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INTERNATIONAL LABOUR LAW NETWORK **NEWSLETTER**

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MAY 2026

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Topic of the month

Legal instruments for disciplining employees

Fellow Reader,

We are pleased to present the latest edition of our newsletter. In this issue, we focus on legal instruments for disciplining employees across the ILLN member states, including most European Union countries, the United Kingdom, and Switzerland. Disciplinary measures constitute an important aspect of labour law, enabling employers to address misconduct and ensure compliance with workplace rules and standards.

Although the legal framework, available sanctions, and procedural requirements vary between jurisdictions, disciplinary measures generally seek to balance the employer's managerial authority with the employee's right to fair treatment and protection against disproportionate sanctions.
In many European countries, disciplinary procedures are regulated by statutory provisions, collective agreements, internal workplace policies, and case law, often imposing specific requirements regarding due process and employee rights.

This newsletter provides a comparative overview of how employee disciplinary measures are regulated and applied in selected ILLN jurisdictions. It examines, among other issues, the types of disciplinary sanctions available, procedural obligations imposed on employers, employees' rights of defence, and the legal consequences of unlawful disciplinary action.

This cross-jurisdictional perspective highlights both shared principles and key differences in approaches to workplace discipline across Europe.

We, as the ILLN, are pleased to announce that

Marcin Wojewódka, PhD (Poland)
and
Tomáš Procházka (Czech Republic)

have been shortlisted as nominees for the Central and Eastern Europe Awards 2026, hosted by:

Legal500

LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES UNDER GERMAN LAW

FEDERAL REPUBLIC OF GERMANY

Addressing employee misconduct appropriately is a recurring challenge for employers. Under German employment law, employers have access to a range of disciplinary measures that are governed by the principle of proportionality and designed to balance the legitimate interests of the employer with the rights and protections afforded to employees. The following provides a brief overview of the key disciplinary measures available under German employment law.

Introduction

The appropriate disciplinary measure will depend on the specific circumstances of each case, particularly the nature and seriousness of the misconduct, the terms of the employ-ment contract, applicable collective bargaining agreements, works agreements, and the overarching principle of proportionality. Violations of lawful instructions or contractual obligations may give rise to employment law sanctions ranging from an informal warning to dismissal as a measure of last resort. In all cases, employers are required to consider and apply the least severe reasonable measure before taking more serious action, such as ter-mination of employment.

Key legal instruments

Possible disciplinary measures include, in particular:

a) Informal warning („Ermahnung“)
An informal warning represents the mildest form of disciplinary action. It serves to draw the employee's attention to misconduct and to remind them to comply with their contrac-tual obligations in future. Unlike a formal warning (see below), it does not yet contain an explicit warning of further employment-related consequences, such as dismissal in the event of a repeat offence. It is therefore particularly suitable in cases involving minor breaches of duty where issuing a formal warning would be considered disproportionate.

b) Formal warning („Abmahnung“)
A formal warning is a reprimand issued in response to a specific breach of contractual du-ties. It primarily serves to reprimand and document the employee's conduct, while also acting as a warning of potential further employment-related consequences. There is no specific format required, but it should be in writing for record-keeping purposes. It must clearly describe the behaviour being criticised, specify the contractual obligation that has been violated, and include a warning that repetition may lead to employment-related con-sequences, including termination of employment. Under German case law with regard to the principle of proportionality, a formal warning is generally a prerequisite for a conduct-related ordinary dismissal where the German Protection Against Dismissal Act (KSchG) applies.

GERMANY

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c) Relocation or reassignment

Another measure that may be considered is a transfer to a different position or workplace, provided it is likely to remedy the misconduct and is reasonable for the employer. It can serve as an alternative to termination but must fall within the scope of the employer's man-agerial prerogative and be exercised in accordance with equitable discretion, requiring a proper balancing of the employer's and employee's interests. In addition, a suitable vacant position of equal value should be available, and milder measures, such as a formal warn-ing, must not be sufficient. Where applicable, the works council is to be involved.

d) Termination

Dismissal is the most severe disciplinary measure as a last resort, where less severe measures, such as a written warning, are not sufficient, or where the misconduct is so seri-ous that continued employment is unreasonable. The KSchG might also be taken into ac-count and where a works council exists, it must be consulted.

