

## Disciplinary Policy & Procedures

**Martec Training recognises the need to ensure that disciplinary practices are effective, fair, well understood and consistently applied. This policy and procedure is intended to help and encourage all employees to achieve and maintain acceptable standards of conduct, attendance and job performance.**

### 1. Disciplinary Policy

The following principles are fundamental to the disciplinary procedures and will be adhered to throughout the disciplinary process:

- 1.1 No disciplinary action will be taken against an employee until the case has been fully investigated.
- 1.2 At each stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before a decision is made.
- 1.3 At each stage the employee will have the right to be accompanied by a work colleague, trade union representative or where a referral to the Independent Safeguarding Authority (ISA) is a possible outcome, a legal representative.
- 1.4 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct or gross negligence.
- 1.5 An employee has the right to appeal against any disciplinary penalty imposed.
- 1.6 The disciplinary procedure consists of four possible stages. It may be implemented at any stage if the alleged misconduct or negligence warrants such action.
- 1.7 All warnings will be considered spent after a specified period subject to satisfactory improvement.

### 2. The right to be accompanied

At each stage of the procedures the employee will have the right to be accompanied by a work colleague or a trade union representative. This right does not include family members, friends, solicitors or any other legally qualified representatives.

Where an employee is facing allegations of improper conduct that may lead to a referral to the Independent Safeguarding Authority (ISA), permission will be given to bring a legal representative to investigations or hearings.

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Since these are internal meetings, attendance does not give a right of representation; there is only the right to be accompanied. The witness may take notes on the behalf of the employee and contribute fully to the discussion; however they may not answer questions that have been posed to the employee or to adversely interfere in the process.

### 3. Disciplinary Procedures

Disciplinary procedures may be used to address concerns in relation to:

#### 3.1 Performance

Occasionally, line managers may encounter difficulties with the performance of an employee. Where concerns are not serious, it is good practice to address such issues informally as and when they arise. At an informal one to one discussion, the line manager should clarify the standard required and discuss the areas for improvement. (**Note:** A formal written warning cannot be issued following an informal meeting).

It is expected that in most cases this informal discussion will quickly resolve most difficulties and the employee will be informed that no disciplinary action will be taken against them.

If unsatisfactory performance continues line managers should address these using formal disciplinary procedures.

**[Note : A line manager should bear in mind that underperformance may also result of poor induction or insufficient training or support. Where this is the case, it is important that this situation is recognised and remedied before any decision is taken in relation to disciplinary action.]**

### **3.2 Conduct**

Concerns about employee conduct should be tackled as soon as they occur as delay in dealing with a situation may compromise the line managers ability to take action. (It is difficult to argue the seriousness of a situation if it has been left for weeks without action).

Minor criticisms can be dealt with informally by the line manager as per the capability issues (see 3.1). However if the matter is more serious or the minor criticisms are not resolved, the line manager should address these using formal disciplinary procedures.

Before any disciplinary action is taken regarding conduct line managers must investigate all criticisms and allegations of unsatisfactory behaviour and misconduct thoroughly, with care taken to establish all the relevant facts. If a line manager fails to carry out a full and

### **3.1 Performance 3.2 Conduct 3.3 Capability**

reasonable investigation it will be difficult to demonstrate that he / she acted reasonably in taking disciplinary action.

A disciplinary hearing should be arranged in order that the employee is able to give their explanation of events and / or offer mitigation. (**Note** : Managers must refer to the guidelines on Implementation & Application of Disciplinary Procedures prior to arranging this meeting.

The list below contains some of the problems that may be tackled using Martec Training

- Disciplinary Procedures.
- Poor timekeeping
- Unauthorised absence
- Failure to follow reporting procedures
- Persistent absenteeism
- Time wasting
- Use of inappropriate language
- Poor relationships with colleagues
- Failure to follow Martec Training procedures
- Negligence resulting in minor loss, damage or injury
- Failure to comply with a specific instructions

*This list is neither exclusive nor exhaustive. Please also note the list defining gross misconduct in section 5.*

### **3.3 Capability**

In certain circumstances, the disciplinary procedure may be an appropriate mechanism to deal with an employees incapability.

In most cases this will be when an employee is unable to meet the standards of performance required after concerted attempts by the line manager to support an improvement in their work. Where the employee consistently fails to meet the required standards of work but is making genuine attempts to do so, a modified disciplinary procedure may be followed. This should always supported by a Principal or Vice Principal.

Where incapability is due to a health or medical condition, an alternative route which is closer to our Sickness Absence Policy and Procedures will be more appropriate. The Principal must be consulted

where a line manager is concerned about the capability of an employee due to health or medical reasons.

**4. Formal Disciplinary Stages** (For gross misconduct / negligence please see section 5 below)

**The stage at which the performance or conduct is addressed will be dependent upon the seriousness of the situation. Some serious actions warrant a final written warning and a line manager may issue one even if no previous warnings have been given.**

**Stage 1 - Verbal warning (Issued after Disciplinary Hearing)**

A verbal warning should only be given for minor infringements, where conduct or job performance has dipped below acceptable standards.

