

Arcadia

FASHION
FOOTPRINT

CODE OF
CONDUCT
GUIDEBOOK

PART FOUR:
MANAGEMENT SYSTEMS
TOOLS

BURTON
MENSWEAR
LONDON

DOROTHY PERKINS

EVANS

Debenhams

OUTFIT

TOPSHOP

TOPMAN

wallis

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CHAPTER 1: INTRODUCTION

This part refers to good working practices that may be used by the supplier to ensure that the factory meets the requirements of the Arcadia Group Code of Conduct. It provides in-depth guidance on selected topics and builds upon Part Two: Employment Standards Guidelines.

You should always refer to the national or local law and the Arcadia Group Code of Conduct.

The **Migrant Workers' Guidelines** describe sound practice at various stages of a factory's involvement with migrant workers:

- selection of recruitment agencies;
- recruitment of workers;
- employment contract;
- during employment – policies, wages and benefits, dialogue with migrant workers; and
- contract completion.

The **Harassment, Discipline and Grievance Guidelines** provide practical guidance on:

- the standard requirements relating to disciplinary and grievance issues;
- what constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- producing and using disciplinary and grievance procedures; and
- a worker's right to bring a companion to grievance and disciplinary hearings.

We will update this guidebook periodically.

CHAPTER 2: MIGRANT WORKERS' GUIDELINES (Version 2.0, March 2009)

The employment of migrant labour has become increasingly important to the global supply chain as workers seek better opportunities to provide for their families and futures.

Migrant Workers are commonly found in a number of our sourcing countries where local labour availability is declining and the employment of migrant labour has become necessary. In some regions migrant workers form the majority of the workforce.

Our definition of a Migrant Worker is based upon ILO definitions:

- the term 'migrant for employment' means a person who migrates from one country to another with a view to being employed otherwise than on his own account;
- the term 'recruitment' means the engagement of a person in one territory on behalf of an employer in another territory, or the giving of an undertaking to a person in one territory to provide him with employment in another territory; and
- the making of any arrangements as mentioned above, including the recruitment and selection of migrants and the preparation for departure of migrants.

ACKNOWLEDGEMENT

We acknowledge that monitoring and improving recruitment practices and employment conditions for Migrant Workers are challenging issues. Under these Migrant Worker guidelines we commit to:

- communicating our position on Migrant Workers throughout our company, and to those who supply us;
- working with our suppliers for the sustainable improvement of recruitment practices and employment conditions for Migrant Workers in our supply chain.

These guidelines list the responsibilities of suppliers and factories ('the Supplier') for ensuring that Migrant Workers are treated with due respect to their basic human rights and in compliance with the Arcadia Group Code of Conduct and the local law.

Arcadia sought the advice of Verité on the Migrant Workers' Guidelines. This is their response.

"Verité is an independent non-profit organisation committed to ensuring that people worldwide work under safe, fair and legal conditions.

Arcadia Group asked us to review a draft of their Migrant Worker Guidelines. We reviewed this against Verité standards, the Jo-in Code and our organisation's experience with and research into suppliers and the conditions facing migrant workers. We believe these guidelines can make a positive contribution and will serve as an effective foundation on which to improve the working and living conditions of migrant workers."

MIGRANT WORKERS' GUIDELINES

1 RECRUITMENT AGENCY

- a The Supplier should ensure that it does business with reputable government registered recruitment agencies. Where possible, the Supplier should avoid using recruitment agencies altogether and instead transfer existing workers from the Supplier's home country facilities, or hire workers directly.
- b Private recruitment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers (ILO Convention 181 Article 7 (1)).
- c The Supplier should have a written contract with the recruitment agency. This contract should fully explain the hiring practices, and detail the services which the agency will provide (see Attachment 1: Services for recruiting Migrant Workers).
- d The recruitment agent should provide full transparency of its recruitment supply chain, including written details of the use of any sub-contractors or sub-agents, and the terms of engagement between the agency and its sub-agents.
- e The recruitment agent must be sent a copy of the Supplier's Code (or Arcadia Group's Code) and be provided systems and procedures (such as these guidelines) to ensure full compliance with the Code.
- f The Supplier should arrange an annual audit of the recruitment agent either themselves or through an independent party and provide feedback on how to ensure sustained compliance to the Code.

2 RECRUITMENT

- a The Supplier is forbidden from employing Migrant Workers who are not legally permitted to work in the receiving country.
- b The Supplier should seek reliable legal and financial advice regarding the obligations of recruiting and the use of Migrant Workers.
- c The Supplier should ensure that they adhere to the law of the land of the host country and the country of origin of the Migrant Worker, as well as to the core conventions of the ILO, during the application process.
- d The Supplier should pay all costs, including recruitment fees, renewal fees, travel or other costs associated with the recruiting and use of Migrant Workers. The Migrant Worker should not have to pay a deposit to obtain employment.

