



Disciplinarys and grievances where employees are working from home or ‘furloughed’

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By **Philip Cameron** - 30 April

With many employees either working from home or having been ‘furloughed’, is it still possible for an employer to run a disciplinary or grievance process? Another crucial question, at least with disciplinarys, is whether or not it is desirable to run such processes during the current crisis.

In most cases, grievance and disciplinarys can proceed as normal. If the employee is furloughed, employers need to ensure that those involved in the process are not ‘working’. These processes make take longer than normal and it would be wise to point this out to employees in advance. Often the harder decision will be whether or not an employer embarks on the process given the likely diversion of resources. Informal resolution is to be encouraged as much as possible.

The big picture



Disciplinary and grievance processes generally involve face to face meetings with complainants, witnesses and those who are subject to disciplinary charges, accompanied by colleagues where required. The [Acas Code](#) provides valuable and broad brush guidance for employers on how to conduct disciplinary and grievance procedures. Employers who do not follow it risk adverse findings in an Employment Tribunal.

The fact that vast swathes of the workforce are now working remotely or not working at all presents, on the face of it, some difficulties for these processes. HR departments may be stretched very thin and have other priorities. This is a time of important business decisions so dealing with disciplinaries might be an unwelcome distraction not just for HR but also for others in the business who are witnesses and decision-makers. Those who would ordinarily deal with employee relations matters might even be furloughed themselves.

Disciplinaries and grievances

Many disciplinary matters are of course minor and would ordinarily be resolved informally. That should clearly continue to happen, perhaps with greater emphasis. Some disciplinaries can be postponed or paused - that needs to be made clear to the subject.

Grievances are harder since these are initiated by the employee: a complaint that might seem trivial to the employer may have a very different significance to the complainant. Employers should take grievances seriously and attempt informal resolution wherever possible. Employers could also discuss with the complainant whether they would agree to pausing the process until such time as the employer has more resources and time to deal with the grievance. Informal resolution may take on an even greater role.

There will be more serious disciplinary and grievance matters that simply cannot wait and even where an employer might be failing in its duty if the process did not go ahead (e.g. in cases of harassment, or health and safety matters).

The first stage of any disciplinary or grievance is to establish the facts. That can quite easily be done remotely: witnesses can be interviewed (ideally by some sort of video interview rather than by telephone), and documents can be gathered. There may be instances where evidence is physically located in an office that is closed. A call will need to be taken on what to do in such circumstances and that will involve assessing the significance of the unattainable evidence.

The next step is to inform the employee of the disciplinary charge, then invite them to a meeting to put the charges to them. They have a right to be accompanied at that meeting. All of this can be achieved by the use of technology. That too is true of the right set out in the [Acas Code](#) that witnesses can be invited to attend and have questions asked of them.

Furlough

With employees who are furloughed, the situation is less clear. Current government guidance says that an employer is only eligible to make a claim for a furloughed employee's wages when that employee "cannot undertake work.... this includes providing services or generating revenue."

So, care needs to be taken that those conducting the process are not furloughed as this will amount to work for them (for example, a furloughed member of HR would not be able to deal with it). As for the subject of the process being furloughed, a disciplinary process related to conduct would not likely be work and so could go ahead.

Particular difficulties arise though where the disciplinary is about capability. Performance management is likely to involve the employee being involved in some work, so care needs to be taken at the disciplinary stage that a furloughed employee is not working. These are the sort of processes that might be best paused.

It's unlikely that the subject matter of a grievance will amount to work, so furloughed employees could have their grievances heard. Those from HR who run the process should, of course, not be furloughed because that will most likely amount to work for them.

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