

# Employment Law Seminar

Dos and Don'ts of Disciplinary Procedures

Wednesday 25 October 2017



Dublin

London

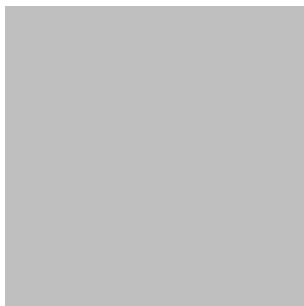
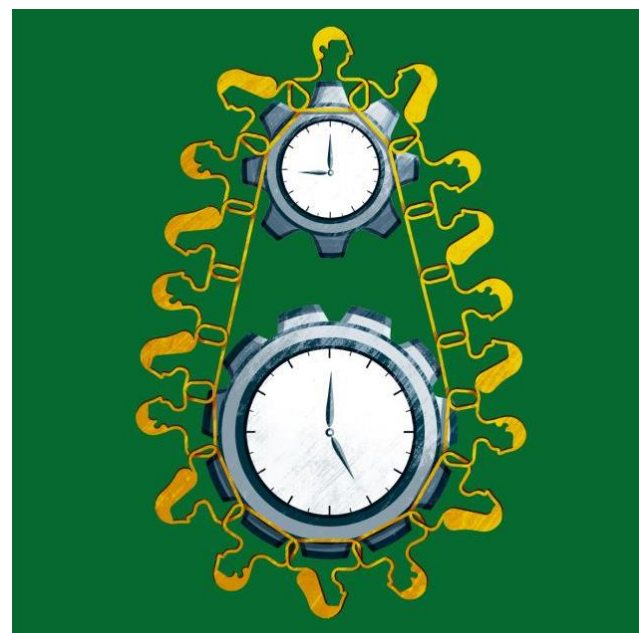
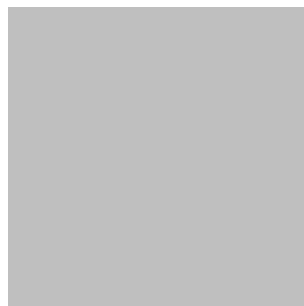
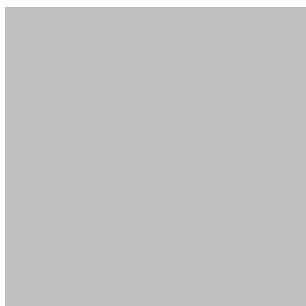
New York

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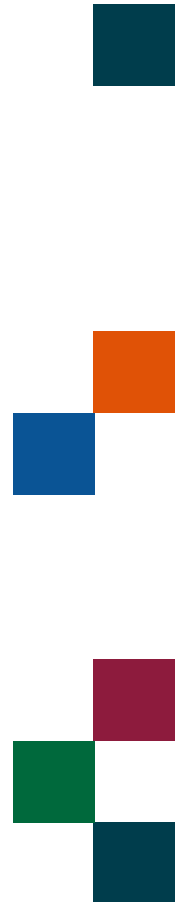
# The Dos and Don'ts of Disciplinary Procedures

Ger Connolly, Partner



# Bad employee

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# The Disciplinary Procedure

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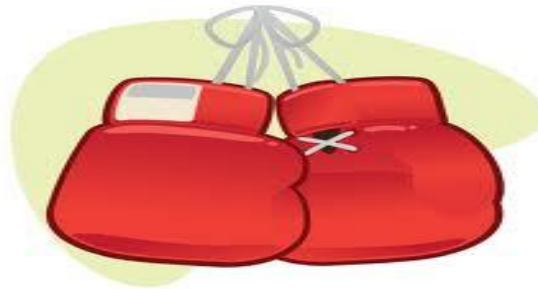
- Section 14(1) Unfair Dismissals Act 1977-2011

*“An employer shall, not later than 28 days after he enters into a contract of employment with an employee, give to the employee a notice in writing setting out the procedure which the employer will observe before and for the purpose of dismissing the employee”.*

- Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000.

# The Charge Sheet

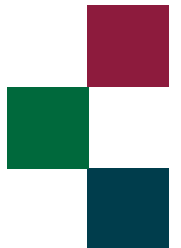
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# Identify the players

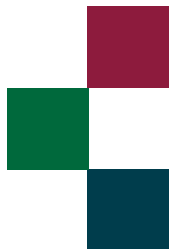
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- Complainant
- Investigator (Step 1)
- Disciplinary Hearing (Step 2)
- Appeal Hearing (Step 3)
- Role of Human Resources - Support / Administration



# Suspension

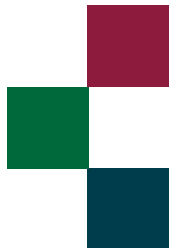
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# Suspension

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- The Valley of the Squinting Windows
- Holding v Punitive
- *“It is potentially capable of constituting a significant blemish on the employee’s employment record with consequences for his or her future career”*





# Suspension

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- To prevent repetition of the conduct complained of
- To prevent interference with evidence
- To protect individuals at risk from such conduct; or
- To protect the employer's business and reputation.

# Step 1 - The Investigator

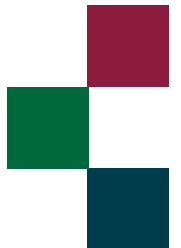
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# The Investigator

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1. Have confidence in their ability
2. Have some prior experience, if possible
3. Have someone independent, if possible
4. Use an external investigator, if necessary
5. Consider - Would they make a good witness?