A verbal warning will remain effective for 6 months from the date of issue. Details of the verbal warning may be written up on a Work Review Update Form or a separate note may be prepared. It is important that a verbal warning is clearly identifiable as such and that it does not take the form of a written warning.

When a verbal warning is given the employee should be told:

The details of the unsatisfactory performance/conduct

The improvement that is required with timescales

That further disciplinary action will be considered if there is no satisfactory improvement

*For capability / performance, verbal warnings may be appropriate for matters such as:*

Failure to complete an agreed task on time

One off failure to adequately supervise a group of participants

An untidy workplace

*For conduct, verbal warnings may be appropriate for matters such as:*

Early signs of tendency to lateness

Regularly distracting colleagues Irritability

Any retraining which is necessary will be arranged. Where further training is required the line manager should ensure that it takes place promptly and that the date, subject and the trainer are noted.

**Stage 2 - Written Warning (Issued after Disciplinary Hearing)**

For more serious performance / conduct issues or where the verbal warning has not been heeded, a written warning will be issued by the line manager following a disciplinary hearing. This warning will be issued with the intention of advising an employee that improvement is required. A written warning will remain effective for 12 months from the date of issue, the employee will receive a written copy of this decision and a copy will remain on the employee's personal file.

The employee will be told:

The details of the unsatisfactory performance/conduct

The improvement that is required with timescales

That further disciplinary action will be considered if there is no satisfactory improvement

The right to appeal

**Stage 3 - Final written warning (Issued after Disciplinary Hearing)**

A final written warning will be issued where there is still a failure to improve performance / conduct or where the matter is sufficiently serious that the individual must be warned that if there is no improvement, a dismissal is the likely outcome.

A final written warning will remain effective for 12 months from the date of issue, the employee will receive a written copy of this decision and a copy will remain on the employee's personal file.

The employee will be told:

The details of the unsatisfactory performance/ conduct

The improvement that is required with timescales That dismissal or whatever penalty is considered appropriate will result if there is no satisfactory improvement  
The right to appeal

#### **Stage 4 - Dismissal (Issued after Disciplinary Hearing)**

Failure to improve performance /conduct following a final written warning will normally result in dismissal.

The employee will be told:

The reasons for dismissal, followed up in writing

The right to appeal

#### **5. Gross Misconduct and Gross Negligence**

If an employee is accused of gross misconduct / negligence the matter will be investigated and a Disciplinary Hearing will be arranged as soon as reasonably possible.

The employee may be suspended on full pay while the investigation is taking place as it may compromise the investigation or later judgements if they are allowed to continue to work.

Suspension will always be necessary where allegations are made which relate to the safety and welfare of a member of staff or participant.

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If an employee is dismissed for gross misconduct / negligence it will be a summary dismissal i.e. without notice or salary in lieu of notice.

**Martec Training views the following issues so seriously that disciplinary action taken and will be dismissal unless there are exceptional mitigating circumstances.**

**If an employee is unclear about any regulation it is his / her responsibility to seek further explanation from line management.**

- 1) Ill-treatment of and / or sexual offences (including harassment) against participants, clients, visitors or employees.
- 2) Actions which endanger or threaten the wellbeing of participants, clients, volunteers, visitors or employees.
- 3) Any action or inaction (negligence) which places a participant, client, volunteer, visitor or employee at risk of harm.
- 4) Causing a participant, colleague or member of the public harm by a failure to follow Martec Training Safeguarding and / or Health & Safety Policy and Procedures.
- 5) Failure to adopt and maintain professional boundaries when working with participants such that the employee s employment position is compromised and / or the reputation of Martec Training is damaged.
- 6) Failure to comply with the legal requirements regarding Health & Safety, safeguarding and Equality & Diversity.
- 7) Physical or indecent assault or fighting with any other person during the course of employment.
- 8) Use of threatening behaviour.
- 9) Negligence which resulted in or could have resulted in serious losses, damage or injury.
- 10) Failure to perform properly the duties of the employment of such seriousness as to justify the organisation in no longer allowing the employment to continue.
- 11) Serious acts of insubordination or serious unprofessional conduct.
- 12) Conviction of a civil or criminal offence (including driving offences) which substantially affects an employee s capacity to work.
- 13) Working while contravening a duty or restriction imposed by law.
- 14) Unlawful discrimination against clients, visitors or employees.

