



EMPLOYMENT MANUAL

**DISCIPLINARY PROCEDURES
AND PRACTISES**

NORTHERN IRELAND



FIRST FOR JUSTICE

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DISCIPLINARY PROCEDURES AND PRACTISES

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A GUIDE TO DISCIPLINARY PROCEDURES

INTRODUCTION

1 INTRODUCTION

The aim of this guide is to help you with the effective use and operation of disciplinary rules and procedures. To promote fairness and industrial relations in the way employees are treated, it is necessary to have disciplinary rules and procedures. Any organisation will operate more effectively if it has a standard set of conduct procedures to make sure standards are met and a fair mechanism for dealing with any failures in meeting those standards. You must ensure that employees are aware of the standard of conduct required of them and they are given information about disciplinary and grievance procedures along with their written statement of employment particulars.

Since 3rd April 2005 employers have been required to follow a minimum statutory procedure. This procedure was introduced by the Employment (Northern Ireland) Order 2003 and whilst the Employment Act (Northern Ireland) Order 2011 repealed a statutory grievance procedure, the minimum statutory disciplinary procedure remains in force and is accompanied by the Labour Relations Agency (LRA) Code of Practice.

It is very important to ensure that you follow the minimum statutory disciplinary procedure as a failure to do so will mean that any dismissal is automatically unfair. Similarly, if an Industrial Tribunal decided and an employer or employee has not complied with the LRA Code of Practice then the tribunal may increase or decrease any award by up to 50%.

Therefore it is advisable that from the outset of a potential disciplinary issue that you take advice from the Legal Advice Helpline.

2 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 than the minimum statutory procedure but must not fall below this.

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ESSENTIAL FEATURES

3 ESSENTIAL FEATURES OF DISCIPLINARY PROCEDURES

The main aim of disciplinary procedures should be to encourage improvements in an individual's conduct, rather than be seen as merely a means of imposing sanctions.

The essential features of disciplinary procedures:

- They should state to whom they apply
- Matters should be dealt with quickly
- State the disciplinary actions which may be taken
- State what level of management should usually deal with the various stages of the disciplinary action. Employees should be told of the complaint against them and given an opportunity to put forward their case before any decision is made
- The employee has a right to be accompanied by a Trade Union representative or a colleague of their choice, whether or not the employer recognises the trade union
- Employees should not be dismissed for their first breach of discipline, except for gross misconduct or if deemed appropriate during a probationary period
- The case must be fully investigated before the disciplinary action takes place
- The employee must be given an explanation for any penalty imposed
- The employee must be given a right of appeal, and to be told who to appeal to and the time limit in which to appeal
- It is important that a disciplinary procedure for poor performance will differ slightly to that for misconduct. An informal counselling approach should be taken before the verbal warning stage is instigated, and consideration should always be given as to whether additional training should be provided to an employee who is not performing adequately
- Before taking action for any but the most minor offences you should consult a Legal Advisor on the Legal Advice Helpline
- A Code of Practice on Disciplinary and Grievance Procedures is available from the Labour Relations website www.lra.org.uk

A Breach of the Labour Relations Agency Codes of Practice does not of itself render an employer liable to Tribunal proceedings, but the Codes will be taken into account within proceedings.

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DISCIPLINARY PROCEDURES

4 DISCIPLINARY PROCEDURES

Having considered adopting a disciplinary policy and the essential features of a policy, below is some general guidance on things to consider throughout the disciplinary process.

4.1 PRELIMINARY CONSIDERATIONS

Before considering instigating disciplinary action it is necessary to consider whether or not formal action is required. It may be that it is more appropriate to try and resolve the matter via informal discussions with the parties involved. Remember however that if your “informal discussions” result in your giving the employee a warning in writing which is retained on their personnel file, it could be viewed as a formal disciplinary warning and you would need to have followed a fair procedure in advance of giving it.

4.2 INVESTIGATION

Where formal action is going to be considered, a fair and balanced investigation will be required. This should not be carried out by the same person who will hold the disciplinary hearing or any appeal meeting unless it is unavoidable. It may be the employee’s line manager but it is often better if it is someone impartial such as an HR manager. In cases involving harassment, bullying or discriminatory treatment, it is preferable if the personnel involved have been given equal opportunities training.

The amount of investigation to be undertaken will depend on the individual circumstances of the case, but it must be sufficient:

- (a) to enable the chair of any subsequent disciplinary hearing to form reasonable grounds for believing or disbelieving the allegations against the employee; and
- (b) to enable the case to be put to the employee in a manner that makes it clear what is being alleged.

