

Central Collaboration Committee guidelines on breach of contract and dismissal



1. Background and purpose

Grundprincipper for personalepolitik 2008 – 2012 ([The Basic Principles of Staff Policy 2008 – 2012](#)) emphasises that the University of Copenhagen is distinguished by its dedicated and independent staff, its visionary, receptive and decisive management and its trusting inter-staff relations.

In instances where problems do, however, arise in the employer-employee relationship, management and the member of staff concerned have a mutual obligation to resolve those problems jointly and through dialogue. Consequently, the emphasis is on dealing with any problems at the earliest possible stage.

The University of Copenhagen expects that unacceptable actions will result in an oral reprimand at the earliest possible stage and as the immediate response to any contravention. It is likewise expected that the member of staff will have the opportunity to rectify any unsatisfactory conduct unless the matter at issue qualifies as an extraordinary situation calling for (summary) dismissal.

The purpose of the present guidelines is to establish secure terms of employment by setting out the frameworks for dealing with any breach of contract which it has not been possible to remedy by dialogue in the first instance. The guidelines are intended to ensure that any sanctions do not come as a surprise to the member of staff. As a rule, a written warning must be issued before dismissal proceedings are initiated. At the earliest possible stage the employee should be urged to retain the assistance of his or her employee representative or other employee rights adviser.

The guidelines are applicable to all positions of employment at the University, irrespective of the type of positions and the duties they entail. However, special rules apply to employees with the status of public servants and to employee representatives et alia; see Sections 5 and 7.

2. Legal basis

In dealing with cases of breach of contract, the University must comply with applicable rules, including Danish employment law and case law, together with the Public Administration Act and principles of administrative law.

Assessment as to whether a breach of contract has been committed will be based on many years of legal usage, and assessment of whether a given action is to be construed as a breach of contract will consequently be based on an objective opinion.

The Public Administration Act, for example, stipulates that a hearing must be conducted before a decision may be made in a given case, and that the employer has a duty to give reasons for its decisions. In addition, there are a number of principles of administrative law which are expected to be observed in dismissal proceedings.

- there must be no unmerited direct or indirect discrimination (*Principle of Non-Discrimination*)
- there must be a reasonable balance between the events that took place and the outcome of the case (*Proportionality Principle*)
- in discretionary decision making, no rules must be established to preclude the power to make decisions on a case-by-case basis rather than on the basis of customary practice (*Abuse of Discretion*)
- no irrelevant considerations or subjective criteria may be applied (*Misuse of Powers*)
- the employee shall be consulted, kept informed and advised as to his legal status, and the procedure must not be prolonged unnecessarily. Decisions should be notified directly through official channels (*Code of good practice in public administration*)
- the responsibility for ensuring that all the requisite information for resolving the matter at issue rests, as a rule, with the authority concerned (*Inquisitorial Principle*)

3. Types of formal disciplinary action

Depending on the nature of the breach of contract, one of the following types of disciplinary action will be taken in cases of breach of contract:

- Oral reprimand
- First written warning
- Final written warning
- Dismissal

A first written warning may be issued without a prior oral reprimand.

A final written warning may be issued without a first written warning depending on the severity of the misconduct. It is customary to issue a warning before dismissing an employee, but this is decided on a case-by-case basis.

In exceptional cases, the employee may be summarily dismissed.

Formal requirements:

Oral reprimand

There are no formal requirements for delivering an oral reprimand. The oral reprimand shall state precisely what Management is dissatisfied with, and the employee shall be given the opportunity to comment. The employee should be urged to retain the assistance of his or her employee representative or other employee rights adviser.

First written warning, final written warning, (summary) dismissal

Prior to any decision to take formal disciplinary action, the employee shall be formally consulted in a disciplinary hearing and given the opportunity to comment on the grounds for his or her conduct; see the provisions of the Public Administration Act. In the supporting documents for the disciplinary hearing, Management shall

- describe the unacceptable conduct as comprehensively as possible
- explain why the conduct is unacceptable
- indicate precisely how Management requires the work to be performed/employee's conduct to be altered
- make it clear what the consequences will be if the employee fails to respond to the disciplinary action

- urge the employee to retain the assistance of his or her employee representative or other employee rights adviser.

As soon as a decision has been made, it must be notified in writing.

Specifics of disciplinary action

The primary object of disciplinary action in the form of a reprimand and warnings is to give the employee the opportunity to rectify (permanently) the matters at issue. In connection with the issuance of a first or final written warning, a decision must be made as to whether the sanction is limited in time. This must be notified to the employee in writing. The general principle may be applied that the more gross the misconduct, the longer the disciplinary measure can be attributed significance, but the decision will be made on a case-by-case basis.

In the case of a reprimand or warning, a follow-up procedure must be agreed to ensure continuous dialogue between Management and the employee and which facilitates consensus on whether the matters at issue have been rectified.

4. The role of Management, including delegation

The Rector is responsible for day-to-day management of the University; see the Universities Act. All other University Management tasks are performed by order of the Rector. The overview in [Appendix 1](#) (in Danish) illustrates how managerial competency may be delegated.

5. The role of the employee representative/union

In cases of breach of contract, Management will urge the employee from the earliest possible stage to retain the assistance of his or her employee representative or other employee rights adviser. From that point on, it is up to the employee to involve the employee representative/union. The employee can also opt to retain the assistance of others. Management has a special obligation to notify the employee representative of any impending employee dismissal. Before informing the employee of the proposed dismissal, Management informs the employee representative so that the employee has the possibility of involving the employee representative/union.

6. Special rules for public servants

[Chapters 4 and 5 of the Public Servants Act](#)¹ (in Danish) lay down special rules regarding disciplinary action and dismissal. When disciplinary action is to proceed in accordance with the rules of the Public Servants Act, the rules set out in the present guidelines are not applicable. Any decision concerning suspension, the launch of an official inquiry, the appointment of a lead inquirer, the imposition of disciplinary penalties and the bringing of any action for libel under the provisions of the Public Servants Act will be made by the Rector, while a decision concerning dismissal will be made by the Ministry of Science, Technology and Innovation upon the recommendation of the Rector. Contact the human resources section for advice on specific instances.

¹ Link: <https://www.retsinformation.dk/Forms/R0710.aspx?id=5654> (In Danish)

7. Special procedure for employees with representative offices


The agreement on employee representatives prescribes special procedures and terms of notice in any process to dismiss formally elected employee representatives. This protection applies to the combined representative of a number of different employee representatives (senior employee representative); deputy senior employee representatives, members of the Collaboration Committee (employee representatives); deputy members of the Collaboration Committee (employee representatives); health and safety representatives and employee representatives who serve on the University Board. Contact the human resources section for advice on specific instances.

8. Validity and termination

These guidelines shall come into effect upon their adoption by the Central Collaboration Committee.

They may be revoked in accordance with the rules set out in the Collaboration Committee Circular, according to which each of the parties has the right to revoke adopted guidelines at three months' notice. Before revocation, the Collaboration committee must endeavour to amend the existing guidelines in a manner that satisfies the parties represented on the Committee.

Considered and adopted at the Central Collaboration Committee meeting on 22 October 2008.



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and



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