



Disciplinary Procedure

Major changes to this document: Rebrand.

1. What is the purpose of this procedure?

The aim of this procedure is to provide a formal process for managing disciplinary matters to ensure that principles of fairness and natural justice are adhered to.

2. When does this procedure begin?

This procedure begins when an issue has been raised and brought to the attention of the employer (Line Manager, Senior Manager, Executive Manager etc.)

3. Who is responsible for ensuring that this procedure is followed and reviewed?

All managers are responsible for ensuring that this procedure is followed in relation to disciplinary action with staff that they manage.

4. Examples of Staff Misconduct

Staff misconduct can be identified as either general or gross misconduct.

Examples of general misconduct could include:

- Alleged unacceptable behaviour or conduct
- Failure to abide by our policies and procedures
- Refusal to perform tasks and requirements of a position to an acceptable standard

Examples of gross misconduct could include:

- Wilful omission of information or providing false information to gain employment.
- Loss of blue card, driving licence or other legal requirements, where these are required to continue doing the job
- Being unfit for work because of the misuse of drugs or alcohol and/or misuse of drugs or alcohol during working hours or on work premises. This includes the consumption of alcohol during working hours or on work premises other than on occasions when authorised by the CEO or other delegated senior member of staff.
- Physical and/or verbal abuse of clients, visitors, volunteers, Board of Directors, or staff.
- Incompetence, failure to apply sound professional judgement or neglect of duties resulting in serious, or potentially serious, consequences for the safety of clients, visitors and staff or our reputation
- Theft, including unauthorised possession of property belonging to us, clients, visitors, volunteers, Board of Directors or staff
- Carrying on a private business from our premises or using our resources for private business purposes
- Stealing and/or wilful damage to our property
- Stealing/fraud involving our finances by falsifying records or any other means
- Discrimination, harassment or bullying that contravenes our [Workplace Discrimination and Harassment Policy](#) or victimisation of a staff member who makes an informal or formal grievance or complaint of discrimination, bullying or harassment
- Conviction for an offence which means that the staff member is completely unfit for continued work with us

- Wilful or neglectful disclosure of confidential information to unauthorised persons.

5. What are the tasks and activities?

Step 1: Preparation

Be well prepared before taking disciplinary action. Make a list of all the concerns relating to an employee's conduct, under different headings. Ensure to list specific examples illustrating how the employee has failed to meet standards of conduct required by the employer.

Check the employee's position description or duty statement and any written policy instructions, staff memos or other policies and procedures which staff are obliged to follow. Where possible, the list of concerns and specific examples should relate to the specific elements contained in such documents.

Step 2: Prior Notice to the Employee

Prior notice needs to be provided to an employee when initiating formal disciplinary procedures. The notice will state that formal disciplinary procedures have been initiated because of serious concerns relating to work performance or conduct. The notice formally requires the employee to attend an interview, state who is to conduct the interview and where and when it is to be held. The notice must also indicate the employee's right to a support person or other personal representation. *If any request is made for a solicitor to be present, please contact Jobs Australia for advice.*

The notice should also request a response in writing from the employee which addresses issues raised in the formal notice. This response should be received by the manager before the interview is conducted.

In the case of serious and gross misconduct, the decision on whether to stand the employee down on full pay pending the formal disciplinary meeting needs to be made by the relevant Executive Manager.

The interview will need to be held in a place where all participants can speak frankly without being overheard by others and where there will be no interruptions. Divert all calls and other possible interruptions. All people involved should be reminded that the process is confidential.

An employee should normally be given sufficient time to make arrangements to prepare for the disciplinary counselling interview meeting. One or two days' notice is acceptable. However, it needs to be noted that some union officials will argue for more time on the grounds of inability to attend. If a union is unable to meet the employer's timeline, then consideration must be given to a reasonable extension so as to avoid further¹disputation.

Include a summary of the employer's concerns in the formal notification of requirement to attend the interview. This provides a focus for the discussion and is a useful reminder of the full range of issues to be discussed. There should be sufficient detail for the employee to understand the key issues. For that reason, it is better to refer to a specific incident (e.g., "...a client has complained that you swore at them on Monday..." is clearer than "...you appear to have engaged in unprofessional behaviour...").

Remain as formal as possible throughout the process to ensure that there is a clear record of all actions taken by the employer, in the event that there is a dispute such as an unfair dismissal claim.

¹ It is advisable to contact a Jobs Australia Industrial Relations Adviser to seek advice should such a situation arise.

Personally explain to the employee that you have concerns and that a meeting is to be held to discuss the concerns in more detail. A letter prepared by the HR Team can then be handed to the employee. This provides an opportunity to briefly emphasise that, although it is a formal process, the purpose is to give the employee an opportunity to put their side before any decision is made about an outcome.

Step 3: The Interview

The employer will decide who is to conduct the disciplinary interview. Usually, it is the Manager with another senior employee, who conducts the interview on behalf of the employer. Keep the number of management representatives to a minimum, preferably just two or three. If too many are present it may be intimidating to the employee and undermine the effectiveness and perceived fairness of the process.

A person other than the lead member of the employer's team will need to take notes of what is said by both parties in the course of the meeting and have these notes typed up as soon as possible after the meeting.

