

# General Collaboration Committee's guidelines for the handling of breach of contract and dismissal



## 1. Background and purpose

"Basic principles for personnel policy" underline that UCPH is characterized by committed and independent employees; by visionary, responsive, and decisive management as well as by safe working conditions and trusting collegiate collaboration.

In cases where problems do arise in connection with employment, then the manager and employee have a mutual obligation to jointly and through dialogue to seek a solution to the problems. And there will therefore be a focus on the fact that any problems are solved as early on as possible.

University of Copenhagen expects that unacceptable conditions will be pointed out as early as possible and in close proximity any possible misconducts. It is assumed that the employee will have the opportunity to correct the unsatisfactory conditions, except in the case of extraordinary situations, resulting in dismissal or expulsion.

The guidelines are designed to create safe and secure working conditions by laying down the framework for the handling of cases regarding breach of contract which cannot be settled by dialogue. The guidelines must ensure that a penalty does not come as a surprise to the employee. Usually, the employee must be given a written warning before dismissal is initiated. The employee must as soon as possible be encouraged to be assisted by his or her union representative or some other observer.

These guidelines apply to all conditions of employment at UCPH regardless of the nature of the employment and the field. However, there are special rules and regulations for civil servant employees and union representatives, etc., cf. items 6 and 7.

## 2. The legal basis

The University must, in the handling of cases of misconduct of the applicable rules and regulations, including Danish employment law and case law as well as The Danish Public Administration Act and the fundamentals of public administration law.

The assessment of when there is a breach of contract, is based on many years of employment law practice, and the assessment of whether a given behaviour is a breach of contract, thus depends on a reasoned estimate.

The Danish Public Administration Act stipulates that the consultation must be carried out before a decision is made in a specific case, just as the employer has a duty to state the reasons for a decision. In addition, a number of principles of the fundamentals of public administration law, which is assumed to be complied with in cases concerning breach of contract:

- there must not occur unjustified either direct or indirect discrimination (*principle of equality*)
- there must be a reasonable relationship between misconduct and the outcome of the case (*principle of proportionality*)
- estimated decisions must not be made, that exclude a specific estimate (*Estimation under rules and regulations*)

- there must not be made irrelevant considerations or involved unreasonable criteria (*Misuse of power*)
- the employee must be involved, be kept informed, and provided with guidance about his or her legal status, and the case may not be unnecessarily drawn out. Decisions should be communicated directly through administrative way (*Good governance*)
- the responsible for ensuring that all necessary information in the case ruling exists, lie with the authority concerned (*Inquisitorial procedure principle*).

### 3. Types of sanctions

Depending on the nature of the breach of contract one of the following types of sanctions will be used:

- Verbal reprimand
- Written reprimand
- Written warning
- compulsory redundancy

A written reprimand can be given without prior oral reprimand.

A written warning may be given without prior reprimand depending on the severity of the misconduct.

Usually, the employee must be given a written warning before dismissal is initiated. But this will be based on a concrete assessment.

In exceptional cases there may be an expulsion.

#### **Formal requirements:**

##### Verbal reprimand

There are no formal requirements for submission of an oral reprimand. The reprimand must give a precise indication of what the manager is dissatisfied with, and the employee must be given the opportunity to comment on such action. The employee must be encouraged to be assisted by his or her union representative or some other observer.

##### Written reprimand, written warning, dismissal, and expulsion

Before deciding on issuing a penalty, the employee must be consulted and thus be given the opportunity to comment on the basis, see The Danish Public Administration Act. In the written consultation, the management has to

- describe the unacceptable behaviour in as much detail as possible
- explain why the behaviour is unacceptable
- specify how the manager requires the work performed/the employee's appearance changed
- make it clear what impact it will have, if the employee fails to comply with the sanction
- encouraged the employee to be assisted by his or her union representative or some other observer.

When a decision has been made, then the employee shall be notified in writing.

##### Special note on reprimands and warnings

The primary object of criticism and warnings is to give the employee the opportunity to permanently correct an unsatisfactory condition. In connection with giving a written reprimand/warning it must be decided whether the sanction is temporary. This must be notified the employee in writing. Generally, the more serious of an offence, the longer the sanction will be, but the decision will be based on an actual assessment.

When a reprimand or a warning is given a follow-up process must be agreed upon, to ensure an ongoing dialogue between manager and employee and allows for a common position on whether the unsatisfactory conditions has been corrected.

#### **4. Role of management, including delegation issues**

Rector is responsible for day-to-day management of the university in accordance with the University Act. The other members of the university's management undertake their duties under the authorization of the rector. [Guidelines for rector's delegation of managerial competence](#) illustrates how the management function may be delegated.

#### **5. Role of union representatives/academic organisation**

In cases concerning breach the manager encourages the employee as soon as possible to be assisted by his or her union representative or other observer. It is then up to the employee to involve the union representative/the trade union. The employee may also choose to be assisted by others.

At the forthcoming dismissal of an employee the management have to inform the union representative. This means that the management will inform the union representative no later than simultaneously with or immediately after the employee has been informed of the impending dismissal.

#### **6. Particularly on civil servants**

In chapters 4 and 5 of [the Public Servants Act](#) special rules apply regarding disciplinary sanctions and dismissal. When a disciplinary action are being processed in accordance with the Public Servants Act, then the case falls outside these rules. Decisions regarding suspensions, initiation of an official examination, the appointment of the interrogator, imposition of disciplinary punishment, and action for defamation of character in accordance with the Public Servants Act are made by rector, while the decision on dismissal is made by the relevant ministry on rector's recommendations. Please contact the HR centre for advice in specific cases.

#### **7. Special information regarding employees with positions of trust**

The union representative agreement lays down special procedures and terms of notice for dismissing union representatives. The protection applies (joint) union representatives, substitutes for (joint) union representatives, liaison committee members (employee representatives), substitutes for liaison committee members (employee representatives), occupational health and safety representatives, and employee representatives on UCPH's board. Please contact the HR center for advice in specific cases.

## **8. Validity and termination**

The guidelines take effect on adoption by the General Collaboration Committee.

Termination shall comply with the rules in the collaboration committee circular according to which either of the parties may give three months' notice of termination of the guidelines. Before termination, the collaboration committee is to endeavour to amend the existing guidelines to make them satisfactory for the parties in the collaboration committee.

Replaces the former guidelines.

Processed and passed by the General Collaboration Committee on 24 August 2018

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