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- e The Supplier (including its employees and representatives) must not accept any reimbursements, financial inducements or other amounts from any recruitment agency or other person involved in the recruiting process. The Supplier also must not charge back or accept reimbursement from any foreign contract worker to recover any fees paid by the Supplier in the recruitment or hiring of the worker.
- f Feedback to the Supplier on health checks of applicants should merely indicate the worker's fitness or otherwise to undertake the job.

3 EMPLOYMENT CONTRACT

- a All conditions of employment for Migrant Workers should be no less favourable than those afforded to local workers.
- b The employment contract for the Migrant Worker should be directly between the recruiting company and the worker, and NOT with the recruiting agency or labour broker.
- c The employment contract should be legally enforceable in the receiving country.
- d The Supplier is responsible for ensuring that each Migrant Worker receives a detailed Employment Contract in the language of his or her home country.
- e The Employment Contract should specify, among other things:
 - employee's name;
 - date of birth;
 - passport number;
 - nature of the work and place where it will be performed;
 - occupational category;
 - the method and responsibility for costs of transporting the Migrant Worker to the host country and back;
 - gross pay rates to be paid;
 - overtime wage rates to be paid;
 - bonuses and allowances;
 - an estimated minimum net pay that the worker should expect to receive each month;
 - all legal deductions;
 - any and all benefits to be provided, including but not limited to medical coverage, sick leave, annual leave and holidays;

MIGRANT WORKERS' GUIDELINES

- ❑ maximum allowable overtime hours consistent with the laws of the country and the Arcadia Group Code of Conduct;
- ❑ grievance, harassment and disciplinary processes;
- ❑ a detailed summary of the living conditions, including costs (if any) for meals and accommodation;
- ❑ length of the contract;
- ❑ the grounds on which the contract may be terminated; and
- ❑ the Arcadia Group Code of Conduct in full.

f Migrant Workers should be given a clear understanding of their employment and living conditions in the host country and the personnel policies of the factory. If the Migrant Worker is illiterate, the terms and conditions contained within the contract and other employment policies of the factory, including workers' rights and obligations, must be clearly explained to them in their own language.

Good practice is to prepare a video to show potential employees the working and living conditions in their intended country of employment.

All potential workers should be able to demonstrate a full understanding of the employment arrangements. This could be from verbal discussions, or from a multiple-choice questionnaire, for example.

- g The Supplier should sign the employment contract with each worker in the worker's home country.
- h The Supplier and the Migrant Worker should countersign the contract a second time when the Migrant Worker arrives in the host country, to help guard against any additional charges being raised by a recruitment agent.
- i The Supplier should not impose any additional terms or requirements on the Migrant Worker after the employment contract is signed unless expressly required by law. Where new terms have been introduced, the supplier should ensure that such terms are fully understood and accepted by workers.

4 DURING EMPLOYMENT: POLICIES

- a The Supplier should ensure that their Code of Conduct explicitly covers Migrant Workers as well as local workers.

MIGRANT WORKERS' GUIDELINES

- b The Supplier should issue an employee handbook to all workers in a language that workers understand. Good practice is to accompany the distribution of the Handbook with a training or orientation on the contents of the Handbook to ensure that workers raise any questions or seek any clarifications.
- c The Supplier should train supervisors and managers to let them know what behaviour is and is not acceptable. This training should include guidance on avoiding intimidation, threats, sexual harassment, discrimination etc.
- d The Supplier should maintain Migrant Workers' personnel, financial and all business records on site.
- e The Supplier should allow workers access to their personnel records or files.
- f The Supplier should always allow the worker to retain his or her passport, identity papers and work permits. Only photocopies of passports and/or identity papers should be kept on file. Where workers ask that these be held for safekeeping, ensure that they are available to the concerned worker within 24 hours. The Supplier should retain a written record of the worker's agreement to this.
- g Migrant Workers should be able to return home for any reason and at any time without fear of reprisal and without incurring extraordinary debt.
- h The Supplier should pay all transportation costs to the worker's home country for any Migrant Worker prior to conclusion of contract, if a Migrant Worker must travel home due to family emergency or who wishes to leave the factory at any time, unless the Migrant Worker is in clear breach of contract.
- i The Supplier should maintain records of all their Migrant Workers employed at each facility, including the date of arrival, contract terms, employment history, anticipated and actual date of return and Migrant Worker recruitment fees, for at least five years, or as required by law. The Supplier should make such records available to the Arcadia Group or its representatives, if requested.

5 DURING EMPLOYMENT: WAGES AND BENEFITS

- a The Supplier should pay at least the legally mandated minimum wage to all of its workers. The Supplier should review the level of wages and benefits on a regular basis to ensure that workers' wages are sufficient to meet their basic needs and those of their families, and provide some discretionary income.
- b The Supplier should provide the same pay levels and access to benefits to Migrant Workers that are provided to local workers unless specifically prohibited by law.

