

MANAGER'S GUIDE TO DISCIPLINARY ACTION

The purpose of a progressive disciplinary process is to assist employees to overcome identified problems regarding their work performance or conduct, and provide a structured opportunity for the employee and their Manager/Supervisor to improve the individual's work performance.

While you can appropriately address most issues on a day to day basis without having to follow the formal disciplinary process, there will be occasion when the disciplinary process will be required.

By dealing with employee behaviour and conduct problems effectively, in the event of a decision to terminate the employee's employment it may be possible to avoid costly proceedings in industrial tribunals.

Preparation

You need to be well prepared before taking disciplinary action. An investigation into the alleged performance/conduct is always required. The nature of the investigation will vary depending on the alleged performance/conduct.

Make a list of all the concerns (listing specific examples) relating to an employee's conduct, setting them out in order of seriousness under different headings. Refer to the employee's position description or duty statement and any written policy instructions, memos or other policies and procedures which employees are obliged to follow. Where possible, the list of concerns and specific examples should relate to the specific elements contained in such documents.

You need to be patient in dealing with these issues. It is important to maintain a clear, professional, and objective perspective. Don't let anger or frustration influence your handling of the situation.

Prior notice to the employee

Prior notice should be given to an employee when initiating disciplinary procedures. Generally, an employee should normally be given sufficient time (i.e. one to two days' notice) prepare for the disciplinary interview. Remember, the employee has the right to request the attendance of a support person, and you can not unreasonably refuse that request.

Before handing the letter to the employee, you should explain to the employee that you have concerns with his or her conduct, and that a meeting is to be held to discuss those concerns in more detail. This provides an opportunity to briefly emphasise that, because it is a formal process, the purpose is to give the employee an opportunity to tell their version of what happened and why before any decision is made about an outcome.

The interview should be held in a place where all participants can speak openly without being overheard by others and where there will be no interruptions. Divert all calls and other possible interruptions. Furthermore, all those involved should be reminded that the process is confidential.

The interview

Usually, it should be the employee's Line Manager, supported by a second management representative, who conducts the interview. The person who is not leading the interview should take notes of what is said by both parties during the interview. The notes do not need to be a verbatim record, but summarise the issues discussed, the key points made by each participant, and any outcomes or actions decided.

The main aims of the interview are:

- To ensure that the employee is aware of all concerns;
- To give the employee a reasonable opportunity to respond to the allegations made against them; and
- Where appropriate, to plan how your concerns will be responded to and satisfactorily addressed by the employee.

If the employee brings a support person to the meeting, the person leading the interview should clearly indicate to the support person what their role is; (you should not tell them 'you are not to say a word') that they are there to 'assist' the employee, but that does not extend to acting as an advocate or talking on the employee's behalf.

It is important that the person leading the interview keeps control over the direction of the discussion. Remember, the purpose of the meeting is to provide the employee with the opportunity to respond to our concerns. Stick to the point, remain objective and use the headings and examples that you have prepared. At the same time, you must listen carefully to what is being said by the employee, or the support person. You need to carefully consider the responses before determining the next course of action. "No response" is in itself a response. However, the employee should be warned that this is his/her opportunity to be heard and to present their case or version of events, and if they choose not to answer that they risk the employer making a decision based upon the information available.

It may be necessary to adjourn the interview to investigate any new issues raised by the employee in their defence.

Step 4 – Possible Sanctions including Dismissal

Whether or not to dismiss the employee is a decision that should only be made at a senior level of your business.

Warning or dismissal?

In the absence of a prescription in a workplace policy or enterprise agreement, there is no set rule about the number of warnings required. Industrial case law suggests that each situation needs to be viewed on its merits.

In cases of misconduct, it may be reasonable to give fewer warnings since misconduct relates to deliberate actions by the employee.

The decision to dismiss

Termination of employment is the ultimate sanction available to you as an employer. It may result in taking away the livelihood of the employee and their family and so should not be decided lightly.

Once a decision has been made to dismiss an employee you should, as soon as is practicable, advise the employee of the decision. This advice should inform the employee of the reasons for the decision and should be provided verbally in the first instance and followed up in written form. Except in cases of dismissal for serious misconduct, you are required to pay the employee in lieu of the required period of notice.

Employee under probation

As the probationary period is used to evaluate and assess an employee's suitability for the position, any misconduct or serious misconduct during the probationary period will result in the employees' dismissal.

For more information or assistance with employee disciplinary issues contact NatRoad on 02 6295 3000 and talk to one of the experienced, practical, and friendly advisers.