

DISCIPLINARY PROCESS GUIDE (FOR EMPLOYEE MISCONDUCT)

This is a guide to following a disciplinary process to deal with employee conduct issues (e.g. dishonesty, intoxication, etc.) as opposed to issues of poor performance (i.e. where an employee is carrying out their duties, just not to a satisfactory standard). Please see our separate guidance on dealing with poor performance.

WHY DO I NEED TO FOLLOW A DISCIPLINARY PROCESS?

Employees may be able to bring a claim against their employer (for example a claim in unfair dismissal) if they are dismissed without the employer following a “procedurally fair” disciplinary process (even if they have a valid reason for dismissal).

A fair disciplinary process generally involves giving an employee a chance to respond to allegations / issues with their conduct before a decision is made regarding taking any disciplinary action against them. It also usually involves an employee being given a number of formal written warnings before a decision is taken to dismiss them.

We set out the process we recommend employers follow on the following pages:

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STEP 1 - CARRY OUT AN ADEQUATE INVESTIGATION

Depending on the nature of the misconduct, it may be necessary to carry out some form of investigation. This might involve speaking to the employee's colleagues or managers or asking for written statements. A file note should be taken of all relevant conversations.

Where there are serious allegations of misconduct it may be appropriate to suspend an employee (on full pay) whilst the matter is being investigated.

STEP 2 - CONSIDER INFORMAL ACTION

Often where there is an incident of minor misconduct or it is the first time the employee has not acted appropriately an informal chat is the best approach. During this conversation the employee can be warned (verbally) of the need to improve their behaviour. A file note should be taken of the conversation.

STEP 3 - FOR MORE SERIOUS INCIDENTS OR FOR REPEATED MISCONDUCT, GIVE THE EMPLOYEE A WRITTEN DIRECTION TO ATTEND A DISCIPLINARY MEETING

The letter should contain the following:

- The time, date and location of the meeting (ideally in 24 to 48 hours' time);
- Details of conduct issues to be discussed at the meeting (so the employee can prepare). Ideally this should state what happened and when. Provide specific examples if possible;
- A statement telling the employee they can bring a support person to the meeting* (and if they wish to, that they should inform you of the identity of the support person in advance);
- A warning that the outcome of the meeting could be a formal written warning or the termination of their employment; and
- A requirement that the employee keeps the content of the letter confidential.


Although it is not strictly necessary to offer an employee to have a support person with them, unless the termination of their employment is being discussed, it is best practice to allow a support person to attend in any formal meeting.

A support person can be a friend, family member or colleague of the employee (although they should not be directly involved in the matter to be discussed). Their role is to provide emotional support to the employee, but they should not speak on the employee's behalf. It is appropriate to refuse a support person to attend if to do so would be reasonable.

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STEP 4 - HOLD THE DISCIPLINARY MEETING

At the meeting:

- Remind the support person (if present) that they cannot talk on the employee's behalf, but are there just to provide support to the employee;
- Read out each conduct issue from the disciplinary letter and ask for the employee's response;
- Take a written note of everything the employee says;
- If termination of employment is being considered, ask the employee for their view as to why they should not be dismissed;
- Ask the employee if they have anything else to add;
- Conclude the meeting by telling the employee that you will consider everything they have said and will confirm the outcome in writing shortly; and
- It is a good idea to have a witness with you at the meeting to take notes. There is no strict requirement to provide these notes to the employee, but it is good practice.

Do not make a decision on termination of employment or giving a warning in the meeting.

Always take time to consider the most appropriate cause of action and whether you need to do more investigation. Always consider the personal circumstances of the employee (length of service, likelihood of being able to find alternative work, financial situation, etc) before taking a decision to dismiss.

In cases of "serious misconduct" an employer is entitled to dismiss an employee without providing them with a period of notice (or payment in lieu of notice). Serious misconduct has a strict legal meaning and is reserved for the most grave types of misconduct (eg violence, theft, etc). If you are considering dismissing any employee without providing notice or payment in lieu of notice it is a good idea to ask for the employee's comments as to why this would not be appropriate in the disciplinary meeting. We would recommend that you seek professional advice before dismissing an employee on grounds of serious misconduct.

STEP 5 - CONFIRM OUTCOME OF DISCIPLINARY MEETING

Possible outcomes of the disciplinary meeting include:

- To take no formal action;
- A formal written warning; or
- Termination of employment.

There is no legislative requirement specifying a period of time during which a warning remains valid and there are also no strict rules governing the exact number of warnings an employee must receive before being terminated. This all depends on the circumstances, including:

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- The length of service of the employee;
- The nature and seriousness of the issues; and
- The reasonable period required to rectify this behaviour or performance.

The outcome of the meeting should always be confirmed in writing. If a written warning is given it should clearly set out that if the employee is involved in further misconduct this could result in further disciplinary action, up to and including dismissal. If termination is the outcome, the reasons for the decision should be set out in writing.

Generally, an employee should be given the written confirmation of the outcome of disciplinary process in a further face to face meeting, especially if the result is termination of employment.

HOW EMPLOYMENT INNOVATIONS CAN HELP

If you require assistance with dealing with disciplinary issues concerning staff, Employment Innovations can help. Our HR Advisors will be able to guide you through each step of the disciplinary process and we have template documents (eg direction to attend disciplinary meeting, written warning, letter of termination, etc) available as part of our subscription packages.

ABOUT EMPLOYMENT INNOVATIONS

Employment Innovations is one of Australia's leading providers of employment services designed to increase productivity and ensure compliance. Its services and solutions include all the tools that every Australian small to medium sized employer needs – including [workplace advice](#), [payroll solutions](#), [migration](#), [human resource management](#) and [HR software](#). Our partner firm [El Legal](#) provides employment law advice and representation.

Disclaimer: The information provided in this document is general in nature and is not intended to substitute for professional advice. If you are unsure about how this information applies to your specific situation we recommend you contact [Employment Innovations](#) for advice.

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