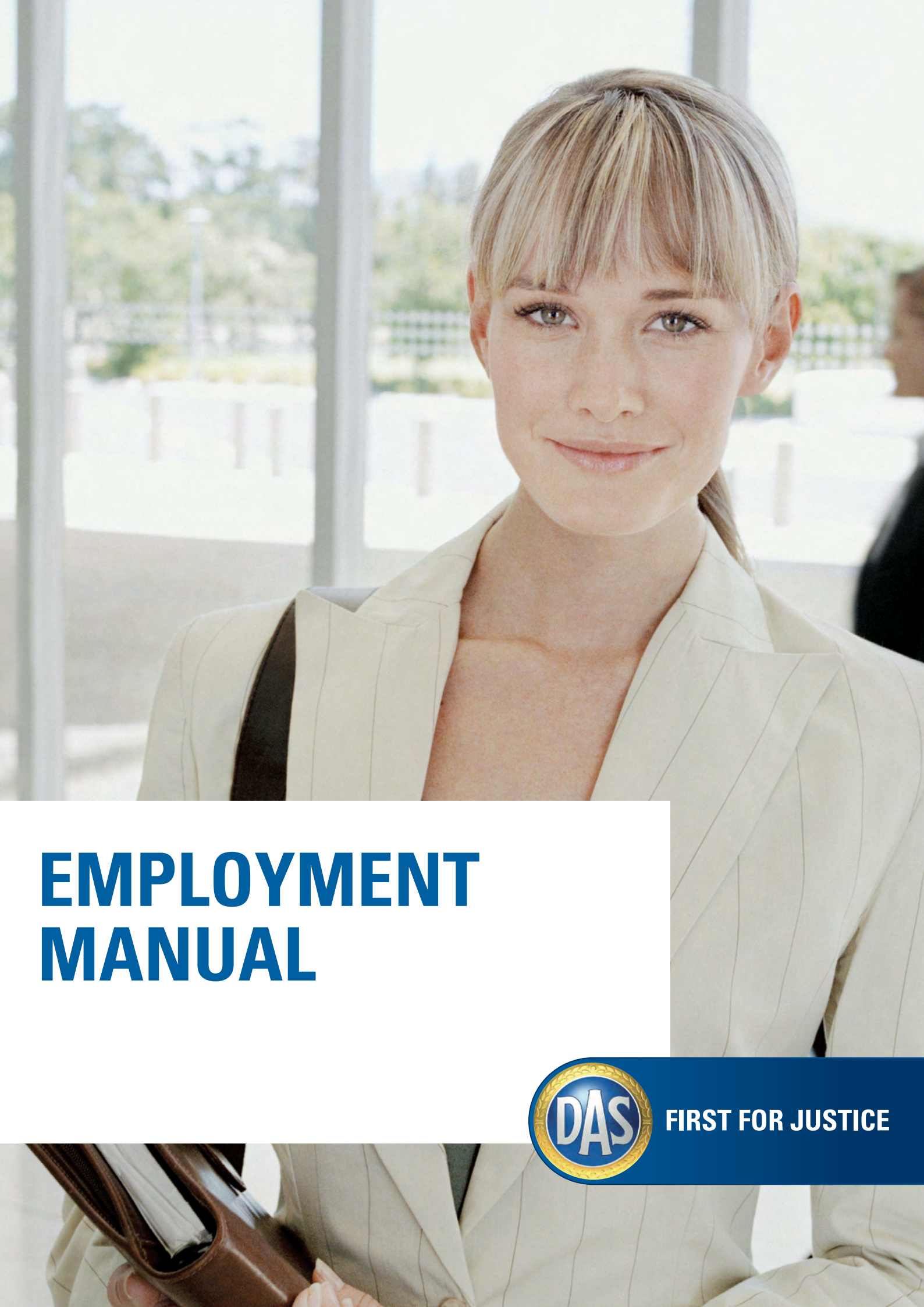

EMPLOYMENT MANUAL

FIRST FOR JUSTICE

TERMINATION OF EMPLOYMENT

5.1 DISCIPLINARY PROCEDURES AND PRACTICE

The aim of this guide is to help you with the effective use and operation of disciplinary rules and procedures. Due to the volume of details, smaller organisations may wish to adopt a more simple procedure in order to incorporate all the points. To promote fairness and industrial relations in the way employees are treated, it is necessary to have disciplinary rules and procedures. All organisations will also operate more effectively if it has a set standard of conduct, procedures to make sure standards are met and a fair mechanism for dealing with any failures in meeting those standards.

An employer must ensure that employees are aware of the standard of conduct required of them and, pursuant to **The Unfair Dismissals Acts, 1977 - 2007** and Statutory Instrument 146 of 2000 which is more fully described as **The Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000** there is a legal obligation on all employers to supply all employees, not later than 28 days after commencing employment, with written procedures which the employer will observe before dismissing an employee. Any changes to the procedure must be notified to the employee within 28 days of the change being made.

