

Investigation: Is it right to suspend an employee?

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On receipt of serious allegations against an employee, one of the first decisions that you need to make, as an employer, is whether to suspend your employee or not. This is all the more important where the employee is senior, as it is practically impossible to suspend and keep the suspension confidential.

You will usually have a contractual right to suspend. However, this right is not unfettered. A suspension may (if wrongly implemented) undermine the implied contractual term of trust and confidence.

This means that before suspending, you must be satisfied that you have reasonable grounds to suspend. This is particularly critical where the individual is senior, as a suspension may damage their reputation and wreck their career. In some cases, the employee's mental health is so badly affected by the suspension that even if they are exonerated at the end of the investigation, they end up not being able to return to the work place. This can be very costly for you, as an employee who is suspended unlawfully will argue that they are entitled to uncapped compensation for their losses. In many ways, this makes a suspension decision even more important than a dismissal decision.

When dealing with suspensions, here are a few points you should remember.

- 1. Weigh the evidence proffered in respect of the allegation.** Are there verifiable facts cited to back up the allegations? Are the allegations stale and a repetition of previous already dismissed allegations? Is there an obvious missing line of enquiry? Has the employee been given the opportunity to comment on the allegations? Does the complainant have an axe to grind?
- 2. Consider the explanation for needing to remove the employee from the work place.** Just because serious allegations have been made, you should not assume that suspension should automatically follow. If there is a risk to people or property, what is the extent of this risk based on the available information? Will the accused employee interfere with witnesses?
- 3. Question – is there an alternative to suspension, such as alternative duties for the individual?** Here you can be creative. Can the accused employee be transferred to different duties, sent on secondment or put in charge of a project so they can continue to work?
- 4. If a complainant reports to the accused,** can the reporting line be changed (and related precautions put in place) so that the accused can carry on working?
- 5. If there is no alternative to suspension, review this decision regularly as the investigation proceeds.** It may be possible to bring the employee back into the work place part way through the investigation. You should also discuss with the employee what will be said to those who will notice their absence, both within and outside the organisation. Will they simply be told he/she has taken some leave? Is there an obligation to inform the regulator?
- 6. At the suspension meeting, do not offer a settlement** unless the employee is genuinely looking for a way out. Any exit discussions need to be handled in a nuanced and sensitive way.
- 7. Do not prejudge the evidence by commenting on its strength to justify a suspension.** It is the task of the investigator to establish whether the allegations are made out.
- 8. Offer support to the suspended employee.** This may range from counselling to legal or forensic support in certain cases.

9. Ensure the suspended employee receives regular information and updates.

Handling the situation logically, thoroughly and, perhaps most importantly, sensitively, is key when considering suspension. If you are in doubt, we can help you assess the situation and find the right solution for both you and your employee.

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