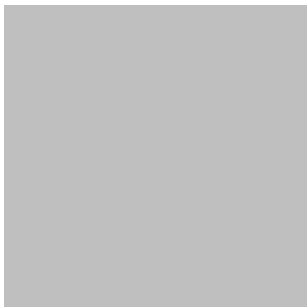
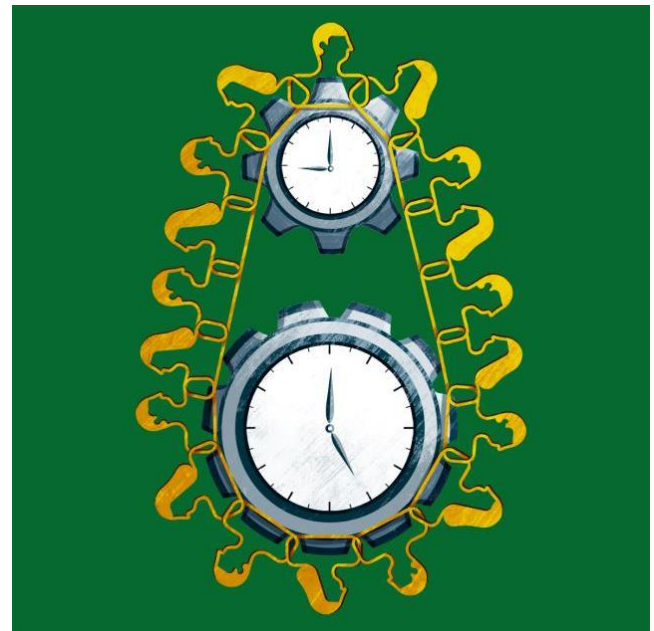
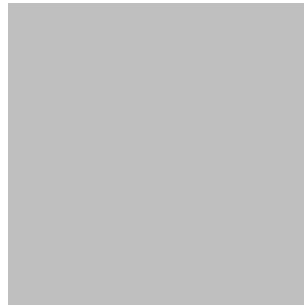
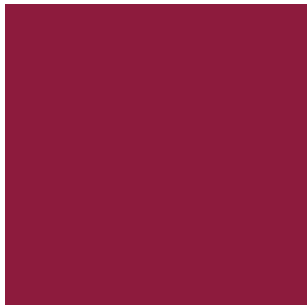
# The Investigation

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- Findings v Recommendations
- The Right to Cross Examine in Internal Proceedings
- Witness notes
- The Right to Legal Representation in Internal Proceedings

# The Dos and Don'ts of Disciplinary Procedures

Orla O'Leary, Senior Associate



## Step 2 - The Disciplinary Hearing

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- Communication with employee – notification of allegations and invitation to disciplinary meeting
- Representation
- Not the same person who conducted the investigation
- Review the allegations
- Allow employee comment
- The sanction (up to and including dismissal)
- Be patient – reflection and decision

# The Decision

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1. Clear reasons for your decision
2. The balance of probabilities
3. Act proportionately
4. Sanction – Range of Warnings (Verbal/Written/Final)  
Demotion  
Suspension without pay  
Dismissal
5. Appeal

## Step 3 – The Appeal

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- Independent Appeals Officer
- Grounds of Appeal?
- New Evidence?
- Full Re-hearing?
- Sanction pending outcome of appeal?
- Alternative Sanctions –
  - Training
  - Performance Improvement Plan
  - Pay Cut
  - No Bonus
  - Reasonable Accommodation



# Common Pitfalls

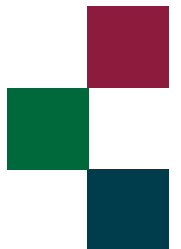
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# Top Pitfalls

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1. Delay in addressing the issue
2. Ignore your own policy
3. Failure to warn the employee
4. Change the parameters



# Top Pitfalls contd.

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5. Try to be all things to all men

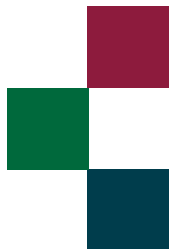


6. Involve a cast and crew of thousands – data access requests

7. Tell the discipliner what his/her decision should be – consider alternative sanctions



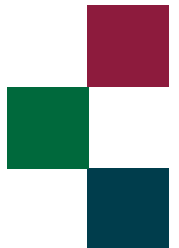
8. Communicate the outcome of the disciplinary hearing without taking some time to reflect on what was discussed at the hearing



# Common Concerns

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- Identity of the Representative
  - Mammy/Daddy/Sister/Brother/Aunty/Uncle etc
  - Solicitor
- Sick Leave – Work Related Stress
- No Show



# Top Tips

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- Be clear about the allegations and potential sanctions
- Have 3 steps at every stage
- Be clear about individual roles and responsibilities in the process
- Be facilitative
- Be conscious of potential data access requests

# Top Tips

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- Be flexible – consider the future
  - Conduct – training
  - Capability – accommodation
  - Competence – PIPs, support, training
- Be reasonable – punishment must fit the crime
- Remember:           80% Process  
                              20 % Substance

# Thank you

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