The use of disciplinary procedures is imperative where an employee's conduct, attendance or performance is of concern to an employer. Failure to use or comply with procedures may be taken into account by the WRC in awarding compensation. Procedures should normally include a set of graduated steps from verbal and written warnings to suspension on pay and eventually dismissal. There is no set rule about how many warnings there should be in any case. The test is: what would a reasonable employer do? Such an employer notifies his staff of any shortcomings and suggests improvements. Such an employer listens to any response the worker has to make. In other words, the rules of natural justice apply. Legal advice should be taken.

In cases of serious misconduct, it may be appropriate to move to a later stage of the procedure much more quickly if requested, an employer must give the reason(s) for dismissal in writing within 14 days of the request.

See Workplace Relations Commission Code of Practice on Disciplinary Procedures and see WRC (www.workplacerelations.ie)

Formulating Policies
Both employees and management should be involved in formulating the rules and procedures, as it is important that they are seen as reasonable by both parties (employee(s) and employer). Though the rules should be as general as possible in order to cover all situations which may arise, they may vary according to particular circumstances, such as the size of the establishment, administration and other resources available to you. Any policy may be more comprehensive that the minimum statutory procedure but must not fall below this.

TERMINATION OF EMPLOYMENT

5.2 FORMAL DISCIPLINARY PROCEDURES

Formal procedures are necessary to ensure common and equitable disciplinary action for employees failing to meet standards of job performance on breach of work rules or other conditions of employment. The maintenance of work standards and general behaviour is the primary responsibility of the company. It is the aim of the disciplinary procedure to help individuals whose performance falls below the company's standards.

The following procedures should apply:

- **Stage 1: Verbal Warning**
  In the case of minor infringements the supervisor directly concerned will warn the employee verbally of the specific aspect of work or conduct which is below standard, stating clearly that this is a warning and advising on the improvements that must be made. This warning will be recorded in the employee's file.

- **Stage 2: First Written Warning**
  In the event of continued failure to meet required standards, the employee will be issued with a written warning in the presence of his/her shop steward. He/she will also be warned that continued failure to improve may result in further disciplinary action up to and including dismissal, in accordance with the procedure.

- **Stage 3: Second Written Warning/Suspension**
  If the problem persists the manager will give the employee, in the presence of his/her representative, a second written warning. It will be made clear that further disciplinary action involving dismissal will be taken if conduct or performance is not satisfactory.

- **Stage 4: Dismissal**
  If the problem persists, the individual concerned will be given notice of dismissal. In circumstances of serious breaches of discipline not warranting immediate dismissal, the procedure outlined in Stage 3 above will be applied, i.e. written warning.

TERMINATION OF EMPLOYMENT

5.2 FORMAL DISCIPLINARY PROCEDURES (CONTINUED)

The Company hopes that it will not be necessary to dismiss you. There are however, certain breaches of Company rules and of established custom and practice that will render you liable to dismissal:

You may be dismissed from the Company for:

- Incompetence.
- Misconduct (serious or persistent).
- Incapacity.
- Failure to carry out reasonable instructions.
- Redundancy.
- Some other substantial reason.

Certain serious breaches of company rules, custom and practice may result in an employee's summary dismissal without notice or pay in lieu of notice.

The following list while not exhaustive is an outline of such offences:

- Deliberate breach of safety regulations likely to cause damage to oneself or other employees.
- Theft of, or malicious damage to, Company property, customer property or another employee's property.
- Sleeping on duty.
- Interfering with or falsifying either one's own or another employee's attendance records or any other Company or client records.
- Assault on another employee, member of management or customer/client.
- Being in possession of controlled drugs or alcohol while on duty, whether such drugs or alcohol are for own use or for distribution or sale to others.
- Reporting for work under the influence of drugs or alcohol such that, in the opinion of the supervisor/manager, you are unfit for work.
- Provision of any information gained by you in the course of carrying out your duties to a third party.
- Engaging in remunerative employment while absent from work, irrespective of whether the absence is covered by a Medical Certificate or not.
- Conviction of a criminal offence.
- Absenting yourself from work during your working hours without prior permission.
- Refusal to carry out reasonable and lawful instructions. An employee must carry out the supervisor's/manager's lawful instructions even if he/she disagrees with the instruction (i.e. under protest). The matter can be taken up under the Grievance Procedure subsequently.
- Bullying and harassment, victimisation or discriminatory conduct.

TERMINATION OF EMPLOYMENT

5.3 DEALING WITH POOR PERFORMANCE

Individuals have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so. Employers have a responsibility for setting realistic and measurable standards of performance and for explaining these standards carefully to employees. Where workers are found to be failing to perform to the required standard the matter should be investigated before any action is taken. Where the reason for the substandard performance is found to be a lack of the required skills the worker should, wherever practicable, be assisted through training or coaching and given reasonable time to reach the required standard. Where the substandard performance is due to negligence or lack of application on the part of the worker then some form of disciplinary action will normally be appropriate.