MIGRANT WORKERS' GUIDELINES

- c The Supplier should allow workers full and complete control over the monies they earn.
- d The Supplier should not withhold any guarantee money, 'runaway insurance', surety bond, commitment or membership or reservation fees, deposits or recruitment fee sums from pay.
- e The Supplier should provide all wages and benefits directly to workers and not to any third party.
- f The pay-slip should be clear, and the employer should check that workers understand it.
- g Where the host country laws allow deductions from the workers' wages for 'savings', ensure that such deductions are strictly voluntary and supported by the written consent of the workers. Savings must be placed in the individual worker's savings account. Workers should be able to monitor and have access to these accounts at any time.
- h The Supplier should have a policy in place regarding the treatment and care of Migrant Workers who are injured at work, become ill or become pregnant. Health and safety policies and procedures should be communicated to all workers.
- i All accommodation provided to Migrant Workers must be of a safe and decent standard and meet all local building regulations.
- j The Supplier should provide the same training and education opportunities to Migrant Workers that are provided to local workers.

6 DURING EMPLOYMENT: DIALOGUE WITH MIGRANT WORKERS

- a The Supplier should develop tools and processes for direct contact with the Migrant Workers in their own language.
- b In line with Article 4 of Convention 181, measures shall be taken to ensure foreign workers are not denied or impeded in the right to join the union of their choice (freedom of association) and the right to bargain collectively.
- c The supplier should have an on-site Migrant Worker Employee Coordinator who can communicate fluently in the languages of the Migrant Workers and of the factory Management.
- d The Supplier should develop freely elected worker committees which can also deal with issues specific to Migrant Workers.
- e The Supplier should ensure that there is a grievance and disputes procedure in place and that Migrant Workers are aware of this. This will allow the Migrant Workers to let the factory know if they are unhappy about their supervisors or about any of their working and/or living conditions.

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- f Facilities (including reasonable time off) should be made available to union workplace representatives to advise workers of their rights in this respect.

7 ON CONTRACT COMPLETION

- a The Supplier must arrange and pay for the worker's airfare and/or other reasonable transportation costs home.
- b The Supplier must pay to the worker any wages, benefits or other amounts due and owing to the worker.
- c All of these sums must be paid to the worker prior to the return to the home country.

SOURCES

a ILO

- C143 Migrant Workers (Supplementary Provisions) Convention 1975
- C97 Migration for Employment Convention (Revised) 1949
- C181 Private Employment Agencies Convention 1997
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990

ATTACHMENT

Recruitment Agency services can include any or all of the following:

- identification of a place of work and facilitation of a work contract;
- processing of travel documents, visas and work permits (if obtainable from the embassies of the receiving country);
- registration for skills testing and the cost of certification;
- mandatory physical and health tests and other tests required by the receiving country (for example a HIV/AIDS test);
- the cost of language training and/or a pre-departure orientation seminar;
- transportation costs; and/or
- vaccination or inoculation required by the receiving country.

Verité Research Paper: 'Protecting Overseas Workers'

December 2005

Attachment 1: Services for recruiting Migrant Workers

CHAPTER 3: GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

This guidebook provides practical guidance on:

- the standard requirements relating to disciplinary and grievance issues;
- what constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- producing and using disciplinary and grievance procedures; and
- a worker's right to bring a companion to grievance and disciplinary hearings.

It is recognised as good practice to allow all workers access to disciplinary and grievance procedures. The right to be accompanied applies to all workers.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

1 GRIEVANCE PROCEDURES

a Why have grievance procedures?

- Grievances are concerns, problems or complaints that employees raise with their employers.
- Grievance procedures are used by employers to deal with employees' grievances. Grievance procedures allow employers to deal with grievances fairly, consistently and speedily.
- Employers must have procedures available to employees so that their grievances can be properly considered.

b Establishing grievance procedures

When employers draw up grievance procedures, it pays to involve everybody they will affect, including managers, employees and, where appropriate, their representatives.

Grievance procedures should make it easy for employees to raise issues with management and should:

- be simple and put in writing;
- enable an employee's line manager to deal informally with a grievance, if possible;
- keep proceedings confidential; and
- allow the employee to have a companion at meetings.

Issues that may cause grievances include:

- terms and conditions of employment;
- health and safety;
- work relations;
- bullying and harassment;
- new working practices;
- working environment;
- organisational change; and
- equal opportunities.

Where separate procedures exist for dealing with grievances on particular issues (for example, harassment and bullying) these should be used instead of the normal grievance procedure.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

It is important to ensure that everyone in the company understands the grievance procedures. Supervisors, managers and employee representatives should be trained in their use. Employees must be given a copy of the procedures or have ready access to them, for instance on a notice board. Large companies can include them with disciplinary procedures as part of an induction process.

Take the time to explain the detail of grievance procedures to employees. This is particularly useful for people who have difficulty with reading.

c Keeping records

It is important, and in the interests of both employer and employee, to keep written records during the grievance process. Records should include:

- the nature of the grievance raised;
- a copy of the written grievance;
- the employer's response;
- action taken;
- reasons for action taken;
- whether there was an appeal and, if so, the outcome; and
- subsequent developments.

