



HR Broadcast – Resignation during a disciplinary process

On a few occasions I have come across the situation where an employee, when subject to a disciplinary investigation or indeed when invited to attend a disciplinary hearing, has sent in a letter of resignation. That leaves the employer in the situation of having an incomplete disciplinary process and wondering whether to continue it or not.

In my view the employer's next course of action will really depend on the severity of the allegation.

When the employee has resigned, you as the employer may choose to accept the employee's resignation and discontinue the disciplinary process. This will be an end of the matter.

However, if the alleged conduct is serious, you may feel that it is appropriate to conclude your investigations and possibly hold a full disciplinary hearing, which the employee must be invited to attend even if they choose not to. Some examples of when it may be advisable to continue with the disciplinary process include;

- 1) If an allegation of criminal activity has been made.
- 2) A grievance has been raised by a co-worker and it would be unreasonable or discriminatory to fail to investigate the matter.
- 3) An allegation has been raised by a co-worker and it would be unreasonable or discriminatory to fail to investigate the matter.

Whether you decide to continue with the disciplinary process or not you should always write to the employee responding to his resignation.

Should you accept the resignation then you would confirm your acceptance in writing and you should also say that the disciplinary process will now be discontinued. It is then up to you to decide whether you wish the employee to work their notice or whether you will put them on garden leave (assuming your contract of employment allows for this).

However, should you wish to continue with the disciplinary process you will need to state in the letter words to the effect that the alleged conduct is so serious that you consider it right to conclude your investigations and, if appropriate, hold a full disciplinary hearing, at which the employee will be given the opportunity to put their side of the story. You should then advise them that should they choose not to participate in the investigation process or any disciplinary hearing then a decision will be taken in their absence. It is also worth pointing out in the letter that should the decision go against them, it will have an impact on any reference provided to prospective employers.

You should also remember that if you choose not to accept the resignation and to continue with the investigation or disciplinary process than the employee must continue to be paid.

Andy or Danny are available to discuss this situation further should the need arise.