A worker should not normally be dismissed because of a failure to perform to the required standard unless warnings and an opportunity to improve (with reasonable targets and timescales) have been given. Employers may need to have special arrangements for dealing with poor performance of workers on short-term contracts or new workers during their probationary period.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING

It is important that you act fairly, consistently and objectively by adhering to natural justice and fair procedures at all times, as this is how the Employment Appeals Tribunal will consider cases of alleged unfair dismissal. Furthermore, it is important that you contact us for advice before each stage of the disciplinary process. Disciplinary matters should be dealt with when the facts are still fresh in the witnesses' minds, although this should not prejudice a full investigation. When an allegation of misconduct is made, you must investigate the matter and consider whether it is suitable to suspend the employee (for as long as is reasonably necessary in all the circumstances of the particular case).

You should only suspend if there was a danger that the employee would tamper with evidence, or a witness, or interfere with the business if he remains at work or it is to do with a potential gross misconduct issue.

The investigation
A full investigation of all the allegations should be conducted, potential witnesses interviewed and documentary evidence must be prepared. After this, you should then

- consider all evidence which should all be weighed objectively
- be aware of any history between the employee and the witness

Providing information to the employee
If there is sufficient evidence, employees should be given a reasonable length of time to prepare their case and copies of all the documentary evidence that you, as the employer, intends to rely on should be furnished to the employee in advance of the disciplinary hearing. This is important as the employee may complain to the Employment Appeals Tribunal if an unfair procedure is followed. The employee must be notified if, after all the investigations, there remains insufficient evidence to substantiate the allegations and accordingly no disciplinary action will be taken.

The right to representation at a disciplinary hearing or grievance hearing
An employee has a right to be accompanied to a disciplinary hearing by a friend, work colleague, union representative or other person as they see fit. The employer must permit the companion to address the hearing in order to do any or all of the following – put the worker's case, sum up the case, respond on the worker's behalf to any view expressed at the hearing and to confer with the worker during the hearing. However the companion is not allowed to:

- Answer questions on behalf of the worker.
- Use the position in a way which prevents the employer from explaining his case or prevents any other person at the hearing from making his contribution to it.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING (CONTINUED)

Conduct of the Hearing
As an employer, you must adhere to the rules of natural justice. The employee has to be fully informed of the allegations and any evidence used against them, and be given an opportunity to put a case forward, produce their own evidence and be allowed to question the witnesses. The employee's representative is also there to act on behalf of the employee and should be allowed to ask questions during the disciplinary hearing. This should be a real opportunity to find out what happened and should not be seen as an aggressive interrogation. There must not be bias during the investigation or hearing and an objective person must be present, whose duty is solely to take notes and who should not be involved with the hearing in any other way. New matters raised during a hearing should be investigated thoroughly and the employee should be told of the outcome of the investigations and be given sufficient time to consider a response. At the end of the hearing, you should usually adjourn and make an informed decision taking all the evidence into consideration.

The employee must be advised in writing of the outcome. You are strongly advised to contact your legal advice helpline before making a decision. If you fail to do so and you are subsequently taken to an employment tribunal your insurance cover may be declined if you have acted unreasonably. Once a decision is made the employee may be notified verbally of the decision, however, this should always be confirmed in writing. The letter should always include the nature of the misconduct, time required for the employee to improve, the improvement required and the duration of the penalty on the employee's record, as well as the consequences of further misconduct and appeal details.

The Appeal
The employee should always be notified of the right of appeal. Written notification should state to whom and the deadline by which an appeal must be lodged (five days is usual). The opportunity to appeal against a decision is essential to natural justice. Workers may choose to raise appeals on a number of grounds which could include the perceived unfairness of the judgement, the severity of the penalty, new evidence coming to light or procedural irregularities. These grounds need to be considered when deciding the extent of any new investigation or re-hearing in order to remedy previous defects in the disciplinary process.

Appeals should be dealt with as promptly as possible. A time limit should be set within which appeals should be lodged. This time limit may vary between organisations but five working days for lodging an appeal is usually appropriate. A time limit should also be set for hearing the appeal. Wherever possible the appeal should be heard by an appropriate individual, usually a senior manager, not previously involved in the procedure. In small organisations it may not be possible to find such an individual and in these circumstances the person dealing with the appeal should act as impartially as possible. Independent arbitration is sometimes an appropriate means of resolving issues and where the parties concerned agree it may constitute the appeals stage of procedure.

Individuals should be informed of the arrangements for appeal hearings and also of their statutory or other right to be accompanied at these hearings. Where new evidence arises during the appeal the worker, or their representative, should be given the opportunity to comment before any action is taken. It may be more appropriate to adjourn the appeal to investigate or consider such points. The worker should be informed of the results of the appeal and the reasons for the decision as soon as possible and this should be confirmed in writing. If the decision constitutes the final stage of the organisation's appeals procedure this should be made clear to the worker.

TERMINATION OF EMPLOYMENT

5.4 GUIDANCE NOTES ON HOLDING A DISCIPLINARY HEARING (CONTINUED)

Records
Records should be kept detailing the nature of any breach of disciplinary rules or unsatisfactory performance, the worker's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be kept confidential and retained in accordance with the disciplinary procedure and Data Protection legislation, which requires the release of certain data to individuals on their request. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example, to protect a witness.