The investigation must be even-handed, and should not simply be a search for evidence against the employee. Evidence in the employee’s favour should also be sought. Once the disciplinary investigation is commenced, both this and any subsequent hearing should be dealt with without unreasonable delay. You are advised to contact the legal advice helpline if there are any delays, for further advice as to how to deal with them.

If the disciplinary proceedings concern poor performance or capability, the investigation may simply be a review of the employee’s appraisals and any discussions that have taken place between the line manager and employee. In cases of alleged misconduct, you will usually need to interview witnesses including other employees and potentially gather any other relevant evidence.

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4.2 INVESTIGATION (continued)

An investigatory meeting with the employee in question will also usually be required at an early stage. This is important as it may be that there is a simple misunderstanding which can be resolved without the need for a disciplinary hearing. In other cases, the employee under investigation may be able to direct you to witnesses or documentary evidence that support their case. An investigatory meeting is not a disciplinary hearing, and so the employee has no statutory right to be accompanied by a representative unless the company's own procedures allow for this.

Any investigatory meetings to interview the employee or other witnesses should be held in private and notes should be taken of the meeting. Try and restrict the number of witnesses to the minimum required to establish what is being alleged. However, do not only interview witnesses who can confirm the allegations. The investigation must be fair and balanced, so ensure that any witnesses who may support the employee's version of events are also interviewed. In cases of suspected misconduct it is appropriate to remind employees who are being interviewed of their duty of confidentiality and that they should not discuss the contents of the meeting with other employees. A witness statement should be taken from the witness that confirms their version of events. It is better that they write this in their own words. All witness statements should be signed and dated by the witness.

Following investigation, the company may decide that no further action is necessary, in which case the employee should be informed of this decision. The purpose of the investigating officer is to determine whether or not there is a 'case to answer' at a disciplinary hearing and NOT to determine if the facts are proven. They should write a report confirming their decision to proceed to a hearing or that no further action is necessary. If matters are to be taken further, there must first be a disciplinary hearing. The investigation alone is not a sufficient legal basis for dismissal or any other sanction. Furthermore, you should ensure that there is a clear distinction between investigatory meetings and any disciplinary hearing. On no account should you roll the two meetings into one.

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DISCIPLINARY PROCEDURES

4.3 SUSPENSION

As part of an investigatory process it may be necessary to consider suspending an employee. Suspension will normally only be considered appropriate where the alleged misconduct is considered to be serious/gross misconduct, where the employee's continued presence in the workplace would render an investigation impossible, or where working relations have broken down and there is no other way of avoiding conflict whilst investigating the matter.

If the employee is to be suspended, this should be on full pay and a formal letter confirming the terms of the suspension and details of the allegations (and a point of contact in the company for the employee) should be sent to the employee (template letters for you to use are at the end of this guide). It is advisable to take a neutral line in the event that colleagues or external clients enquire as to the whereabouts of the employee.

It is very sensible that all disciplinary procedures reserve a right to suspend an employee from work to allow for investigation.

Employees should be suspended for a short as time as necessary. In the case of very straightforward allegations of misconduct this may only be a day or so. It is recognised that more complex allegations may need much longer periods of suspension to allow for a proper investigation.

Tribunals have always expected employers to act reasonably in investigating, accordingly long periods of disciplinary suspension may be found to be unreasonable unless they can be justified as being necessary. Please note that the statutory codes introduced in April 2005 have as a cornerstone the need for such matters to be dealt with expeditiously.

You may find that you have a contractual procedure which gives you a finite period of time for which an employee can be suspended - this should be adhered to.

Unjustified lengthy periods of suspension can give rise to a claim for constructive dismissal by an employee.

Please speak to the Legal Advice Helpline should you have any question about suspension.

With pay or without pay?

In the vast majority of cases the employee has the contractual right to be paid during periods of disciplinary suspension. In addition they will in all probability have the right to receive all other contractual benefits e.g. pension contribution, Luncheon Vouchers etc.

We have seen some disciplinary procedures which allow suspension from work without pay. It is likely that there could be a challenge to such a provision on the grounds that it is an unfair term. Should no payment be made an employer will almost certainly breach the provisions of the National Minimum Wage legislation.