A conduct-related ordinary termination may be issued in cases of repeated or significant breaches of duty and is generally preceded by at least one formal warning for a violation of the same kind. Its purpose is to end the employment relationship in compliance with the applicable notice periods, where milder measures have proven ineffective.

An extraordinary termination without notice (§ 626 German Civil Code (BGB)) requires good cause that, taking into account all circumstances and the interests of both parties, makes it unreasonable to continue the employment relationship even until the expiry of the notice period. It is limited to cases involving particularly serious misconduct, such as theft, physical assault, serious insults, or time fraud.

e) Contractual penalty

The inclusion of a contractual penalty clause in an employment contract is generally per-missible under German law, but it is subject to strict validity requirements and is only ap-propriate in limited exceptional circumstances. Such a clause requires a legitimate interest on the part of the employer and must not place the employee at an unreasonable disad-vantage. Both the specific breach of duty triggering the penalty and the amount of the con-tractual penalty must be clearly and transparently defined, enabling the employee to align their conduct accordingly. In addition, the amount of the penalty must also remain propor-tionate and reasonable in light of the particular breach of duty concerned. Contractual pen-alty clauses typically relate to a contractual non-competition clause or an employee's fail-ure to observe the notice period.

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LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES IN LUXEMBOURG

DUCHY OF LUXEMBOURG

Luxembourg employment law does not provide for a specific statutory regime governing disciplinary sanctions in the workplace. The Luxembourg Labour Code essentially regulates only two forms of disciplinary action: dismissal with notice for real and serious grounds and dismissal with immediate effect for serious cause ('motif grave', including serious misconduct).

Apart from these two forms of termination, Luxembourg law does not expressly define or organise other disciplinary measures. As a result, employers may only impose additional sanctions where they are provided by another legal or contractual source, such as a collective bargaining agreement, the employment contract itself, or internal policies and regulations accepted by the employee. This reflects the general principle of legality of sanctions: disciplinary measures must have a sufficient legal or contractual basis before they can validly be imposed on an employee.

The employer's disciplinary authority derives primarily from the employment relationship and from the employer's managerial prerogatives. Employers may, in principle, exercise disciplinary powers where an employee breaches legal, contractual or regulatory obligations, fails to comply with internal rules, or refuses to follow lawful management instructions.

Provided that a valid legal or contractual basis exists, employers may implement a range of disciplinary measures, including verbal or written warnings, reprimands, temporary suspensions, demotions, transfers, internal fines within the strict legal limits, and ultimately dismissal. Any sanction must however remain appropriate and proportionate to the employee's conduct.

Luxembourg case law and general principles of employment law have progressively established a number of safeguards governing the exercise of disciplinary powers.

First, the principle of proportionality requires that the sanction corresponds to the seriousness of the misconduct and the surrounding circumstances. Although it may be recommended in certain situations, Luxembourg law does not impose a mandatory escalation of sanctions: a dismissal does not necessarily need to be preceded by prior warnings if the misconduct justifies proceeding directly with termination.

LUXEMBOURG

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Second, the employee's dignity must always be respected. Disciplinary action cannot be implemented in a humiliating, defamatory or abusive manner, nor may employers publicly expose employees to ridicule when imposing sanctions.

Third, employers may lose the right to sanction misconduct if they tolerate the behaviour for too long. Under the principle commonly referred to as "pardon", an employer who expressly or implicitly accepts the employee's conduct may no longer rely on the same facts at a later stage. In the specific context of immediate dismissal for serious cause, the Labour Code imposes a strict one-month deadline from the date on which the employer became aware of the relevant facts justifying the termination.

Another important limitation is the prohibition against double sanctions. As a rule, the same misconduct cannot give rise to several disciplinary measures, unless a new and distinct breach subsequently occurs.

Finally, Luxembourg law also protects employees against abusive or retaliatory disciplinary action. Employers may not sanction employees for exercising legally protected rights, including in situations involving whistleblowing, discrimination complaints, harassment claims, participation in lawful strike action, or the prevention of imminent and serious danger.