The notes do not need to be a verbatim record. They should clearly 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 the concerns of the employer.
- To give the employee a reasonable opportunity to respond to any allegations made against them.
- To let the employee know what standards of work performance or conduct the employer requires; and,
- To plan how the employer's concerns will be responded to and satisfactorily addressed by the employee.

The person conducting the interview on behalf of the employer keeps control of the direction of the interview. The purpose of the meeting is to provide the employee with the opportunity to respond to the employer's concerns and expand on their written response to the issues. Whoever conducts the interview must stick to the point, remain objective and use the headings and examples that have been prepared. At the same time, the employer's representative must listen carefully to what is being said by the employee or the support person or other personal representative. The employer will need to carefully consider these responses before determining the next course of action.

It may be necessary to adjourn the meeting in order to be able to investigate new issues raised by the employee in their defence. For example, if the employee claims there is a witness who can support an alternative explanation, the employer will need to interview that witness before making a decision about disciplinary action.

Step 4: The Warning Letter

Unless it is decided that the matter has been resolved because the employee has provided a satisfactory response, or the outcome of the process is dismissal, the employer may issue a formal written warning to the employee.

A written warning will:

- Directly state that unless the employee's conduct or behaviour improves to the standard required by the employer (following a reasonable review period), the employer will consider further disciplinary action including dismissal (if the matter is serious, there should be a direct reference to the prospect of dismissal).
- Stipulate the review period and review date; and,

- Outline the standards of conduct the employer requires to be reached and maintained.

The review period needs to be long enough for employees to be able to demonstrate that they have achieved and can maintain the standards set by the employer. A recommended length of is a minimum of 3 weeks but will depend on individual circumstances (It is best to consult with Jobs Australia about a suitable review period if unsure).

Step 5: The Review Period

It is important to take a positive approach to the review period and work together. The review must not be a matter of 'sink or swim'. Identify obstacles to resolving the issues and then develop solutions. If both employer and employee want to make it work, there needs to be reasonable assistance provided to the employee in the form of coaching, mentoring or training as needed.

An assessment will need to be made as to whether or not the employee is meeting expectations. The employer needs to be reasonable in monitoring the conduct of the employee during the review period. A reasonable balance needs to be struck.

The employer will need to accurately observe and record the employee's conduct during the review period. In particular, the employer should note whether the employee has or has not achieved and maintained the standards set.

Step 6: Review - Possible Sanctions including Dismissal

Following the adoption of Step 5, a decision will need to be made about the outcome of the review process.

The outcomes could include:

- No further action if performance has been satisfactory
- A further warning depending on how much improvement there has been. or
- Dismissal, depending on the history of warnings and the level of seriousness of the problems.

Whether or not to dismiss the employee is a decision that should only be made at an Executive Management level of the organisation (and, advice should be sought).

The employer conducts the review - not the employee or their support person or other representative. It is the employer who needs to be satisfied that the employee's performance or conduct has improved to the point where dismissal is no longer warranted.

6. Warning or dismissal?

Dismissal can proceed if the review indicates that the employee has not satisfactorily addressed the employer's concerns, depending on the level of seriousness and the history of warnings.

In cases of misconduct, it may be reasonable to give fewer warnings since misconduct relates to deliberate actions by the employee, whereas performance issues relate to skills and capacity that are less able to be addressed immediately by an employee.

7. The decision to dismiss

Termination of employment is the ultimate sanction available to the employer. Once a decision has been made to dismiss an employee the employer will need to, as soon as is practicable, advise the employee of the decision. This advice will inform the employee of the reasons for the decision and needs to be provided in both written and verbal forms.

The Multicultural Australia Enterprise Bargaining Agreement and The Fair Work Act 2009 sets out minimum periods of notice. If it is not appropriate that the employee works out the notice period, the employer may pay the employee in lieu of the required notice.

The employer is required to provide the employee with an Employment Separation Certificate. Employment Separation Certificates are available from Centrelink, and can be downloaded from their website.

8. Rights of Appeal

An employee who wished to appeal against formal disciplinary action should do so within ten working days of receiving details of the outcome of the disciplinary process. The basis of an appeal should normally relate to the following:

- Multicultural Australia did not follow correct disciplinary procedure
- The disciplinary action was inappropriate
- The need for the disciplinary action was not warranted.

In the case of verbal warning or first written warning issued by the manager, the right of appeal is to the CEO. An appeal must be made in writing and delivered to the CEO.

9. What are the outputs or measures for this procedure?

Multicultural Australia staff, volunteers and board of management are:

- Aware of the disciplinary procedure and know how to implement it.
- Aware of our standards of behavior and code of conduct.

Where disciplinary action is required, conduct and performance issues are identified and resolved in a timely manner.

10. Related documents

- [Managing Underperformance and Disciplinary Policy](#)
- [Exit Procedure](#)
- [Code of Ethics and Conduct](#)
- [Multicultural Australia Enterprise Bargaining Agreement](#)
- Position Descriptions and Duty Statements
- State and Federal Award Provisions

References

Jobs Australia Community Sector Industrial Relations (2012). *Disciplinary Action and Termination of Employment Guide*.