



The panel should consist of people of the same rank or higher than the accused, with the chairperson having some knowledge of DI process, procedures and regulations relating to employment law.

Domestic inquiry and employee misconduct



An employee accused of misconduct gets his day in “court” via a domestic inquiry, whereby the employer has to prove the charges and the worker gets to defend himself.

A DOMESTIC inquiry (DI) is an internal hearing held by an employer to ascertain whether an employee is guilty of misconduct before an employee is dismissed or before any other major penalty is imposed.

It aims to establish whether the alleged misconduct is proven or not, and should the misconduct be proven, it will recommend a punishment that is appropriate. The employer will have to prove the charges before punishment is imposed, while the employee gets an opportunity to defend himself.

To ensure every step is taken accordingly, both parties must be able to anticipate the process of the inquiry. If the employee has been given an opportunity prior to the latest alleged misconduct, the employee can be dismissed.

However, the DI must bear in mind to follow the proper procedures and that employees are treated fairly.

There are six steps in conducting the DI process:

1. Issuance of showcause letter

The letter is issued to the accused employee to call for an explanation for the alleged misconduct and to answer the question on why disciplinary action should not be taken, to be responded to within the set time frame. The letter should be drafted in a language that can be easily understood and must confidential. It is to be personally delivered to the employee.

2. Response to the showcause letter

The employee should respond within the stipulated time. If the explanation is acceptable, no punishment will be imposed. However, if it's not acceptable or unclear, a Notice of Domestic Inquiry may be issued.

3. Issuance of Notice of DI

In cases where there is no response from the employee, or the response is found to unacceptable or unclear, HR may proceed to issue the Notice of Domestic Inquiry.

4. Suspension

If the response is unsatisfactory, the accused can be suspended up to a maximum of two weeks with half wages. However, the employer must pay back the remaining wages to the employee if he is later found to be not guilty.

5. Appointment of the Panel of Domestic Inquiry

The panel of inquiry must not be involved directly in the investigation. It should consist of people of the same rank or higher than the accused. To conduct a DI adequately, the chairman of the panel should have some knowledge of DI process, procedures and regulations relating to employment law.

Always bear in mind that the panel must strictly comply with the principle of natural justice and the panel should be seen to act “fairly and justly”.

The panel should comprise an odd number of persons who are employees of the company, usually three or five. Practically, three panel members are appropriate for SMEs. In addition, there should be a secretary and a presenting officer in the domestic inquiry.

6. Domestic Inquiry

At this stage, the employer should start with the allegation of the misconduct and provide valid proof.

The panel should keep a verbatim record

of the proceedings, and the chairman must outline the rules covering the conduct of the proceedings and ensure that the DI be held in the presence of the accused.

All witnesses must be taken into account and questioned in the presence of the accused, and documented evidence must be presented and statements during the DI must be recorded and signed. At the end of the DI, the panel must be able to conclude and submit the DI report to the management.

Once the DI date has been set and the employee has been formally notified, the employer should anticipate that the following scenarios may happen on the day of the DI:

1. The employee is absent

In this case, the employer needs to ensure that notice of DI has been sent out. Then another date should be set for the inquiry. Also, the employee should be informed that the DI will proceed on the postponed date even if he is absent again.

2. The employee submits a sick certificate

As per the first scenario, the Inquiry should be postponed and a letter should be written stating he should be present on the postponed date unless he is seriously ill.

3. The Employee requests a postponement

If the accused employee is able to provide a reasonable reason for the request, the postponement shall be granted.

The next stage would be on the day of the actual inquiry. The DI comprises several stages. Firstly, the charge is read and

explained to the accused and he is asked to make his plea, either guilty or not guilty. It's important to ensure that the employee understands the charges before he makes a plea.

The inquiry panel or officer should make sure that the plea is unequivocal, without any conditions, and that he understands the consequences of his plea.

If the accused employee pleads not guilty, the presenting officer then calls the company's witness.

If in any case the accused is not represented by union officials, the accused is allowed to give his evidence and may be guided by the inquiry panel or officer.

He is then cross-examined by the presenting officer, may be given a chance to clarify certain issues and may be then examined by the inquiry panel or officer.

The accused should then be allowed to call his witnesses.

Once all this is done, the panel will adjourn to decide whether the employee is guilty or not. If the employee is found to be guilty, the panel will recommend to the management an appropriate penalty.

There are many possible penalties, be it a written warning, a no-pay suspension not exceeding two weeks, demotion, withholding of a contractual increment or bonus, or dismissal.

The DI must be conducted ethically and the panel must strictly comply with the principle of natural justice and should be seen to act fairly and justly.

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