Although Luxembourg employment law leaves employers with significant flexibility in disciplinary matters, this flexibility is counterbalanced by contractual requirements, judicial oversight and fundamental principles developed through case law. Employers should therefore ensure that disciplinary rules are clearly documented and properly communicated to employees in order to minimise legal uncertainty and reduce litigation risks.

Tailored legal advice is key prior to taking disciplinary actions to ensure compliance with applicable law.

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LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES IN POLAND

REPUBLIC OF POLAND

Introduction

Generally applicable Polish regulations, including the provisions of the Labor Code -specifically Articles 108-113 set forth in detail the list of disciplinary measures and the rules for imposing them on employees. The disciplinary measures provided for in the Labor Code may only be applied to individuals employed by a company under an employment contract.

List of disciplinary penalties

Pursuant to Article 108 of the Labor Code, an employee may be subject to a disciplinary penalty if the employee fails to comply with:

- the established organisation and order in the work process,
- health and safety regulations,
- fire safety regulations,
- the established method of confirming arrival and presence at work and justifying absences,
- leaving the workplace without justification,
- appearing at work under the influence of alcohol or drinking alcohol during working hours.

The list of disciplinary measures is as follows:

- reprimand,
- warning,
- financial penalty–only in cases of failure to comply with health and safety or fire safety regulations, leaving the workplace without justification, reporting to work under the influence of alcohol, or drinking alcohol during working hours.

The imposition of disciplinary penalties other than those specified in labor law constitutes a violation of the employee's rights and is punishable by a fine ranging from PLN 1,000 to PLN 30,000.

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Violations of social norms, workplace harmony, and work discipline

Inappropriate behavior in the workplace should be considered in light of the provisions governing social coexistence. Article 8 of the Labor Code states that one may not exercise a right in a manner that would be contrary to the socio-economic purpose of that right or the principles of social coexistence. Such an act or omission by the entitled party is not considered an exercise of a right and is not protected.

An employee who yells at or sends threats to coworkers is not adhering to the principles of social coexistence, which are based on generally accepted standards of behavior.

How can an employer discipline employees?

1. Time Limit for Responding to a Violation
The employer has two weeks to discipline an employee from the moment the employer becomes aware of the misconduct, or three months from the date the employee committed the offense. After this period has elapsed, the employer cannot effectively impose a disciplinary sanction on the employee. If an employee cannot be heard due to absence from work, the two-week period does not begin, and if it has already begun, it is suspended until the employee returns to work.

2. Hearing the Employee's Side of the Story
Before imposing a penalty, the employer must notify the employee of this intention and hear the employee's explanation. Only after such a discussion may a disciplinary penalty be imposed.

3. Notification letter
The document imposing a disciplinary penalty on the employee must include information about the nature and date of the offense, as well as a seven-day deadline for filing an objection.

4. Review of any objection
The employer has 14 days to consider all circumstances supporting the rejection or acceptance of the employee's objection. During this period, the employer must also review the opinion issued by the labor union representing the employee. Failure to respond to the employee's objection will be deemed to constitute acceptance of it. Pursuant to Article 112 of the Labor Code, the employee may appeal a rejected objection to the Labor Court.

5. Employee Files
A copy of the letter notifying the employee of the disciplinary action must be placed in the employee's personnel file. After one year, the record of the disciplinary action must be removed, and the action is considered null and void.

Summary

An employer has the authority to impose disciplinary actions on employees; however, it is important to remember to comply with the time limits (2 weeks from the employer's knowledge of the offense or 3 months from the employee's commission of the offense), as well as the fact that imposing a disciplinary penalty on an employee other than those provided for in the Labor Code will constitute a violation of the employee's rights.

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LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES IN PORTUGAL

PORTUGESE REPUBLIC

The disciplinary procedure is subject to specific deadlines and formal requirements under the Portuguese Labour Code. Such procedure constitutes the mandatory legal framework applicable not only to the imposition of disciplinary sanctions in general, but also to dismissal with just cause, which may only be lawfully implemented following the completion of a formal disciplinary procedure conducted in accordance with the applicable legal requirements.

The employer's right to exercise disciplinary authority shall lapse one year after the infringement, or within the limitation period established under criminal law where the relevant conduct also constitutes a criminal offence. Once the person vested with disciplinary authority becomes aware of the relevant facts, the employer has 60 days to initiate the disciplinary procedure by serving the employee with a written statement of misconduct setting out a detailed description of the facts alleged against them.