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4.4 INVITATION TO A DISCIPLINARY HEARING

Following the investigation, if there are sufficient grounds on which to hold a disciplinary hearing, a letter must be sent to the employee dealing with the following matters:

- (a) Set out the allegations and the basis for them. You must include sufficient information about the allegation and its possible consequences to enable the employee to prepare for the hearing.
- (b) Enclose all evidence you intend to rely on at the disciplinary hearing, such as witness statements or other documents. Tell the employee if you intend to call witnesses to the meeting or simply rely on written statements. The employee should also be asked if they wish to submit any evidence or call any witnesses to the hearing.
- (c) Inform the employee of the time and place of the disciplinary hearing, which should be reasonable.
- (d) Make clear that the employee has the right to be accompanied to the hearing by a trade union representative or a colleague.
- (e) It is advisable to enquire as to whether the employee has any disability or other special requirements for which reasonable adjustments may need to be made.
- (f) If the employee is facing possible dismissal this must be made clear.
- (g) If the employee has not already been given a copy of the Company's disciplinary procedure, this should be sent with the letter.

4.5 THE RIGHT TO BE ACCOMPANIED AT A DISCIPLINARY HEARING

Since the Employment Relations (NI) Order 1999 there has been a statutory right for an employee to be accompanied at statutory meetings.

In summary:

- The employer must permit the worker to be accompanied at the hearing by one companion who has been chosen by the worker - this still only allows a work colleague or Trades Union official (whether or not you recognize the union)
- 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
- Address the hearing if the worker indicates that he does not wish his companion to do so
- 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.

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DISCIPLINARY PROCEDURES

4.6 DISCIPLINARY PROCEDURES AND THE STATUTORY MINIMUM PROCEDURE

The above procedure is considered to be a procedure of best practice. It is important however to remember that the Employment (Northern Ireland) Order 2003 introduced a statutory minimum procedure that must be followed when an employer contemplates dismissing an employee.

The minimum procedures apply whatever the reason for dismissal except in a few cases. These procedures must therefore be followed when dismissing employees for redundancy and absence from work through ill health, non-renewal of a fixed term contract, some other substantial reason (SOSR) dismissal as well as misconduct dismissals.

The new procedures do not apply to verbal or first written warnings although please note that the employee still has the right under existing legislation to be accompanied by a work-place colleague or a trade union official (whether or not you recognise that trade union). It is also important to note that collective agreements can also modify the procedure that an employer has to follow so it is necessary to check to see if there is anything that applies to your organisation.

There are two types of procedure under the regulations known as “standard” and “modified” procedures. The standard procedure should be used in the vast majority of cases and is suitable for most day-to-day cases of disciplinary action contemplated against employees. In very limited cases the modified procedure which is a much shorter procedure will be used where very serious cases of gross misconduct are discovered and where the employee really has to be dismissed as soon as the misconduct comes to light. You must take advice from the Legal Advice Helpline if considering following the modified procedure.

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STANDARD AND MODIFIED PROCEDURES

5 STANDARD AND MODIFIED PROCEDURES

Below are copies of the standard and modified procedures as found in Schedule 1 of the Employment Order (Northern Ireland) 2003.

5.1 STANDARD PROCEDURES

Step 1: Statement of grounds for action and invitation to meeting

- 1(1) The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him to contemplate dismissing or taking disciplinary action against the employee.
- 1(2) The employer must send the statement or copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2: The meeting

- 2(1) The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- 2(2) The meeting must not take place unless:
 - (a) the employer has informed the employee what the basis was for including in the statement under paragraph 1(1) the ground or grounds given in it, and
 - (b) the employee has had a reasonable opportunity to consider his response to that information.
- 2(3) The employee must take all reasonable steps to attend the meeting.
- 2(4) After the meeting, the employer must inform the employee of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

Step 3: The appeal

- 3(1) If the employee does wish to appeal, he must inform the employer.
- 3(2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a further meeting.
- 3(3) The employee must take all reasonable steps to attend the meeting.
- 3(4) The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- 3(5) After the appeal meeting, the employer must inform the employee of his final decision.

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STANDARD AND MODIFIED PROCEDURES

As previously discussed a failure to follow this basic minimum statutory procedure will mean that any dismissal will be automatically unfair and the tribunal will have the opportunity of increasing the compensation by between 10% and 50%.

5.2 MODIFIED PROCEDURE

Step 1: Statement of grounds for action

4 The employer must:

- (a) Set out in writing
 - (i) The employee's alleged misconduct which has led to the dismissal,
 - (ii) What the basis was for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and
- (b) Send the statement or a copy of it to the employee.

