

# Is suspension a penalty, a precaution or a sign of panic?

Press coverage of public scandals may be prompted by, or lead to calls for, the suspension of those involved. But suspension needs to be considered carefully by employers. It may be a sensible precaution, but it will rarely be justifiable as a punishment, and should not be used as a panic measure.

Although the case law is relatively straightforward, employers need to exercise caution, not only to minimise their potential legal exposure, but also to avoid unintended and undesirable consequences.

## Case law

There is an implied contract term governing suspension (*McClory v Post Office* 1993 IRLR 159). Employers must: act reasonably, have reasonable grounds for the action, and ensure that the period of the suspension is reasonable. Whether a suspension is reasonable or not will depend on “events as they occurred” – its “reasonableness” is not judged with hindsight.

This approach does give some leeway. Employers have no specific duty to give reasons for a suspension, or to balance the interests of the employee against the organisation’s own. And courts and tribunals cannot substitute their own view on “reasonableness” for the employer’s.

## Other options

Unjustified or excessively lengthy suspensions can lead to constructive dismissal claims, not just to unfair dismissal proceedings. In one case, *Gogay v Hertfordshire County Council* (2000 IRLR 703 CA), suspending an employee because of an allegation of sexual abuse was found to have been a “knee jerk” reaction. The employer should have considered other options, such as a period of leave or a move to another part of the organisation. The employee won personal injury damages, both for the financial loss and the damage caused by the psychiatric illness that she suffered as a result of the employer’s breach.

## Checking facts

In *Aziz v Crown Prosecution Service* (2007 ICR 153 CA), an employee successfully claimed race discrimination when the employer suspended her without undertaking a preliminary consideration of the facts required by its own procedure. The Court of Appeal said such enquiries were necessary as a matter of fairness, reasonableness and “good employment practice”.

## Disciplinary and grievance procedures

The Acas code states that suspension should be as brief as possible, kept under review, and not be used as a disciplinary sanction. Breaching the code could result in an uplift in compensation of up to 25 per cent. To avoid a constructive dismissal claim, employers should not use suspension as a punishment (for example, for misconduct) unless it is authorised by the employee’s contract of employment. Even then, it should be used carefully.

## Is suspension the right course of action?

Acas says that suspension may be justified if it’s used to preserve evidence, avoid the intimidation of witnesses, separate protagonists where work relationships have broken down, protect a victim of alleged harassment or protect an employee’s or the organisation’s property. The guidance also reminds employers that redeployment and working from home can be suitable alternatives to suspension, being less destructive to the business, and making it easier for an employee to return if vindicated.

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