Where the employer considers that the employee's continued presence within the company may interfere with the investigation or disrupt the normal functioning of the business, the employee may be placed under preventive suspension, without loss of remuneration. Following receipt of the statement of misconduct, in the event of dismissal proceedings, the employee shall have no less than 10 working days to consult the disciplinary file and submit their defence, including the presentation of documents and the request for witness hearings.

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The employer, or any appointed instructor, must carry out the evidentiary measures requested by the employee unless such measures are considered manifestly dilatory or unnecessary. Once the evidentiary stage has been completed, the employer has 30 days to issue the final decision. In such decision, after assessing all the circumstances of the case, the employer shall determine the disciplinary sanction deemed appropriate, in accordance with the principle of proportionality. Depending on the seriousness of the infringement, the sanction may range from a reprimand to a fine, loss of vacation days, suspension without pay or loss of seniority, or, in the most serious cases, dismissal with just cause.

Furthermore, disciplinary proceedings shall lapse one year after the date on which they were initiated if, within such period, the employee has not been notified of the final decision. Should the employer decide to proceed with dismissal with just cause, no severance compensation shall be due to the employee. Nevertheless, the employee shall remain entitled to receive all outstanding labour credits accrued up to the termination date. In the event of judicial proceedings arising from the disciplinary procedure, the employer bears the burden of proving both the underlying misconduct and compliance with the applicable procedural requirements. Should any further misconduct occur in the future, the employer would need to initiate a new disciplinary procedure based on the new facts.

However, in such context, the employee's previous disciplinary record may be taken into consideration, and repeated misconduct may justify the application of a more severe sanction, depending on the nature and seriousness of the new infringement.

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LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES

under Swiss employment law

THE SWISS CONFEDERATION

Managing employee misconduct requires a careful balance between effective enforce-ment, procedural fairness and legal risk management. Swiss employment law offers em-ployers a range of disciplinary instruments, but their lawful and proportionate use de-pends on a structured assessment of the specific circumstances.

A Graduated System of Disciplinary Measures

Swiss law does not provide for a codified disciplinary regime. Instead, practice has devel-oped a graduated system of measures that increases in severity depending on the seri-ousness of the misconduct. At one end of the spectrum are informal and written warn-ings; at the other end are ordinary termination and, in exceptional cases, termination without notice. Between these endpoints, employers may combine warnings with condi-tions or accompanying measures. The decisive principle is proportionality: the more se-vere the misconduct and its impact, the more intrusive the disciplinary response may be.

Key Assessment Criteria

Before selecting an appropriate measure, employers should conduct a holistic assess-ment.

Relevant factors typically include:

- the nature, severity and frequency of the misconduct;
- the employee's degree of involvement and culpability;
- their role and seniority;
- the damage caused to the company;
- past conduct; and
- the employee's behaviour during any internal investigation.

Expectations of regulators or authorities and internal sanction practices in comparable cases may also be relevant, particularly in regulated industries.

Warnings as a Central Instrument

Warnings play a pivotal role under Swiss law. A properly documented written warning not only addresses past misconduct but also sets clear expectations for future conduct. Where appropriate, warnings may be combined with conditions, such as mandatory training or compliance measures. From a risk perspective, warnings are often a necessary prerequi-site for more severe steps, especially termination without notice.

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Termination as a Disciplinary Measure

Ordinary termination may be used as a disciplinary response even without prior warnings, but carries litigation risk if perceived as disproportionate or abusive. Termination without notice is subject to particularly high thresholds: it requires a fundamental breakdown of trust and strict timeliness once the misconduct is established (usually two to three work-days from the employer's knowledge of the misconduct).

Strategic Takeaways

Effective disciplinary action under Swiss law is less about choosing the "harshest" tool and more about applying the right instrument, at the right time, based on a transparent and well-documented decision-making process.