Records should be treated as confidential and kept in accordance with any local Data Protection Act, which might give individuals the right to request and have access to certain personal data.

Copies of meeting records should be given to the employee including any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

d Dealing with grievances in the workplace

Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly.

If a grievance cannot be settled informally, the employee should raise it formally with management.

Wherever possible a grievance should be dealt with before an employee leaves employment.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

A standard grievance procedure however, applies where an employee has already left employment, the standard procedure has not been commenced or completed before the employee left employment and both parties agree in writing that it should be used instead of the standard procedure.

e Raising a grievance

Employees should normally raise a grievance with their line manager unless someone else is specified in the company's procedure.

If the complaint is against the person with whom the grievance would normally be raised the employee can approach that person's manager or another manager in the organisation. In small businesses where this is not possible, the line manager should hear the grievance and deal with it as impartially as possible.

Managers should deal with all grievances raised, whether or not the grievance is presented in writing.

Setting out a grievance in writing is not easy, especially for those employees who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative.

In circumstances where a grievance may apply to more than one person and where a trade union is recognised it may be appropriate for the problem to be resolved through collective agreements between the trade union(s) and the employer.

f Grievance meetings

On receiving a formal grievance, a manager should invite the employee to a meeting as soon as possible and inform them that they have the right to be accompanied.

It is good practice to agree a time and place for the meeting with the employee.

Small organisations might not have private meeting rooms, but it is important that the meeting is not interrupted and that the employee feels their grievance is being treated confidentially.

If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer.

This five-day time limit may be extended by mutual agreement.

The employee should be allowed to explain their complaint and say how they think it should be settled.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

If the employer reaches a point in the meeting where they are not sure how to deal with the grievance or feel that further investigation is necessary the meeting should be adjourned to get advice or make further investigation.

This might be particularly useful in small companies that lack experience of dealing with formal grievances.

The employer should give the grievance careful consideration before responding.

Employers and employees will normally be expected to go through the standard grievance procedures unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as:

- violent behaviour;
- abusive behaviour;
- intimidating behaviour; or
- they might be harassed.

There will always be a certain amount of stress and anxiety for both parties when dealing with grievance cases, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

The employer should respond in writing to the employee's grievance within a reasonable time and should let the employee know that they can appeal against the employer's decision if they are not satisfied with it.

What is considered reasonable will vary from company to company, but five working days is normally long enough.

If it is not possible to respond within five working days the employee should be given an explanation for the delay and told when a response can be expected.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

g Appeals

If an employee informs the employer that they are unhappy with the decision after a grievance meeting, the employer should arrange an appeal.

It should be noted that the appeal stage is part of the standard procedure. As far as is reasonably practicable the appeal should be with a more senior manager than the one who dealt with the original grievance. In small companies, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If that is not an option, the person overseeing the case should act as impartially as possible. At the same time as inviting the employee to attend the appeal, the employer should remind them of their right to be accompanied at the appeal meeting.

As with the first meeting, the employer should write to the employee with a decision on their grievance as soon as possible. They should also tell the employee if the appeal meeting is the final stage of the grievance procedure.

In large companies it is good practice to allow a further appeal to a higher level of management, such as a director.

In smaller firms the first appeal will usually mark the end of the grievance procedure.

h Special considerations

Complaints about discrimination, bullying and harassment in the workplace are sensitive issues, and large companies often have separate grievance procedures for dealing with these. It is important that these procedures meet the standard minimum requirements.

Source: UK Arbitration Conciliation Advisory Service (ACAS) Guidelines

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

2 HARASSMENT

a Policy statement

Arcadia Group expects suppliers and factories to create a working environment where all employees are treated with fairness, consideration and respect.

Harassment of any type must not be permitted. All workers have the right to bring any case of harassment to the attention of their line manager or to a member of the personnel department. Any complaint must be investigated, and, if the case is upheld, the outcome may be disciplinary action up to and including dismissal.

Everyone in our supply chain has a responsibility to apply the principles of the Harassment policy in their day-to-day work irrespective of their position or job role.

All workers must have access to this policy and the supporting guidelines.

b Definition

Harassment means unwanted, unwelcome or unreciprocated actions, comments or conduct that is considered objectionable by the recipient(s) and/or the organisation.

Harassment may take many forms, for example bullying or intimidation, and can include unwelcome physical, verbal or non-verbal conduct.

Harassment can be either a single serious incident or persistent conduct and it may be related to sex or sexuality, marital status, national origin or nationality, religion or belief, colour, race or ethnicity, disability, age or any other factor. However it may be based on some other factor such as weight or accent and such behaviour is equally unacceptable and damaging.

c Legal implications

Sexual, racial or disability related harassment can be a form of discrimination and therefore may be unlawful under any local or national regulations. Harassment may also be a criminal offence.

d Why is there a need for a harassment policy?

