

KNOWLEDGE BANK

GUIDE TO SUSPENSION

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Suspension usually takes place where an alleged offence necessitates it in order for an investigation to take place.

You should usually only consider suspending an employee from work in the following situations:

1. To investigate a serious allegation of misconduct
2. If you have medical grounds to do so
3. If there is a workplace risk to a new or expectant mother.

Suspension must not be used as a disciplinary sanction and when an employee is suspended, it does not necessarily mean that they have done something wrong or that you as an employer assumes that they have done something wrong. It is a neutral act.

The information in this guide is provided in relation to suspension of an employee as part of a disciplinary process. Further information on when you can suspend an employee on other grounds can be found in the relevant topic area.

You should never automatically suspend an employee when dealing with a potential disciplinary matter. Suspension should always be considered and a decision made as to whether it is necessary and appropriate in the circumstances. In most situations an employee will be able to continue in their role whilst the matter is investigated.

FACTORS TO CONSIDER

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1. What is the nature of the allegation?
2. If the employee is not suspended, is there a risk that they may cause disruption?
3. Has the working relationship severely broken down?
4. Is there a threat to the business or other employees?
5. Are you able to investigate the matter properly whilst the employee is at work?
6. Is there a risk that the employee could tamper with or destroy evidence?
7. Is there a risk that the employee may interfere with witnesses or the investigation?
8. Is the employee subject to criminal proceedings which may affect their ability to do their job?
9. Are there any alternatives to suspension?

You should always consider all of the above factors before deciding to suspend an employee. For example, it may be that a temporary adjustment to their role or working arrangements may avoid the need to suspend.

Examples of alternatives may include:

- moving the employee to a different area of the workplace
- allowing the employee to work from home
- altering their working hours
- closely supervising the employee
- temporarily transferring the employee to a different role

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Only if there are no practical alternatives to suspension, may suspension be necessary.

In the absence of a contractual right to suspend, you will need to consider whether suspending the employee may give rise to a claim for breach of contract or a breach of the implied term of trust and confidence. In the event that you do not have a specific clause in your contract which allows for suspension, this does not mean that you cannot suspend, but we recommend seeking legal advice before doing so.

If suspension is required, the suspension and reason for it should be kept confidential as it can have a potentially damaging effect on the employee.

PLANNING A SUSPENSION

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Once you have made the decision that it is necessary to suspend, you need to consider how and when you are going to do it.

Consideration needs to be given to the following:

1. When and at what time of day will you carry out the suspension
2. Who is going to be present during the suspension meeting?
3. What arrangements are there in place to escort the employee from the premises
4. Who will escort the employee from the premises?
5. What steps do you need to take in order to restrict the employee's access to your systems including emails etc?
6. Do you need to take any company property from the employee?
7. Do you wish to restrict the employee from making contact with anyone during their suspension such as customers, other employees etc?
8. How will you explain the employee's absence to the rest of their team, bearing in mind the duty of confidentiality
9. Who will carry out their work whilst they are suspended?
10. Do you have a contractual right to suspend?

The above are things that you need to consider and plan for before carrying out the suspension.

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Once you have considered all of the above, you can suspend the employee. This should be done in person and it should be clearly explained to them that the suspension is merely to allow you to investigate the matter, that its duration will be kept to absolute minimum, and that they will continue to be paid during the period of suspension.

Any period of suspension should be as short as possible. You must keep the suspension under review.

The suspension should be confirmed in writing.

CONFIRMING A SUSPENSION

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An employee needs to be informed of the fact that they have been placed on suspension as soon as possible. You must therefore ensure that following the meeting in which you suspend them, that their suspension is confirmed in writing as soon as possible.

The letter should include;

- the reason for the suspension and how long it is expected to last
- the employee's rights and obligations during the period of suspension, such as that they must be contactable during normal working hours etc.
- a reminder that their employment contract continues but that they are not to report to work and must not contact colleagues or clients.
- a point of contact (such as a Human Resources manager) during their period of suspension.
- Confirmation that the purpose of the suspension is to investigate and is not an assumption of their guilt.

For an example of a suspension letter, see Letter - suspending employee pending investigation.

DURING SUSPENSION

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Employees should usually receive their full pay and benefits during any period of suspension, unless they are not willing or able to attend work (i.e. if they are ill) or if you have a clear contractual right to suspend without pay.

If you suspend an employee and during their period of suspension they fall ill, you may want to consider the amount of pay that they are receiving.

You may have a sick pay policy which states that the employee is only entitled to SSP whilst they are off sick and in such circumstances, you may take the view that they are only therefore entitled to be paid SSP.

This could however give rise to a claim for unlawful deduction from wages, if you have a clause in their contract which provides for full pay during any period of suspension. In such cases, we would suggest that it is best practice to pay the employee full pay, unless of course you have a provision which confirms that in the event that they fall ill and unable to work during any period of suspension, that they will then only be paid SSP.

You need to ensure that the period of suspension is kept under regular review to determine if it is still necessary.

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An employee who is suspended will usually be expected to be contactable during normal working hours and available to attend meetings and interviews that are required as part of the investigation.

If an employee wishes to take annual leave during a period of suspension, they must request such leave in accordance with your normal procedures.

You have a duty to communicate with your employee during their suspension in order to keep them updated and let them know how much longer it is expected to last. It is important to maintain regular contact and to provide support to the employee during this period.

ENDING A SUSPENSION

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Once the investigation has been completed, the suspension should be ended and the employee allowed to return to work immediately if no further action is being taken.

It is usual for an employee to feel anxious about returning to work following a suspension and it may be a good idea to arrange a return to work interview with them. This can take place in the workplace or at an alternative venue.

Following a period of suspension, you may either take no further action or it may lead to the next stage in the Disciplinary process. Whichever route you go down, this should be clearly communicated to the employee so that they know what is going to happen next if anything.

If you decide that formal disciplinary action is required, you should write to the employee to confirm the outcome of the investigation and invite them to a disciplinary hearing. For more information on the Disciplinary process, please refer to our guide on Disciplinary Procedures.