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LEGAL INSTRUMENTS FOR DISCIPLINING EMPLOYEES IN THE UNITED KINGDOM

THE UNITED KINGDOM OF GREAT BRITAIN AND NOTHERN IRELAND

Introduction

Employers in the United Kingdom can use a range of tools to address employee misconduct and poor behaviour. Disciplinary action is tightly regulated by a combination of statute, case law and guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS). Employers who fail to follow an appropriate process risk exposure to claims for unfair dismissal and, in some cases, discrimination or whistleblowing detriment. The key issue is ensuring that any disciplinary process is fair, proportionate and consistently applied.

The legal framework

Contracts

Disciplinary processes are often governed by a mix of non-contractual and contractual documents, including employment contracts and staff handbooks, which typically set out disciplinary rules and procedures. Where such provisions are expressed to be contractual, failure to follow them may give rise to breach of contract claims, in addition to unfair dismissal risk.

ACAS Code of Practice

The ACAS Code of Practice on Disciplinary and Grievance Procedures sets out the standard of procedural fairness expected of employers. While the Code is not legally binding, tribunals must take it into account in relevant cases. A failure to follow the Code can result in an uplift of up to 25% in any compensation awarded. The Code establishes core principles of fairness, including proper investigation, clear communication of allegations, a hearing at which the employee can respond, and a right of appeal.

Employment Rights Act 1996 (ERA)

In more serious cases, where dismissal is warranted, the ERA provides the statutory framework. Under section 98, dismissal must be for a potentially fair reason, such as conduct, capability or some other substantial reason, and the employer must act reasonably in all the circumstances. If a claim arises, the fairness of a dismissal is assessed by an employment tribunal, which considers whether the employer acted within the range of reasonable responses open to an employer.

Disciplinary Tools Available to Employers

Employers have a range of tools available to address misconduct or performance concerns, and the appropriate response will depend on the seriousness of the issue and the surrounding circumstances. A fair investigation is usually a key element of any lawful disciplinary process. Before commencing formal action, employers must establish the relevant facts, which will typically involve gathering documentary evidence, interviewing witnesses and giving the employee a reasonable opportunity to respond to the allegations.

Employers should ensure that each stage of the process is properly recorded, including investigation materials, correspondence, hearing outcomes and appeal decisions. A failure to conduct a reasonable investigation, or reaching conclusions without properly testing the evidence, may undermine the fairness of any subsequent disciplinary decision.

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Informal action

Informal action is often appropriate for minor concerns. This may involve an informal discussion, coaching or additional supervision. While informal measures fall outside formal disciplinary procedures, it is good practice to keep a record of discussions, particularly if issues continue.

Formal warning

Where concerns are more serious or repeated, employers typically move to formal warnings. A first written warning is commonly used where misconduct is substantiated but not sufficiently serious to justify dismissal. If further issues arise, a final written warning may be issued. Warnings should be time-limited and clearly set out the nature of the misconduct, the required improvement and the consequences of further breaches.

Suspension

Suspension is sometimes used as a precautionary measure while investigation takes place. It is not, in itself, intended to be a disciplinary sanction. Employers should avoid treating suspension as an automatic response to allegations of misconduct. It should only be used where there is a legitimate reason, such as a risk to the business, to colleagues or to the integrity of the investigation. Case law has highlighted that unnecessary or prolonged suspension can undermine the implied term of trust and confidence.

Contractual sanctions

Some employers may consider demotion, loss of seniority or other contractual sanctions as an alternative to dismissal. These measures can only be imposed where there is a contractual right to do so, or the employee agrees, otherwise the employer risks constituting a repudiatory breach of contract. It is rare for such sanctions to be imposed: they are inherently problematic.

Dismissal

Dismissal remains the most serious sanction. In conduct cases, summary dismissal (without notice) may be justified in cases of gross misconduct, provided the employer has a genuine belief that the employee is guilty of misconduct, based on reasonable grounds after a reasonable investigation. A tribunal will not substitute its own view but will assess whether dismissal fell within the range of reasonable responses.

Conclusion

The law in the UK allows employers flexibility in selecting appropriate sanctions but imposes clear expectations as to fairness and consistency. Practically, employers should ensure that disciplinary rules are clearly documented, managers are trained in applying them, and each case is approached with an open mind and a structured process. Furthermore, adherence to the ACAS Code, alongside a well-documented investigation and decision-making process, will significantly reduce legal risk.

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