All workers have the right to be treated with dignity and respect, and as such, harassment of any kind must not be permitted. Suppliers and factories should aim to create and maintain a working environment free from harassment.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

Harassment and similar behaviour can affect an individual, their colleagues and the general working environment. This can lead to anxiety and stress, which can adversely impact on work standards, could increase absence and could lead to employees resigning from their jobs.

Not dealing with cases of harassment can damage morale, motivation and team working as well as hurting and stressing individual workers.

Harassment may be intentional or unintentional but it still undermines people's dignity at work.

e Examples of behaviour which suppliers and factories should prevent

We recognise that harassment may be initiated by workers, colleagues, union officials or managers. These examples are illustrative and the list is therefore not exhaustive:

- Unwanted physical contact, ranging from touching or brushing against, to serious assault.
- Verbal harassment such as offensive language, which can include jokes, suggestive remarks, gossip, slander, innuendo and teasing.
- Written harassment such as letters or graffiti.
- Verbal threats or demands.
- Display of offensive pictures or objects.
- Obscene gestures.
- Isolation or non co-operation at work.
- Intrusion by pestering, spying or following someone.
- Failure to acknowledge individual rights or needs.
- Misuse of power or position.
- Bullying or undermining people, leaving them feeling upset, hurt, vulnerable or helpless.
- Victimisation.

f Responsibilities

Everyone in the factory has the responsibility to ensure that the harassment policy is adhered to.

Everyone must recognise and fulfil their responsibility for contributing to this policy. All individuals have a duty to behave in accordance with this policy and they all have a duty to challenge inappropriate behaviour in others. Everyone must feel able to report incidents without fear of recrimination.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

The Management team, including supervisors, must set an example and should challenge and investigate any instances of inappropriate behaviour.

The Management team should aim to create and maintain an environment that is free from harassment or intimidation.

The Personnel function should be responsible for producing and maintaining policies, procedures and guidelines, reviewing and revising all documentation, assisting management in meeting their responsibilities and giving advice and support to individuals.

The Training function should be responsible for providing appropriate training to support this policy.

g 'What should I do if I am being harassed?'

Any individual or group who feel they are being subjected to any form of harassment should seek advice and assistance in resolving the problem. There should be several options open to any individual or group which are appropriate or which they will feel more comfortable with, depending on the circumstances.

Speak to the person they feel is causing the harassment in an attempt to resolve the problem informally in the first instance. It may be sufficient for the worker to explain clearly to the person engaging in the unwanted conduct that the behaviour is not welcome, that it offends them or makes them feel uncomfortable and it interferes with their work, in short, that it is unacceptable to them. This route is appropriate for minor problems only.

Seek advice from any team leader, supervisor, manager or work colleague who can offer support in dealing with the problem. This support may be informal, such as speaking to the perceived harasser, or if necessary, a formal approach can be taken and an investigation held. In all instances the wishes of the individual or group being harassed should be taken into account to reach a responsible and sensible solution.

Seek advice from any member of the personnel department. This advice should be confidential to ensure that it results in a responsible and sensible solution.

A written complaint to a manager, supervisor or the personnel department may be made if an individual or group feels that the treatment they are being subjected to is of a nature that cannot be dealt with informally or through any of the above means.

h Disciplinary action

Harassment at work will not be permitted and any individual or group has the right to complain about it should it occur.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

Any person found to be responsible for harassment must be interviewed under the disciplinary guidelines and, if the complaint is upheld, the outcome may be disciplinary action up to and including dismissal.

Where a complaint is found to be malicious or untrue, the outcome may also be disciplinary action up to and including dismissal against the person making the complaint.

The company must deal speedily and effectively with any complaints of alleged discrimination and/or harassment, ensuring that all such complaints are fully investigated and that appropriate action is taken where necessary.

i Keeping records

It is important, and in the interests of both employers and workers, to keep written records during the harassment process. Records should include:

- the complaint against the individual;
- the employee's defence;
- findings made and actions taken;
- the reason for actions taken;
- any grievances raised during the harassment procedure; and
- subsequent developments.

Records should be treated as confidential and be kept no longer than necessary under local law.

Copies of meeting records should be given to the worker including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

j Special consideration for migrant workers

Special provisions must be made for migrant workers or workers whose language is not the first language of the factory.

Workers must be offered the opportunity to initiate the harassment policy in a language of their choosing.

Workers must be offered the opportunity to complete all steps in the harassment policy in a language of their choosing.

It is the responsibility of the management to ensure that suitable translators or translation facilities are made available to the workers on a confidential nature.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

This harassment policy must be explained to and made available to all workers in their native language.

k Communication

All workers must be made aware of your harassment policy, so that they understand their responsibilities and can apply them in the workplace. The harassment policy should be published on notice boards across the factory.

Source: UK Arbitration Conciliation Advisory Service (ACAS) Guidelines

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

3 DISCIPLINARY PROCEDURES

a Why have disciplinary rules and procedures?

Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals.

Disciplinary procedures are also a legal requirement in certain circumstances.

Disciplinary rules tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called misconduct.

Employers use disciplinary procedures and actions to deal with situations where employees allegedly break disciplinary rules.