- 15) Smoking in prohibited areas
- 16) Inappropriate use of ICT, the internet, telephony, email or other electronic means whether this is in working time or outside of working hours.
- 17) Use of social networking sites (eg Facebook, Twitter) to engage participants.  
[Note: Employees should not accept participants as friends or post messages on a participants site).
- 18) Disclosure of personal information about a participant, colleague or member of the public where this does not form part of Martec Training s legitimate business operations and / or where appropriate steps have not been taken to protect the identity of the individual from the risk of exposure to unauthorised groups.
- 19) Breaching Martec Training Data Protection Policies and Procedures such that a participant, colleague or member of the public s security is compromised or they are exposed to additional risk.
- 20) Loss or disclosure of sensitive data caused by negligence.
- 21) Disclosure of privileged, confidential or any other information to information to unauthorised persons or organisations.
- 22) Use for personal ends confidential information obtained by the employee in the course of employment.
- 23) Theft or attempted theft during the course employment or on Martec Training premises.
- 24) Misappropriation, attempted misappropriation or misuse of Martec Training's funds or resources.
- 25) Falsification of any document or system concerned with the recording of hours worked or duties undertaken.
- 26) Falsification of any document which makes a financial claim to Martec Training or to a body with a relationship to Martec Training.
- 27) Failure to follow procedures and /or systems which results in a deterioration in the organisation s relationship with its funders or awarding bodies and / or a repayment of funds.
- 28) Fraudulent manipulation or falsification of accounts and financial statements.
- 29) Failure to disclose other paid professional employment where a conflict of interest may arise.
- 30) Serious misrepresentation at the time of appointment including declaration of health, qualifications held, previous positions held, falsification of date of birth, failure to disclose a criminal offence in accordance with the Rehabilitation Offenders Act, failure to disclose a relationship to any member of staff within Martec Training.
- 31) Serious misrepresentation at any time during employment in connection with qualifications held.
- 32) Falsification / mutilation of official records.
- 33) Any act of fraud as outlined in section 6 below.
- 34) Being unfit for work due to the abuse of alcohol, drugs or other substances self administered which effect work performance.
- 35) Being asleep on duty.
- 36) Conduct violating common decency
- 37) Malicious or wilful damage to property belonging to Martec Training, clients, visitors or employees.
- 38) Acceptance of a gift or favour or hospitality which might be interpreted as seeking to exert undue influence to obtain preferential treatment.

*This list is neither exclusive nor exhaustive*

## **Suspension**

While every effort will be made to deal with cases speedily, it may be necessary to suspend an employee so that a full and proper investigation can take place.

The reason for suspension will be explained to the employee.

This will be carried out without prejudice to the employee's future employment. Such suspension will be with full pay and should be no longer than is absolutely necessary.

An employee must not contact colleagues, participants, placement providers or external agencies (YPLA, SFA, JCP, and LA, Connexions etc) without the express permission of their line manager. Failure to adhere to this instruction may result in further disciplinary action being taken against the individual. The employee should be informed of this stipulation. Suspension should not be used to defer management's decision making.

## **Summary Dismissal**

Summary Dismissal means dismissal without notice and without pay in lieu.

Such action will only be taken after a full investigation and full and careful consideration of all the facts at a Disciplinary Hearing.

Summary Dismissal will normally apply if the behavior amounts to **gross misconduct** and / or **gross negligence** or makes it unacceptable to the organisation for the employee to continue in employment.

## **6. Fraud**

Martec Training has adopted the following definitions of Fraud for disciplinary purposes.

These definitions are extracted from the Fraud Act 2006

An employee will be deemed to have committed an act of fraud if he or she is found to be in breach of any of the following:-

- Fraud by false representation
- Fraud by failing to disclose information
- Fraud by abuse of position.

**An employee who is found to have committed an act of fraud as defined in this section will be dismissed for gross misconduct.**

### **Fraud by false representation**

A person is in breach of this section if he or she :-

- (i) dishonestly makes a false representation, and
- (ii) intends, by making the representation
- (iii) to make a gain for himself or another, or
- (iv) to cause loss to another or to expose another to a risk of loss.
- (v) A representation is false if :-
  - a. it is untrue or misleading, and
  - b. the person making it knows that it is, or might be, untrue or misleading.
- (vi) Representation means any representation as to fact or law, including a
- (vii) representation as to the state of mind of :-
  - a. the person making the representation, or
  - b. any other person.

A representation may be express or implied.

For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

### **Fraud by failing to disclose information**

A person is in breach of this section if he or she :-

- dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and intends, by failing to disclose the information :-
- to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

### **Fraud by abuse of position**

A person is in breach of this section if he or she :-

occupies a position in which he is expected to safeguard, or not to act against, the interests Martec Training, dishonestly abuses that position, and intends, by means of the abuse of that position :-

- to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.

A person may be regarded as having abused his position even though his or her conduct consisted of an omission rather than an act.

### **7. Appeals Procedure**

If an employee is dissatisfied with the outcome of any stage of the disciplinary procedure he / she has the right to appeal.

The purpose of the Appeals Procedure is to:

Safeguard the interests of the employee through the examination of the case by a third party who may undertake further investigation as deemed necessary.

Ensure that decisions are as fair and reasonable as is practicable in all the circumstances. The employee must appeal in writing within 5 working days of the confirmation of the disciplinary decision, to the next level of senior management, stating the grounds of appeal clearly. The appeal should be heard as soon as is reasonably possible by a manager who has not been involved with the original disciplinary hearing. At the appeal, the grounds stated by the employee will be considered and the original decision may be upheld, decreased or increased. The decision following the appeal is final and concludes the organisations procedure.

**(All employees should be aware of and abide by Martec Training s written statement - Professional Standards and Ethics. As this statement confirms the importance the organisation places on its employees working to the highest professional standards and taking responsibility for their own actions.**