

Disciplinary and grievance procedures during the coronavirus pandemic

Employment law and the [Acas Code of Practice on disciplinary and grievance procedures](#) still apply during the coronavirus (COVID-19) pandemic. This includes while social distancing and lockdown measures are in place.

The circumstances of those involved in a disciplinary or grievance procedure may be affected by the pandemic. Employers need to consider how to proceed in a fair and reasonable way. They should do this in consultation with those involved in the procedure.

If someone's on furlough

If someone's on temporary leave ('furlough'), they can still:

- raise a grievance
- take part in a disciplinary or grievance investigation or hearing

This is as long as [HMRC's guidance on the Coronavirus Job Retention Scheme](#) is followed.

Deciding if a disciplinary or grievance procedure should go ahead

The [Acas Code of Practice on disciplinary and grievance procedures](#) means that disciplinary and grievance procedures must always be fair and reasonable.

During the coronavirus pandemic, they must also be carried out in a way that follows public health guidelines around social distancing and the closure or phased re-opening of certain workplaces.

It may be helpful for employers to consider their overall policy on how they handle disciplinary and grievance procedures during the pandemic. Many organisations and employees will be facing additional pressures and there may be practical challenges to holding meetings. But procedures must still be taken forward without unreasonable delay.

Employers should try to find a safe, fair and reasonable way to go ahead with procedures. If this is not possible, they should consider if it might be fair to suspend a procedure.

If an employer's disciplinary or grievance procedures were previously agreed with a trade union, the employer should talk to a union representative about whether it might be appropriate to make any temporary changes.

Considering the circumstances of each case

It's important to consider the individual circumstances and sensitivity of each case when deciding how to proceed. For example, consider if it may be something urgent, such as a disciplinary allegation of gross misconduct or a grievance about unlawful

harassment. Or, for relatively minor disciplinary issues it might be appropriate to consider if it can reasonably be dealt with at a later date.

If it's a grievance or disciplinary issue about an ongoing situation, it's important to consider whether a delay might make matters worse.

If the case might result in an employment tribunal claim, it's important to be aware of the [time limit for making a claim](#). If the time limit ends before the grievance or disciplinary meeting is held, delaying the case may result in an employment tribunal claim being made, which might otherwise have been avoided.

The employer should talk through the options with everyone involved before deciding whether and how to proceed. This includes:

- the employee involved in the procedure
- the employee's representative or companion, if there is one
- any other people involved, for example the manager chairing the meeting or witnesses who may need to attend

This will help to make an informed decision based on everyone's circumstances.

When talking through the options it's important to consider if anyone:

- has a good reason for wanting the procedure to either go ahead or be suspended
- has concerns about holding the meeting either in person or remotely
- has concerns about how the employee can be fairly accompanied at the meeting

Going through a disciplinary or grievance procedure can be stressful in normal times, and employees might be facing other stressful circumstances during this time. Employers should give careful consideration to the health and wellbeing of employees when deciding whether and how to proceed.

[Find out more about coronavirus and mental health at work.](#)

If the workplace is open

If all those involved in the procedure can go to the workplace, the employer should firstly consider whether a face-to-face hearing can be safely arranged. The employer must follow the [government's guidelines on working safely during coronavirus](#), including carrying out a [risk assessment](#) of their workplace.

If the employer goes ahead with a face-to-face meeting, it's important that the employee's chosen companion can also attend the meeting in person if the employee wishes.

If a face-to-face meeting cannot be safely arranged, or if anyone has another reasonable objection to holding the meeting in person, it should be considered whether it's possible to carry out the procedure remotely in a fair way. If this is not possible, it may be appropriate to suspend the meeting.

Carrying out a procedure remotely

Video meetings may need to be used for any investigation interviews and hearings if a procedure is carried out remotely, as long as the procedure is still fair and reasonable.

It's important to consider if:

- everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection
- anyone involved has any disability or other accessibility issues that might affect their ability to use video technology, and whether any [reasonable adjustments](#) might be needed
- it's possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office
- any witness statements or other evidence can be seen clearly by everyone involved during an interview or hearing and provided in advance where appropriate
- it will be possible to fairly assess and question evidence given by people interviewed during a video meeting
- it's possible for the person under a disciplinary investigation or who raised a grievance to be fairly accompanied during the hearing

[Find out more about carrying out a fair investigation.](#)

Recording video meetings

Employers should keep a written record of any disciplinary or grievance cases they deal with. Disciplinary or grievance meetings held by video may be digitally recorded with the agreement of everyone involved.

If there's agreement to digitally record a meeting, this must be done in line with data protection law.

[Find out more about data protection from the Information Commissioner's Office \(ICO\).](#)

The right to be accompanied

The right for an employee to be accompanied at a disciplinary or grievance hearing still applies during the coronavirus pandemic. The employee's chosen companion must be able to attend the hearing and fully participate in it.

Any hearing must be set up to allow the employee's chosen companion to:

- put and sum up the employee's case, if the employee wishes
- respond on behalf of the employee to anything said
- talk privately with the employee at any point

If a hearing is being held face-to-face, the companion should be present in person if the employee wishes.

The employer should talk to the individual and their companion to understand their circumstances and any concerns they may have about the procedure. For example, the employee and their companion might prefer a face-to-face meeting if the issue raised by a grievance is very serious, or if a disciplinary hearing might result in the employee's dismissal.

It's also important to consider the availability of an employee's companion might be more limited than usual. For example, they may have more caring responsibilities or have difficulties travelling.

If the employee's chosen companion cannot attend at the time or date of the hearing, the right to be accompanied allows the employee to suggest another time and date. This is as long as it's reasonable and not more than 5 working days after the original hearing date. If the companion is not available for a longer period, the employer should consider if a delay of more than 5 days may be reasonable. This is especially important if the hearing might result in dismissal, as the employer must always act fairly to avoid an

unfair dismissal.

[Find out more about the right to be accompanied.](#)

If an employer goes ahead with or suspends a procedure

The employer should explain the decision on whether and how to proceed to all those involved in the procedure, so everyone is clear what's been decided and why.

The employer should regularly review any decision to suspend a procedure. They should do this in consultation with those involved in the procedure. The procedure should be taken forward as soon as this can be arranged in a safe, fair and reasonable way.

If the employer decides to continue or start a procedure, they must follow the [Acas Code of Practice on disciplinary and grievance procedures](#).

If a disciplinary or grievance case reaches an employment tribunal, judges will look at whether the employer has followed the Acas Code of Practice in a fair and reasonable way.

Find out more about:

- [disciplinary procedures](#)
- [grievance procedures](#)

The employee's right of appeal

The employee's right of appeal still applies as it normally would.

The employer must follow a fair appeals procedure taking in the same considerations as for carrying out a disciplinary or grievance procedure during the coronavirus pandemic.

[Find out more about appeals.](#)

Making a claim to an employment tribunal

If an employee or worker wants to make a claim to an employment tribunal, the legal time limit is still the same during the coronavirus pandemic, even if a disciplinary or grievance procedure has been suspended.

The claim must usually be made within 3 months less 1 day. If it's a claim about redundancy pay or equal pay, the claim must be made within 6 months.

They still need to tell Acas first that they're intending to make a claim.

[Find out more about making a claim to an employment tribunal.](#)