Step 2: The appeal

- 5(1) If the employee does wish to appeal, he must inform his employer.
- 5(2) If the employee informs the employer of his wish to appeal, the employer must invite him to attend a meeting.
- 5(3) The employee must take all reasonable steps to attend the meeting.
- 5(4) After the appeal meeting, the employer must inform the employee of his final decision.

It is stressed that the modified procedure should only be used in very limited circumstances. If you are not sure about this then please take advice from the Legal Advice Helpline.

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OUTCOME OF A DISCIPLINARY HEARING

6 OUTCOME OF A DISCIPLINARY HEARING

If the chair of the disciplinary hearing decides that there is a reasonable belief that the employee has committed the alleged misconduct, then the chair is required to consider what an appropriate sanction would be. This will depend on the seriousness of the misconduct and whether the employee currently has any live warnings on their personnel file.

(1) FORMAL VERBAL WARNINGS

These should be used for minor offences, such as poor time keeping or poor performance. It is not necessary to recognise a verbal warning as part of an internal procedure but will commonly be included in a disciplinary procedure. These warnings should not be on file for any longer than 3 months.

(2) WRITTEN WARNINGS

If there are no recognised verbal warnings under the procedure then the first stage for minor misconduct is normally a first written warning. This should not be on an employee's file for longer than 6 months.

A final written warning should not be on an employee's file for any longer than 12 months and the warning should make it clear that any further misconduct/poor performance could result in the termination of the employee's employment.

Both verbal and written warnings should be confirmed in writing, stating the offence, the steps necessary to remedy the issue and also must offer the employee the right of appeal.

(3) SUMMARY DISMISSAL

This is usually imposed in the case of gross misconduct and must be preceded by a disciplinary hearing. Summary dismissal is usually imposed in the most severe cases of misconduct, for example theft from company, damage to property, fighting, drugs or alcohol on company premises, or bringing the company into disrepute.

(4) RIGHT OF APPEAL

A right of appeal should be given when you issue an employee with any type of disciplinary sanction (this is incorporated into the draft letters at the end of this guide). It is important that this right is not omitted.

NOTE: Appeals must always be heard by someone who has no influence or part in the investigation or conduct of the hearing.

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FAIR AND UNFAIR DISMISSALS

7 FAIR AND UNFAIR DISMISSALS

(1) HAS THERE BEEN A DISMISSAL?

A dismissal will have taken place if;

- an employee's contract of employment is terminated by you, with or without notice
- an employee's fixed term contract is not renewed
- an employee is forced to resign as a result of a fundamental breach of contract on your behalf.

(2) FAIR REASONS FOR DISMISSAL

There are five potentially fair reasons for dismissal:

- capability or qualifications of the employee
- conduct of the employee
- redundancy (**see: Redundancy Guide**)
- illegality
- some other substantial reason which justifies the dismissal, for example, a necessary reorganisation of the business or the dismissal of an employee taken on to cover maternity leave.

In order to avoid a successful claim for unfair dismissal, you must not only establish a fair reason for dismissal but also show that it was reasonable in all the circumstances to dismiss and that a fair procedure was followed.

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GENERAL REQUIREMENTS

8 GENERAL REQUIREMENTS

The Employment (Northern Ireland) Order 2003 Schedule 1 also states a number of general requirements that is sensible to take account of: Schedule 1 Part III – General Requirements.

TIMETABLE

12 Each step must be taken without reasonable delay.

MEETINGS

13(1) Timing and location of meetings must be reasonable.

13(2) Meetings must be conducted in a manner that enables both employer and employee to explain their cases.

13(3) In the case of appeal meetings which are not the first meeting, the employer should, as far as is reasonably practicable, be represented by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).

(Source: Employment (NI) Order 2003 Schedule 1)

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SAMPLE LETTERS

9 SAMPLE LETTERS

9.1 SUSPENSION LETTER

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

Suspension from work

This letter is to confirm the conversation we had today when I informed you that you were to be suspended from work. The reason for your suspension is to allow us to investigate certain allegations made against you which include ***(give a general indication of the allegations made if appropriate but avoid breaching the confidence of other employees at this stage)***.

Suspension is a neutral act and you should not view it as an indication that the matter will progress beyond our investigating the allegations mentioned above. It is likely that we will wish to see you shortly in order to discuss matters with you. I will contact you by telephone to advise you of this in due course.

We understand that this must be a very stressful time for you and we will do our utmost to finish our investigations within a reasonable time – on the information before me at the moment I envisage that this will take ***(state number of days)***. Should this time frame need to be extended I will write to you informing you of this.