Further action
Rules and procedure should be reviewed periodically in the light of any developments in employment legislation or good employment practice and if necessary, revised in order to ensure their continuing relevance and effectiveness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all workers and, where appropriate, their representatives have been consulted. Except in very exceptional circumstances, where legal advice should be sought, changes to individual contracts may only be made with agreement.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES

(Please Note the Procedure for Dismissal applies to these cases)

High levels of employee sickness absenteeism can have a drastic effect on a business. It is very important to have a properly implemented sickness control procedure incorporating:

(a) A written procedure for sickness reports. This should encompass the following:
- When it is expected that the employee should report their absence and to whom.
- What steps employees are obliged to take to keep the company informed during the period of sickness absence.
- What medical certification the employee is required to produce, e.g. self certificate for absences of up to seven days followed by a doctor's certificate thereafter.
- Upon return to work, the required reporting procedure such as the completion of a record form.

(b) A written record of all absences (including holiday) in an easily identifiable format.

Only by having such procedures can you, as an employer, effectively review individual absenteeism. You should have particular regard for:

- Employees whose absenteeism level is above the average.
- Employees whose absenteeism relates to a particular health problem.
- Whether there is a pattern of absence such as at the beginning or end of a week.

The two main problems encountered with sickness absenteeism are:

i Long term ill health absenteeism.
ii Persistent intermittent absenteeism for a variety of genuine health reasons.

You will need to take steps to deal with both of these problems and may wish to dismiss an employee for either of these reasons. To do so, you will firstly have to establish that the reason for dismissal falls within one of the fair reasons to dismiss, namely capability or qualifications, conduct, redundancy, or contravention by the employee of a statutory duty or restriction, or some other substantial reason justifying dismissal. Secondly, as an employer, you must be able to show you have acted reasonably in all the circumstances of the case in treating the reason as sufficient for dismissal. Long term ill health absenteeism comes under the category of capability whilst persistent intermittent absenteeism may come under the "some other" substantial reason category or even under the conduct category. The procedures to be followed through in each case are different and will be outlined below. For specific advice please always call your legal advice helpline.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

Long-term ill health absenteeism
Firstly, you as an employer must try to establish an underlying medical condition causing the employee's absence. It is essential to seek medical opinion concerning the employee's condition. The first step is to write to the employee requesting a medical report from their medical attendant or alternatively requesting the employee to attend the Company Doctor for the purposes of obtaining such a report.

As the employer, you need to consider the contents/prognosis of the report and, in consultation with the employee, assess whether the business can sustain the continued absence without causing serious operational difficulties. Alternative employment within the business needs to be considered, if there is any available more suited to the employee. You, as the employer, need to show that you have acted reasonably by obtaining sufficient medical evidence (including consulting with the employee) on the nature and likely length of the employee's illness and return to work.

In light of such facts, question the needs of the business as to whether or not it is reasonable. It is advisable to discuss each individual case with your legal advice helpline.

Persistent intermittent absenteeism
It is now recognised that a poor attendance record may become a problem and that it can be necessary and reasonable to dismiss an employee following a fair warning procedure. You will need to investigate all the relevant facts and review the attendance record and the reasons for the absences. A counselling interview should be conducted in the first place to attempt to assess the reasons for the absence. In most cases the absences are due to genuine illness but with unrelated symptoms. If counselling does not remedy the problem then a more formal warning procedure needs to be followed through. It is important that you let the employee concerned know that the level of absenteeism is unacceptable, the absence record must improve, the time scale of this improvement, to what extent improvement is expected and the consequences of failure to improve.

It may also be appropriate to write to the relevant employee advising of the Company's concern with their attendance and mentioning the dates of illness. This letter should state that the employee's absence causes operational difficulties and that the employer is concerned for the employee's health and safety as a result of the intermittent absences. A letter should be requested from such employee's medical attendant stating their fitness to carry out their duties as per their contract of employment.

It is also very important to consider the explanations of employees, hence the need for personal interviews prior to the issuing of any warnings. The number of warnings required would normally be three: oral warning, first written warning and final written warning, with each clearly expressing and allowing a reasonable time period for improvement between warnings. Again, it is important to seek specific advice from your legal advice helpline.

Whilst not being able to go into further detail, there are other aspects to consider such as an employee falsely claiming illness, mental health issues, pregnancy related illness and/or Disability concerns.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

- **Fraudulent claims**
  These are essentially matters of misconduct and appropriate disciplinary action should be taken. It must be borne in mind, however, that it may be difficult to establish sufficient evidence upon which to base a reasonable belief that an employee is not genuinely ill.

- **Mental health**
  In any mental health and stress related illness absence, it is essential that you fully investigate any conduct or incapacity before taking a decision to dismiss. As an employer, you will be expected to give even more support and be tolerant and sensitive in such a case. A full medical investigation will need to be conducted and adequate consultation must take place.

- **Pregnancy**
  It is an automatically unfair reason to dismiss a woman because she is pregnant or for any reason related to her pregnancy, which includes incapacity to work due to pregnancy related illness. Additionally, there are also complex regulations relating to medical suspension where there is pregnancy related incapability.

