



(COP 16) DISCIPLINE AND GRIEVANCE PROCEDURES

A *Definitions and applicability*

Workplace **discipline** is a means to correct or improve job-related behaviour or performance.

Disciplinary procedures make sure that a company's standards of conduct and performance at work are followed. They also provide a fair and humane method of dealing with workers who fail to meet these standards.

Grievance procedures are a means for employees to raise concerns about management practices or decisions and have these investigated and resolved. All workers, and migrant workers in particular, should have access to grievance procedures.

Source:

- *Sedex Supplier Workbook Chapter 1.10 : Discipline and Grievance (2013)*
www.sedexglobal.com/wp-content/uploads/2013/03/1.10-Discipline-Grievance_Sedex-Supplier-Workbook.pdf

The **Discipline and Grievance Procedures** section of the COP is applicable to all Facilities that have employees working under supervision.

B *Issue background*

Discipline in the workplace should be viewed as a way to correct problem behaviours or performance issues. It should not be viewed simply as a way to punish employees. Supervisors and other persons in authority should be aware that the object of disciplinary action is to correct the problem, action, or behaviour, not the person.

Unfortunately, in some workplaces discipline can take an extreme form. This can include physical (corporal) punishment and mental, psychological, or sexual abuse. Examples of unreasonable practices that have been documented in workplaces include: being forced to do push-ups or run laps; standing in the sun for extended periods; being beaten or hit over the head; threats of violence; sexual or racial harassment; or withholding of wages, food or services. These and similar actions are considered to be violations of basic human dignity and human rights.

Disciplinary measures, if required, should be applied consistently and fairly among all employees. Supervisors, and contractors such as security forces, should be trained in how to appropriately manage any disciplinary issues. Disciplinary measures should not include compulsory labour as a punishment for participating in a strike. All workers should be reinstated after a strike (absent serious misconduct or criminal acts). Deducting more wages than those corresponding to the days lost during a strike, terminating workers, failing to renew workers' contracts, reducing benefits or seniority, and imposing heavier workloads all would be considered punishment. When subject to disciplinary action, workers should have access to the details of the allegations and have the right to respond to and/or appeal any disciplinary decisions without any negative consequences in return. Security guards and the military should not be allowed to take part in disciplining the workforce. Their role must be clearly limited to safeguarding the premises and the personnel and product located in the premises.

Where disciplinary procedures take place at a workplace, it is essential to put grievance procedures in place. These should permit workers to report unfair treatment to someone other than their supervisor. Employers should ensure that no worker is excluded from participation in grievance procedures. Therefore all communication regarding grievance mechanisms should be available in languages that all workers understand. Translators should be employed where necessary.

The procedures need to establish confidentiality and anonymity, so as to respect employee privacy and protect against possible retaliation. Workers should be able to be accompanied by a fellow worker or union official during formal processes.

It is important to establish that workers who do report problems or abuses should not suffer negative consequences.

C Key regulations

INTERNATIONAL STANDARDS

Both the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) prohibit torture or “cruel, inhuman or degrading treatment or punishment.” Article 23 of the UDHR further states that everyone has the right to “just and favourable conditions of work.”

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975) states that “any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”

These treaties and declarations have been ratified by most of the United Nations member states.

NATIONAL LAW

Many countries prohibit corporal punishment, usually within their constitutional framework. In addition, some countries have elaborated specific legislation for employers regarding disciplinary practices, abuse, harassment, and grievance procedures. Members should be aware of the local legal requirements in countries where they operate.

D Suggested implementation approach

The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.

COP 16.1: NO ABUSIVE PUNISHMENT OR TREATMENT:

Members shall ensure that Employees are not subjected to corporal punishment, harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation, or threats of these towards themselves, family or colleagues.

Points to consider:

- Responsibility for discipline and grievance procedures should be part of a senior management function, such as human resources.
- Risks of inappropriate disciplinary measures may be higher or more evident in certain countries, industry sectors or in particular occupations. A risk assessment appropriate to the business’ circumstances is one way to check where there may be a risk of inappropriate or unacceptable discipline or grievance procedures. Security forces can present particular risks and should also be assessed where present. See the RJC Risk Assessment Toolkit for a general risk assessment template that can be used, particularly for small to medium enterprises. Alternatively Members may use their own risk assessment process.