In the interim I would ask that you do not visit any of the company's premises unless invited by me to do so. Please do not contact any other employees during this process unless it is for the purpose of arranging for them to attend an investigatory meeting with you.

During this period of suspension you will continue to be paid all your contractual entitlements in full.

Yours sincerely

(Name)

(Department and Job Title)

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SAMPLE LETTERS

9.2 FORMAL NOTIFICATION OF STAGE 1 OF THE DISCIPLINARY AND DISMISSAL PROCESS

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

This letter is to inform you that *(Company Name)* is considering dismissing/disciplinary action against you *(delete as appropriate)*.

The action is being considered with regard to the following circumstances _____

This may be considered an act of gross misconduct. If this is founded it may result in your immediate dismissal.

You are invited to attend a Disciplinary Hearing which will be held at *(time)* on *(date)* at *(location)* where the matters outlined above will be discussed.

The hearing will be attended by *(name)* on behalf of the company.

We attach copies of documentation which will be discussed at the meeting.

You are entitled to be accompanied at this hearing by a work colleague or trade union representative. *(Amend this if your company procedure allows a wider right of accompaniment such as a friend)*.

Yours sincerely

(Name)

(Department and Job Title)

NOTE: This sample is only to be used for gross misconduct.

A GUIDE TO DISCIPLINARY PROCEDURES

SAMPLE LETTERS

9.3 FORMAL NOTIFICATION OF STAGE 2

Letter sent by employer after the hearing with confirmation of sanction

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

On the *(date)* you were informed that the Company was proposing to dismiss you/to take disciplinary action against you *(delete as appropriate)*. A meeting was held on the *(date)*.

Following the meeting it was decided that your conduct/performance *(delete as appropriate)* was still unsatisfactory.

This letter is to confirm the decision. You were issued with *(level of warning)* on _____ *(date)*. This will be recorded on your personnel file and remain there for a period of _____ months provided that your conduct/performance reaches a satisfactory level. The reason for the disciplinary action was

The conduct expected is _____

The timescales for improvement are _____

The consequences of any further misconduct/poor performance may mean that further disciplinary action may be taken.

You have the right to appeal against this decision. If you wish to do so please inform *(name)* within _____ days who will then arrange for an appeal meeting to be held.

Yours sincerely

(Name)

(Department and Job Title)

A GUIDE TO DISCIPLINARY PROCEDURES

SAMPLE LETTERS

9.4 FORMAL NOTIFICATION OF STAGE 2

Confirmation of dismissal

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

On *(date)* you were informed that *(Company)* was proposing to dismiss you/to take disciplinary action against you *(delete as appropriate)*. A meeting was held on *(date)*.

This meeting followed previous warnings with regard to your performance/conduct *(delete as appropriate)*.

Following the meeting it was decided that your conduct/performance was still unsatisfactory and that you be dismissed.

This letter is to confirm that decision. Your last day of service with the company will be *(date)*.

The reasons for your dismissal are _____

You have the right to appeal against this decision. If you wish to do so please inform *(name)* within days who will then arrange for an appeal meeting to be held.

Yours sincerely

(Name)

(Department and Job Title)

A GUIDE TO DISCIPLINARY PROCEDURES

SAMPLE LETTERS

9.5 STAGE 3 – NOTICE OF APPEAL

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

We note you wish to appeal against the decision made in the meeting on *(date)* which was confirmed to you in writing on *(date)*.

You are invited to a meeting to discuss the appeal. This will take place at *(time)* on *(date)* at *(location)*. *(name)* will attend on behalf of the Company.

You are entitled to be accompanied by a work colleague or a trade union representative.

Please note that the decision made at this hearing will be final and there will be no further right of appeal.

Yours sincerely

(Name)

(Department and Job Title)

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SAMPLE LETTERS

9.6 NOTICE OF OUTCOME OF APPEAL

(Name) (Address)

*(Company Name)
(Company Address)
(Date)*

Dear *(Employee Name)*,

You appealed against the decision as a result of the Disciplinary meeting held on the *(date)*.
The appeal hearing was held on the *(date)*.

I am now writing to confirm the decision of *(name)* who conducted the Appeal Meeting,
namely that the decision to _____ stands/will be revoked.

Having now exercised your right of appeal, I must remind you that this decision is final and
that no further right of appeal is available.

Yours sincerely

(Name)

(Department and Job Title)

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