- **Disability discrimination**
  It is unlawful to treat an employee less favourably because of their disability in relation to any aspect of employment or dismissal and even in recruitment. You need to make reasonable adjustment to overcome any factor which puts a disabled employee or job applicant at a disadvantage.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

- **Sick Leave and an Employee's Entitlement to Annual Leave**
  In the joined cases of ***Schultz-Hoff -v- Deutsche Rentenversicherung Bund*** and ***Stringer and Others -v- Her Majesty's Revenue and Customs***, the European Court of Justice has interpreted the entitlement to paid annual leave under the Working Time Directive (transposed from **The Organisation of Working Time Act, 1997**) in cases where the workers are on sick leave. In this ground breaking decision the ECJ held that an employee who is unable to work due to incapacity is still entitled to be paid holidays and the expiration of the leave year or carry over period does not extinguish that right.

  Furthermore in the case of ***Pereda -v- Madrid Movilidad SA*** the European Court of Justice held that workers who are on sick leave during a period of previously scheduled annual leave must be allowed to take holidays. This decision only relates to the statutory four weeks set out in the Working Time Directive. However it arguably does not apply to any additional contractual holiday that an employee may be entitled to.

  Following on from this decision, as a prudent employer you should:

  1 Review the policy on carrying out a holiday. Obviously the Pereda decision makes it inappropriate to have a blanket ban on carrying over holidays.

  2 Review your sickness policy. Your policy may need to be updated in light of the Pereda decision. It may be that you will now require medical evidence irrespective of the length of time of an absence while the person is on holidays.

  The recent amendment to the Organisation of Working Time Act, 1997 now means that employees do accrue annual leave for periods of certified sick leave. This is discussed in more details above at page 38.

- **Sick Leave and Incapacity**
  There are a number of factors that must be taken into consideration when attempting to address the issue of incapacity and long term sick leave within the workplace. A number of cases have outlined the procedure that must be followed.

  Humphries -v- Westwood Health and Fitness Club (unreported 13th February 2004) (Circuit Court decision) outlined the steps that must be taken by an employer.
  – Employer must look at the medical evidence.
  – If the employee is not suitable for their previous job then by virtue of Section 16(3) of **The Employment Equality Acts, 1998 - 2004** the employer must consider if there are any special measures or treatment that could be taken to accommodate this employee to re–enter employment.
  – Also enquires into any special measures to be taken by the employer can only be regarded as being adequate if the employee is permitted to present medical evidence themselves.

  In ***Galway Airport -v- Norman Clune (UD 420/2008)*** – It was held that at all times fair procedures must be followed and that appeals should be allowed and normal grievance procedures should be followed.

  In ***Reardon -v- St. Vincents Hospital (UD 74/79)*** – It was held that employees should be put on notice that there is a possibility of their employment being terminated.

  In ***McLoughlin -v- Celmac (Ireland) Ltd (UD 799/84)*** – It was held that a dismissal was unfair as the employer did not get an up to date medical opinion with regards to the employees possible future availability for work. Also employers must consider if there are any different positions that may be suitable for the employee who is unfit to return to carry out previous works.

TERMINATION OF EMPLOYMENT

5.5 SICKNESS ABSENCES (CONTINUED)

- **Sick Leave and Incapacity (continued)**
  An employer should only terminate the employment of an employee where it can be shown through independent medical evidence that the employee is unfit to return to work and the position is unlikely to change in the medium to long term. The Employee should be consulted, told of the possible outcome of the decision making process and be given an opportunity to contest the medical findings.

  Where an employee is receiving payment under a long term illness pain or income continuous scheme it can be difficult to dismiss an employee.

  McAdie -v- Royal Bank of Scotland – It was held in this case that an employer can dismiss on grounds of capability even where the illness is caused originally by employer (stress case in this instance) – If the employer caused the stress then they must go the extra mile to find alternative works and must put up with it longer than might otherwise be reasonable.

- **Sick pay and accrued annual leave**
  Stringer case – In this case it was held that the holiday pay must be paid as it is accrued as normal when employee is on sick leave.

  In ***Pereda -v- Madrid Movilidad SA***, the ECJ considered what happens if a worker falls ill during a pre-arranged period of annual leave. Previously, it had been thought by many employers that the worker would simply lose that annual leave, however the ECJ held in this case that the worker has the option to designate an alternative period of leave as annual leave.

  Khan Case – (August 2010) (English case – yet to be tested in Ireland) – It was held in the Employment Appeals Tribunal that only holidays gained in the year of request must be paid. So if a person is on sick leave for a number of years and seeks the full amount of holiday days, which must be given by virtue of the Stringer case, then only the year in which the holidays are requested must be paid and not back dated as previously believed the position after the Stringer case. This case must be considered with caution as this may be appealed and overturned.

TERMINATION OF EMPLOYMENT

5.6 LETTERS OF ENQUIRY

For file purposes only, after issue of an oral warning

NOTIFICATION OF CONCERN

Employee's Name: .....

Location/Department: .....

Date of oral warning: .....

Offence: .....

An oral warning was given to the above named employee in respect of his/her unacceptable absence record as set out in our Absence Control Procedure. Details of the absence record are attached.