COP 16.2: DISCIPLINARY PROCESS:

Members shall clearly communicate the business’ disciplinary process, and related standards on appropriate disciplinary procedures and Employee treatment, and apply these equally to all management and staff.

Points to consider:

- Develop a written policy and procedures for discipline and grievance procedures, which outline the legal and company-specific penalties for different types of inappropriate action – both in terms of worker and supervisor behaviour.
- Consider establishing a series of escalating steps for disciplinary procedures, according to the seriousness of the behaviour.
- Security forces should be prohibited from disciplining employees.
- Provide training on appropriate disciplinary procedures, particularly to personnel who supervise workers or have other forms of authority such as maintaining security. Refer to the policy and emphasise the appropriate procedures for disciplining workers.

D *Suggested implementation approach (cont)*

- Make sure workers are aware of the disciplinary procedures allowed by the business.
- Record keeping is a key element to demonstrating fair and consistent disciplinary procedures. Keep records of verbal and written warnings, suspensions and dismissals.
- When subject to disciplinary action, workers should have access to the details of the allegations and have the right to respond to and/or appeal any disciplinary decisions without any negative consequences in return. Workers should be given time to prepare a defense when misconduct is alleged.

COP 16.3: GRIEVANCE PROCEDURES:

Members shall provide clear grievance procedures and investigation processes and clearly explain these to all Employees.

- Employees acting individually or with other workers shall be free to submit a grievance without suffering any penalty or retaliation.**
- Grievance procedures shall be designed to function effectively and reach a timely outcome.**
- Records of Employee grievances raised, investigation processes and outcome shall be maintained.**

Points to consider:

- Establish procedures for workers to raise grievances that do not put them at risk of retaliation. Design the procedures so that they can effectively investigate the grievance and reach timely outcomes.
- Provide training on the company's grievance procedures, particularly to personnel who supervise workers.
- Nominate a trusted person, who may be outside of the business in some circumstances, as responsible for administering grievances.
- No worker should be excluded from participation in grievance procedures, so communication regarding grievance mechanisms should be available in languages that all workers understand.
- Ensure that workers know how to raise grievances and can do so without negative consequences.
- Workers should be able to be accompanied by a fellow worker or union official during formal processes.
- Confidentiality should be maintained during grievance procedures, to respect employee privacy and protect against possible retaliation.
- Record keeping is a key element for clear and effective grievance procedures. Keep records of grievances raised by employees, the investigations that were carried out and the outcomes.

CHECK:

- Have you assessed the risks of abusive treatment or punishment in the workplace? The risks will vary across different types of businesses.
- Have you documented policies and procedures on the business' disciplinary process and communicated these to all workers?
- Do you have clear and effective grievance procedures for employees, which do not result in penalty or retaliation for submitting a grievance?

E *Further information*

The following websites have further information on the issue of discipline and grievance procedures:

- Advisory, Conciliation and Arbitration Service (ACAS) – Advisory Handbook on Discipline and Grievances at Work (UK) (2011)
www.acas.org.uk/index.aspx?articleid=890
- Chartered Institute of Personnel and Development (CIPD) – Discipline and Grievances at Work (UK) (2012)
www.cipd.co.uk/subjects/emplaw/discipline/disciplingrievprocs.htm
- Ethical Trade Initiative (ETI) - Promoting equal treatment of workers
www.ethicaltrade.org/in-action/projects/eti-supervisor-training-project
- International Labour Organisation (ILO) Better Work - Guidance Sheet 6: Contracts and Human Resources (2009)
www.betterwork.com/global/wp-content/uploads/6-Contracts-and-Human-Resources.pdf
- Sedex Supplier Workbook Chapter 1.10 : Discipline and Grievance
www.sedexglobal.com/wp-content/uploads/2013/03/1.10-Discipline-Grievance_Sedex-Supplier-Workbook.pdf
- Smart Manager – Addressing workplace discipline
www.smartmanager.com.au/eprise/main/cms/content/au/smartmanager/en/pages/115_work.html
- United Nations (UN) Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html
- Verité - An Introduction to Grievance Mechanisms
www.verite.org/helpwanted/toolkit/suppliers/establishing-effective-grievance-mechanisms/tool-1