

# Gross Misconduct

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# Agenda



- What is gross misconduct?
- Effect of gross misconduct
- Process of dealing with gross misconduct
- Suspension
- Legal claims

# What is gross misconduct?



Neary v Dean of Westminster

- "so undermines the relationship of trust and confidence ... that [the employer] should no longer be required to retain [the employee] in his employment"

# What is gross misconduct?



- [Acas Code](#) states, at paragraph 23:
  - "Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct."

# What is gross misconduct?



- Common examples:
  - Theft, fraud, physical violence, serious negligence or serious breach of health and safety regulations
- List those specific to your organisation in disciplinary policy
- Varies dependent on status of employee; nature of work carried out etc
- Consider all factors

# Effect of a gross misconduct dismissal



- Summary dismissal
- No notice pay, not no process
- Still receive other contractual payments e.g. accrued but untaken holiday pay

# Gross misconduct v misconduct



- General misconduct dismissals made with notice
- Follows a series of warnings

# Disciplinary process





# Suspension



- Should you suspend to investigate gross misconduct offences?
- Violence/theft/fraud
- [New Acas guidance on suspension](#)
- Consider actions short of suspension
- Keep it as short as possible
- Consider mental health support

# Unfair dismissal



- Same test applies when deciding fairness regardless of it being gross misconduct or not:
  - The employer believed the employee to be guilty of misconduct.
  - The employer had reasonable grounds for believing that the employee was guilty of that misconduct.
  - At the time it held that belief, it had carried out as much investigation as was reasonable.
- Within band of reasonable responses of a reasonable employer
- Consideration of mitigating circumstances

# Wrongful dismissal



- No length of service requirement
- Dismissal in breach of contract
- ET will assess whether the misconduct was sufficient to be classified as a repudiatory breach of contract
- Question of fact
- Investigation key
- A dismissal can be wrongful but not unfair

# Useful resources



- Scottish Engineering Employment Guide
- Acas Code on Disciplinary and Grievance Procedures