Disciplinary procedures may also be used where employees don't meet their employer's expectations in the way they do their job. These cases, often known as unsatisfactory performance (or capability), may require different treatment from misconduct, and disciplinary procedures should allow for this.

When dealing with disciplinary cases, employers need to be aware both of any law on unfair dismissal and the standard minimum procedure contained in their local legislation for dismissing or taking disciplinary action against an employee.

b Procedures

Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance is unsatisfactory. Some companies may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying.

When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that employees should be given the opportunity of a meeting with someone who has not been involved in the matter. They should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right of appeal.

Good disciplinary procedures should:

- be put in writing;
- say to whom they apply;

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- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- allow for information to be kept confidential;
- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take disciplinary action;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- give employees a chance to have their say before management reaches a decision;
- provide employees with the right to be accompanied;
- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
- require management to investigate fully before any disciplinary action is taken;
- ensure that employees are given an explanation for any sanction; and
- allow employees to appeal against a decision.

It is important to ensure that everyone in a company understands the disciplinary procedures including the standard requirements.

In small firms this is best done by making sure all employees have access to a copy of the procedures, for instance on a notice-board, and by taking a few moments to run through the procedures with the employee.

In large companies formal training for those who use and operate the procedures may be appropriate.

c Establishing disciplinary rules and procedures

Management is responsible for maintaining and setting standards of performance in a company and for ensuring that disciplinary rules and procedures are in place.

Employers may be legally required to have disciplinary procedures. It is good practice to involve employees (and, where appropriate, their representatives) when making or changing rules and procedures, so that everyone affected by them understands them.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

d Rules

When making rules, the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.

It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:

- bad behaviour, such as fighting or drunkenness;
- unsatisfactory work performance;
- harassment or victimisation;
- misuse of company facilities (for example email and internet);
- poor timekeeping or unauthorised absences; and
- repeated or serious failure to follow instructions.

Rules should be specific, clear and recorded in writing. They also need to be readily available to employees, for instance on a notice-board or, in larger companies, in a staff handbook or on the intranet.

Management should do all they can to ensure that every employee knows and understands the rules, including those employees whose first language is not the language of the factory or who have trouble reading. This is often best done as part of an induction process.

Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples of acts of gross misconduct that may warrant summary dismissal.

Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and are best decided by companies in the light of their own particular circumstances.

However, examples of gross misconduct might include:

- theft or fraud;
- physical violence or bullying;
- deliberate and serious damage to property;
- serious misuse of an company's property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- serious insubordination;
- unlawful discrimination or harassment;

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- bringing the company into serious disrepute;
- serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through serious negligence;
- a serious breach of health and safety rules; or
- a serious breach of confidence.

e Keeping records

It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process. Records should include:

- the complaint against the employee;
- the employee's defence;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievances raised during the disciplinary procedure; and
- subsequent developments.

Records should be treated as confidential and be kept no longer than necessary under local law.

Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

f Dealing with disciplinary issues in the workplace

When a potential disciplinary matter arises, the employer should make necessary investigations to establish the facts promptly before memories of events fade.

It is important to keep a written record for later reference. Having established the facts, the employer should decide whether to drop the matter, deal with it informally or arrange for it to be handled formally.

Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.

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In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration should be given to a brief period of suspension with full pay whilst unhindered investigation is conducted.

Such a suspension should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary action.

g Informal action

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance.

The informal approach may be particularly helpful in small firms, where problems can be dealt with quickly and confidentially. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working.

If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

h Formal action

i) First step

The first step in any formal process is to let the employee know in writing what it is they are alleged to have done wrong.

The letter or note should contain enough information for the individual to be able to understand both what it is they are alleged to have done wrong and the reasons why this is not acceptable.

If the employee has difficulty reading, or if the language of the factory is not their first language, the employer should explain the content of the letter or note to them orally.

The letter or note should also invite the individual to a meeting at which the problem can be discussed, and it should inform the individual of their right to be accompanied at the meeting. The employee should be given copies of any documents that will be produced at the meeting.

Where possible, the timing and location of the meeting should be agreed with the employee.

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The length of time between the written notification and the meeting should be long enough to allow the employee to prepare but not so long that memories fade.

The employer should hold the meeting in a private location and ensure there will be no interruptions.

At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered.

The employee should be allowed to set out their case and answer any allegations that have been made.

The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

An employee who cannot attend a meeting should inform the employer in advance whenever possible.

If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (for example illness) the employer should arrange another meeting.

A decision may be taken in the employee's absence if they fail to attend the re-arranged meeting without good reason.

If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer.

This five-day time limit may be extended by mutual agreement.

ii) Failure to attend meeting

Where an employee fails to attend a meeting held as part of the standard discipline procedure without good reason the standard procedure comes to an end.

In those circumstances the employee's compensation may be reduced if they bring a successful complaint before a local employment tribunal.

If the employee does have a good reason for non-attendance, the employer must re-arrange the meeting.