I saw him/her on an informal basis on ..... (date) when I asked for any explanation of his/her absence record. We had a long session together when we discussed at length his/her absence record and the reasons for it. I told him/her that if he/she had any personal problems or difficulties he/she could tell me in confidence or go to see our Company nurse/doctor. I also referred him/her to Dr ..... on .... (date) and received a report (attached) which did not indicate any medical problem.

I have now advised him/her that unless his/her attendance record makes an immediate, significant and substantial improvement during the next two shifts and is sustained for the next twelve months, he/she will be given a first written warning.

I will review .....'s (name) absence record on ..... (date) and after each shift, for a period of twelve months. If the attendance record improves and is sustained over the next twelve months, this oral warning will lapse.

I have advised him/her that he/she should come to see me if he/she has any problems with which the Company can help.

Signed: .....

Status: .....

TERMINATION OF EMPLOYMENT

5.6 LETTERS OF ENQUIRY (CONTINUED)

SECOND NOTIFICATION OF CONCERN

Employee's Name: .....

Location/Department: .....

Offence: .....

Further to the disciplinary hearing which took place on ..... (date) I confirm that you have been given a first written warning for failing to achieve/maintain a satisfactory attendance record. Over the past ..... (weeks/months) your absence record has been ..... (state number of days/spells).

I have discussed your record with you on two previous occasions and have tried to find out why your record is unacceptable. You have not been able to produce any explanation which satisfies me and regretfully, I have had to issue you with a first written warning.

In accordance with the disciplinary procedure/absence control procedure, if there is a/the required improvement in your attendance which is maintained over the following twelve months, this warning will lapse. However, should your attendance not improve or be sustained over the next twelve months, or should you commit any further disciplinary offence, then you will be given a final written warning.

I trust that you will be able to attend work on a regular basis and achieve a 100% attendance record. If you have any problems which make it impossible for you to attend work, I would urge you to tell me immediately so that we can try to find a satisfactory solution. I have explained to you the difficulties we face when you fail to attend work and the effect that this has on the running of the Company. I trust that this warning will lead to the improvement required and that no further action will be necessary. I have also reminded you of the facility for confidential counselling should you need this.

Signed: .....

Status: .....

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY

Redundancy can occur where one of the following things happen:

- Your employer ceases to carry on business or ceases to carry on business in the place where you have been employed. (For example, if the firm moves location, this can be a substantial change in your working conditions and may therefore be a reason for redundancy. However if there is a change of ownership under the Transfer of Undertaking legislation where employees are re-employed with no change to their working conditions then it is not a redundancy situation.).
- Your employer's requirements for employees in your category has ceased or diminished.
- Your employer has decided to carry on the business with fewer or no staff. In deciding whether your employer is continuing the business with fewer or no staff, close members of your employer's family are not taken into account.
- Your employer has decided to let your work be done in a different manner in future and you are not sufficiently qualified or trained to do the work in the different way.
- Your employer has decided that your work will in future be done by another person who can do other work as well and you are not sufficiently qualified or trained to do that other work.

The Redundancy Payments Acts, 1967 - 2007 oblige employers by law to pay redundant employees what is known as "statutory redundancy entitlement".

The amount is related to the employee's length of service and standard weekly earnings. There is a maximum threshold payment of €600 per week for all redundancy notifications since 1st of January 2005.

A redundancy situation arises where an employee's job ceases to exist, and the employee is not replaced for such reasons as rationalisation/reorganisation, not enough work available, the financial state of the firm, or company closures.

Entitlement to redundancy

- An employee between the ages of 16 and 66 (Old Age Pension age) with 104 weeks (two years) continuous service.
- An employee must be in employment that is insurable under The Social Welfare Acts. A full-time employee must be in employment that is fully insurable for all benefits under The Social Welfare Acts; this does not apply to part time employees.

Rebates

In a situation where a business concern provides the Minister for Enterprise, Trade and Innovation with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister for Enterprise Trade and Innovation will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned, less the 15% rebate which the company would have been entitled to if it had been in a position to make the payment in the first place.

Redundancy payments Section of the Department processes applications for these rebates - see Forms RP50 (Notice), RP2 (Redundancy Certificate) and RP3 (Rebate itself) below, all of which are used for this purpose.

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY (CONTINUED)

Collective Redundancies
In Ireland, collective redundancies arise where, during any period of 30 consecutive days, the employees being made redundant are:

- 5 employees where 21 - 49 are employed
- 10 employees where 50 - 99 are employed
- 10% of the employees where 100 - 299 are employed
- 30 employees where 300 or more are employed

Redundancy Panel
Under **The Protection of Employment (Collective Redundancies and Related Matters) Act, 2007** a Redundancy Panel is being set up by the Department of Enterprise, Trade and Innovation in accordance with the partnership agreement ***"Towards 2016"***. The Panel will deal with collective redundancies to ensure that they are genuine redundancies as opposed to situations where workers are replaced by new workers doing the same job for lower wages.

Rules
In such a situation, your employer is obliged to enter into consultations with a view to agreement with your representatives. These consultations must take place at the earliest opportunity and at least 30 days before the first dismissal. The aim of the consultation is to consider whether there are any alternatives to the redundancies.

