-instatement means offering the employee the position they had when they left on the same terms and conditions;
* Re-engagement means offering the employee a suitable alternative position with the Company.

The outcome of any appeal hearing should, where reasonably practicable, be confirmed in writing within 7 days of the hearing concluding.

**THE DECISION OF THE APPEAL MANAGER IS FINAL.**

I confirm I have read and understood the above

Name …………………………………………………………………………….

Signed ……………………………………………………………………………. Date ………………………………………….