If the employee does not attend the second meeting for good reason the employer need not arrange a third meeting but there should be no adjustment of compensation.

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iii) After the meeting

Following the meeting the employer must decide whether disciplinary action is justified or not.

Where it is decided that no action is justified the employee should be informed.

Where it is decided that disciplinary action is justified the employer will need to consider what form this should take.

Before making any decision the employer should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and, most important of all, whether the intended disciplinary action is reasonable under the circumstances.

It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning.

However, if an employee's misconduct or unsatisfactory performance, or its continuance, is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss even though the employee has not previously received a warning for misconduct.

Following the meeting, an employee who is found to be performing unsatisfactorily should be given a written note setting out:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date; and
- any support the employer will provide to assist the employee.

The employee should be informed that the note represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (for example six months). Where, following a disciplinary meeting, an employee is found guilty of misconduct, the usual first step would be to give them a written warning setting out the nature of the misconduct and the change in behaviour required.

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The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be of a failure to change behaviour.

The consequences could be a final written warning and ultimately, dismissal.

The employee should also be informed that they might appeal against the decision.

A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (for example six months).

Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the employee should normally be issued with a final written warning, but only after they have been given a chance to present their case at a meeting.

The final written warning should give details of, and grounds for, the complaint.

It should warn the employee that failure to improve or modify behaviour might lead to dismissal or to some other penalty, and refer to the right of appeal.

The final written warning should normally be disregarded for disciplinary purposes after a specified period (for example 12 months).

If the employee's conduct or performance still fails to improve, the final stage in the disciplinary process might be dismissal or (if the employee's contract allows it or it is mutually agreed) some other penalty such as demotion, disciplinary transfer, or loss of seniority/ pay.

A decision to dismiss should only be taken by a manager who has the authority to do so.

The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

It is important for employers to bear in mind that before they dismiss an employee or impose a sanction such as demotion, loss of seniority or loss of pay, they must as a minimum have followed the standard dismissal and disciplinary procedures.

Employers and employees will normally be expected to go through the standard dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed.

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There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

iv) What if a grievance is raised during a disciplinary case?

In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the employer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with.

Depending on the nature of the grievance, the employer may need to consider bringing in another manager to deal with the disciplinary process. In small organisations this may not be possible, and the existing manager should deal with the case as impartially as possible.

v) Dealing with gross misconduct

If an employer considers an employee guilty of gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action.

A short period of suspension with full pay may be helpful or necessary, although it should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement.

It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary meeting before deciding whether to take action.

This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance.

There may however be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting a local employment tribunal will, very exceptionally, find the dismissal to be fair.

vi) Dealing with absence from work

When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

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If the absence is due to genuine (including medically certified) illness, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:

- how soon the employee's health and attendance will improve;
- whether alternative work is available;
- the effect of the absence on the company; and
- how similar situations have been handled in the past.

The impact of long-term absences will nearly always be greater on small companies, and they may be entitled to act at an earlier stage than large companies.

vii) Dealing with special situations

Special arrangements might be required for handling disciplinary matters among:

- nightshift employees;
- employees in isolated locations or depots; and
- others who may be difficult to reach.

Nevertheless the appropriate standard procedure must be followed where it applies.

Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions.

Normal standards apply but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official.

viii) Appeals

Employees who have had disciplinary action taken against them should be given the opportunity to appeal. It is useful to set a time limit for asking for an appeal; five working days is usually enough.

An employee may choose to appeal for example because:

- they think a finding or penalty is unfair;
- new evidence comes to light; or
- they think the disciplinary procedure was not used correctly.

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As far as is reasonably practicable a more senior manager not involved with the case should hear the appeal.

In small companies, even if a more senior manager is not available, another manager should hear the appeal, if possible.

If that is not an option, the person overseeing the case should act as impartially as possible.

Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal.

The employers should contact the employee with appeal arrangements as soon as possible, and inform them of their right to be accompanied at the appeal meeting.

The manager must inform the employee about the appeal decision, and the reasons for it, as soon as possible.

They should also confirm the decision in writing.

If the decision is the final stage of the company's appeals procedure, the manager should make this clear to the employee.

i Further action

It is sensible to keep rules and procedures under review to make sure they are always relevant and effective.

New or additional rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.

Source: UK Arbitration Conciliation Advisory Service (ACAS) Guidelines

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

4 DISCIPLINARY / GRIEVANCE HEARINGS

a What is the right to be accompanied?

Workers should have a standard right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings. They must make a reasonable request to their employer to be accompanied.

b What is a disciplinary hearing?

For the purposes of this right, disciplinary hearings are defined as meetings that could result in:

- a formal warning being issued to a worker (ie a warning that will be placed on the worker's record);
- the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action;
- the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

The right to be accompanied will also apply to any disciplinary meetings held as part of the standard dismissal and disciplinary procedures. This includes any meetings held after an employee has left employment.

Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions.

Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker would have the right to be accompanied.

c What is a grievance hearing?