Your employer is also obliged to provide the following information **in writing** to your representatives:

- The reasons for the redundancy.
- The number and descriptions of the employees affected.
- The number and descriptions of employees normally employed.
- The period in which the redundancies will happen.
- The criteria for selection of employees for redundancy.
- The method of calculating any redundancy payment.

Your employer is also obliged to inform the Minister for Enterprise, Trade and Innovation in writing of the proposed redundancies **at least 30 days before the occurrence of the first redundancy**.

The Employees (Provision of Information and Consultation) Act, 2006 requires employers to consult with employees on substantial changes in the workplace, including proposals for collective redundancies. Currently the Act applies to all employers with 50 employees are more.

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY (CONTINUED)

Failure to make redundancy lump sum?
Employers are obliged to make redundancy payments in accordance with the statutory requirements laid down under **The Redundancy Payments Acts**. In situations where the employer is unable to pay the employees their entitlements, the Department of Enterprise, Trade and Innovation pays the full amount direct to the employees from the Social Insurance Fund (S.I.F.). The employee sends in Form RP14 (for useful details on this procedure, see section on Redundancy Forms below). The Department usually treats these applications as a priority, and later seeks reimbursement from the employer via its Redundancy Recoveries Section).

Calculation of redundancy payment
- Two weeks pay for each year of employment continuous and reckonable between the ages of 16 and 66 years in addition, a bonus week. When the total number of days is ascertained, any remaining number of days if such a number comes to 182 (26 weeks) or more, is regarded as an extra year.
- Reckonable service is service EXCLUDING ordinary sick leave over and above 26 weeks, occupational injury over and above 52 weeks, maternity leave over 18 weeks and career breaks over 13 weeks in a 52 week period.
- Reckonable service also excludes absence from work because of lay-offs or strikes.

However, short-time work is reckonable.

All calculations are subject to the ceiling referred to above, which stands at €600 per week with respect to Notified Redundancies from 1st of January 2005 on (€507.90 prior to that date).

Taxation of lump sum payments
There is no tax payable on a statutory redundancy lump sum pursuant to Section 37 of **The Finance Act, 1968**. The following are the relevant redundancy forms which may be printed or downloaded from the website of the Department of Enterprise, Trade and Innovation:

- **RP50 - Notice of Redundancy.** Employees with two years service must get at least two weeks notice, gradually rising to eight weeks with at least 15 years service. Copy of Form must be sent to the Department.
- **RP2 - Certificate of Redundancy.** Contains the figures used to calculate the redundancy lump sum e.g. number of years service reckonable for redundancy purposes, weekly pay etc. and must be signed by both employer and employee (No alteration should be made to the form once it has been signed.)
- **RP3 - Claim for Rebate.**
- **RP6 - Employee proposes to leave before the expiry of the date of termination of Redundancy** - Employer's consent required.
- **RP14 – Employee's Application for Redundancy Payment from the Social Insurance Fund, where employer fails or is unable to pay redundancy payment.** This form must be accompanied by form RP50 and **either** a completed Redundancy Certificate (RP2) or a copy of a favourable decision from the Employment Appeals Tribunal (E.A.T.)

Redundancy payments – inability to pay
In a situation where a business concern provides the Minister for Enterprise, Trade and Innovation with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister for Enterprise Trade and Innovation will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned, less the 60% rebate which the company would have been entitled to if it had been in a position to make the payment in the first place.

TERMINATION OF EMPLOYMENT

5.7 REDUNDANCY (CONTINUED)

Employment appeals tribunal
Disputes concerning redundancy payments can be submitted to the Workplace Relations Commission which has the advantage of providing a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory redundancy rights. The Workplace Relations Commission also deals with disputes under such other labour law areas as **The Minimum Notice and Terms of Employment Acts, 1973 - 2001**. These cover the right of workers to a minimum period of notice before dismissal, provided they are in continuous service with the same employer for at least 13 weeks and are normally expected to work at least 8 hours per week.

The Department of Social Protection published a very helpful guide to Redundancy - "Guide to the Redundancy Payments Scheme" which may be viewed on their website at **www.welfare.ie**

TERMINATION OF EMPLOYMENT

5.8 THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT, 2006 (23RD OCTOBER 2006)

This legislation transposing EU Council Directive 2002/14/EC became law in Ireland on the 24th July 2006. The Act introduces for the first time in Ireland an obligation on employers to establish arrangements to inform and consult with employees in relation to certain organisational and structural changes. Since 23rd March 2008 the Act applies to all employers with at least 50 employees.

The overall purpose of the Act is to establish systems in the workplace whereby employers will inform and consult with employees in advance of certain proposed changes in the workplace. Prior to this Act, the information and consultation rights of employees in Ireland were limited to specific situations e.g. collective redundancies and Transfer of Undertakings and those rights still apply.

The Act is extremely wide ranging and covers any "public or private undertaking carrying out an economic activity, whether or not operating for gain…" As such, it applies to all companies, partnerships, charitable organizations, trade unions and public bodies.