For the purposes of this right, a grievance hearing is a meeting at which an employer deals with a complaint about a duty owed by them to a worker, whether the duty arises from statute or common law (for example contractual commitments).

For instance, an individual's request for a pay rise is unlikely to fall within the definition, unless a right to an increase is specifically provided for in the contract or the request raises an issue about equal pay.

The right to be accompanied will also apply to any meetings held as part of the standard grievance procedures. This includes any meetings after the employee has left employment.

GRIEVANCE, HARASSMENT AND DISCIPLINARY PROCEDURES

d What is a reasonable request?

Whether a request for a companion is reasonable will depend on the circumstances of the individual case. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

e The companion

The companion may be:

- a fellow worker (that is another of the employer's workers); and
- an official employed by a trade union, or a lay trade union official. Ideally this person should have been certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative).

If workers are disabled, employers should consider whether it might be reasonable to allow them to be accompanied because of their disability.

Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. However, where a union is recognised in a workplace, it is good practice for workers to ask an official from that union to accompany them.

Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.

Trade unions should ensure that their officials are trained in the role of acting as a worker's companion.

A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing.

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A trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where an official agrees to accompany a worker employed by another company, time off is a matter for agreement by the parties concerned.

f Applying the right

Where possible, the employer should allow a companion to have a say in the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.

Before the hearing takes place, the worker should tell the employer whom they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.

The companion should be allowed to address the hearing in order to:

- put the worker's case;
- sum up the worker's case; and
- respond on the worker's behalf to any view expressed at the hearing.

The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The companion has no right to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

Employers should be careful not to disadvantage workers for using their right to be accompanied or for being companions.

Sources: UK Arbitration Conciliation Advisory Service (ACAS) Guidelines on Discipline and Procedures

Spectrum for Arcadia Policies and Procedures

CHAPTER 4: FREEDOM OF ASSOCIATION – RIGHT TO ORGANISE GUARANTEE

Our Code of Conduct (CoC) states:

- i) Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- ii) The employer adopts an open attitude towards the activities of trade unions and their organisational activities.
- iii) Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- iv) Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

1 SYSTEMS AND DOCUMENTATION

It is not possible for a factory to comply with the standard on Freedom of Association and Collective Bargaining unless the factory uses a total quality management approach to its communication with employees.

Part 2, chapter 5 of our guidebook, 'Freedom of Association and the Right to Collective Bargaining are Respected' gives an overview of the policies, procedures and management systems that should be present to allow effective and valuable communication between management and workers.

This chapter gives further information on the policies and procedures related to effective worker organising.

It is important that factory management adopt an open and positive attitude to worker organising. The goal should be for management and workers to resolve matters together through mature industrial relations.

This approach should extend to both formal and informal systems of negotiation, communication and relations, at every level of management and workers.

It will be necessary for the factory to examine all the methods by which management communicates with employees, regarding:

- workplace terms and conditions;
- production issues;
- relations between workers and supervisors;
- development of the factory business;
- how to improve productivity and efficiency and reduce waste; and
- how to ensure long term stability.

RIGHT TO ORGANISE GUARANTEE

Management should capture and make use of the constructive ideas and suggestions of its employees.

2 POLICY ON FREEDOM OF ASSOCIATION

The following describes a suitable policy on freedom of association for Factory Management to include in its business policies.

- (company name) shall guarantee all employees the right to join or form a union of their choice for the purpose of bargaining collectively on working terms and conditions.
- (company name) will not discriminate against any employee, nor victimise any employee for exercising this right.
- Furthermore, (company name) shall adopt a positive attitude towards any trade union organisers granted access for the purpose of talking about the benefits of trade union membership.
- (company name) also undertakes to permit the formation of an organising committee in the factory free of hindrance or interference or victimisation of the members of such a committee.

3 RIGHT TO ORGANISE GUARANTEE

- a The 'Right to Organise Guarantee' enables factory management to ensure workers' Freedom of Association rights are clearly communicated and understood by all employees. This demonstrates the company's commitment to adopting an open and positive attitude to worker organising.
- b The Right to Organise Guarantee should be:
 - i) included in workers' payslips once every six months;
 - ii) translated into the appropriate languages;
 - iii) explained in full to workers who cannot read;
 - iv) displayed on all workers' notice boards.

RIGHT TO ORGANISE GUARANTEE

RIGHT TO ORGANISE GUARANTEE

[Company], in accordance with national and international law and the codes of conduct of its buyers governing freedom of association, hereby guarantees all employees of [Company] the right to join or to form a union of their choice for the purposes of bargaining collectively with [Company] on working terms and conditions.

[Company] will not discriminate against any employee nor victimise any employee for exercising this right. Furthermore, [Company] will adopt a positive attitude towards any trade union organisers granted access for the purposes of talking about the benefits of trade union membership.

[Company] also undertakes to permit the formation of an organising committee in the factory free of hindrance or interference or victimisation of the members of such a committee.

[Managing Director's name]

Managing Director

[Company]

Date



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