In short, the Act requires employers who meet the requisite threshold to provide employees with information on developments (recent and future) affecting the economic situation and activities of the business. It also requires employers to inform and consult employees on developments affecting employment in the workplace and, in particular, on decisions likely to lead to substantial changes in work organisation or in contractual relations. In this regard, the Act specifically refers to proposed or anticipated business acquisitions and collective redundancies. This could mean, on a very basic level, that employers find themselves discussing acquisitions, disposals, restructurings, re-organisations, mergers and even recruitment strategies with employees prior to the actual event or decision being made.

The Act does however provide that employers may refuse to communicate information or undertake consultation where such information and/or consultation would seriously harm the functioning of the employer's business or be prejudicial to the employer's business. However, this exception should be used only where **absolutely necessary** lest employers be seen to be holding back from employees.

In general, once the Act applies to an employer and the employer refuses to negotiate an agreement or where an information and consultation agreement cannot be reached within six months of commencing negotiations (which can be extended by agreement), the default Standard Rules set out in the Act will apply to that workplace. Alternatively, the parties may agree to adopt the Standard Rules in their workplace. The Standard Rules are not tailored to a particular workplace and, therefore, may be more difficult than a pre-existing agreement or a negotiated agreement to operate in practice.

The Standard Rules set out in Schedule 1 give some general guidelines of the Act containing provisions in relation to the size and structure of the information and consultation forum, the rules of procedure and then set out the matters on which employees should be informed and consulted. These include:

- information on the recent and probable development of the employer's activities and economic situation;
- information and consultation on the situation, structure and probable development of employment and any anticipatory measures envisaged, in particular where there is a threat to employment; and
- information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.

TERMINATION OF EMPLOYMENT

5.8 THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT, 2006 (23RD OCTOBER 2006) (CONTINUED)

The Act provides that information and consultation can take place with employees directly or through an appointed or elected employee representative.

The Act contains provisions in relation to confidential information. It provides that an employee in receipt of information which is expressed, by the employer, to be confidential must not disclose such information to other employees or third parties. Interestingly, the Act does not contain any provisions for penalties or other sanctions to be imposed on employees or employee representative who breach the confidentiality provisions. In circumstances where such breaches occur, it would be up to an employer to use his normal disciplinary procedure to deal with any breaches of confidentiality.

Even where an employer comes within the scope of the Act by virtue of the number of employees threshold, the obligations under the Act will only apply where a written request is made by 10% of employees (but not less than 15 or more than 100 employees) to the employer or to the Labour Court to enter into negotiations to establish information and consultation arrangements. This requirement for employees to mobilize themselves has proved to be a distinct disincentive for employees in the UK.

If there is any dispute in relation to the interpretation or operation of either the negotiated agreement or the standard rules both parties are obliged in the first instance to avail of any internal dispute resolution procedures which exist. If no resolution can be reached then the matter can be referred by either party to the Labour Relations Commission who can then refer the matter to the Labour Court whose determination can be enforced by the Circuit Court. A determination of the Labour Court can be appealed to the High Court on a point of law only and no appeal lies from the High Court. Any person found guilty of an offence under this Act shall be liable on summary conviction to a fine of up to €3,000 and/or 6 months imprisonment and on indictment to a fine of up to €30,000 and/or 3 years imprisonment. The Act also provides for the appointment of Inspectors with powers of entry onto premises to inspect and ensure compliance with the Act.

TERMINATION OF EMPLOYMENT

5.9 MINIMUM NOTICE

The amount of notice you are entitled to by law will depend on how long you have been working for your employer pursuant to section 4 of **The Minimum Notice Acts, 1973 - 2001**. Every employee who has been in the employment of their employer for at least thirteen weeks is entitled to a minimum period of notice before their employer can dismiss him or her. This period of notice ranges from one to eight weeks, and is according to the length of the employee's service with the company. If the employer is not able to provide the required minimum notice they have the option of paying the employee notice in lieu of such notice.

Duration of employment	**Minimum Notice**
13 weeks to 2 years	1 week
2 years to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years to 15 years	6 weeks
15 years or more	8 weeks

While the notice entitlements under a contract of employment can exceed the minimum periods above, any provision for notice in a contract for less then the above is void. This essentially means that while a contract of employment can set down that an employee will receive a greater amount of notice than the law states above, if the contract states that an employee will get less than the law provides, then this part of the contract has no legal effect. The law however does not preclude an employer or an employee waiving their rights to the legally specified notice period. The law also does not preclude an employee accepting payment in lieu of notice.

An employee may be required to work the notice period or they may accept payment in lieu of notice, if offered by the employer. Payment in lieu of notice means that an employee will not have to work for the period between receiving notice and the ending of their employment, but they will get the same amount of wages that they would have been entitled to, had they so worked.

Your employer **may dismiss an employee without notice** for serious misconduct.

Waiving the right to notice
Employment legislation in Ireland also sets down that if an employer and an employee agree, the employee can waive their right to notice. In addition, where the employer and employee agree, the employer can pay the employee in lieu of notice. If an employee accepts payment in lieu of notice, then the date of termination of the employee's employment is the date on which notice (if it had been given) would have expired.