

Draft Disciplinary Policy

An employer's guide to managing poor performance and misconduct

What is this policy?

This policy sets out the way in which we will deal with all disciplinary matters. It ensures that disciplinary matters will be handled fairly and consistently. It helps us to comply with the letter and spirit of our legal obligations.

This policy is not a contract. It does not create any legal rights or obligations in addition to those contained in your contract of employment and the relevant legislation.

We may amend this policy at any time when we think that it is appropriate to do so. We will send you an updated copy of the policy if we do.

What will we do if a disciplinary matter arises?

If a disciplinary matter arises, we will seek to manage the situation in a way that gives you the best opportunity to improve your performance or conduct in a timely manner.

The course that we will take will depend on the serious of the matter and all of the relevant circumstances surrounding it. Generally, we will try to resolve the matter through the following processes.

Informal counselling

Informal counselling is an informal discussion about a disciplinary matter between you and your manager. It will be used for minor matters, or as a starting point for more serious matters.

What about more serious disciplinary matters?

Disciplinary matters tend to fall into one of two categories. These are:

Underperformance

Underperformance matters arise when an employee consistently fails to perform their role to the required standard. Examples of underperformance include:

- Failing to meet position description requirements or agreed work targets;
- Frequently being late for work without a good reason;
- Frequently being absent from work without good reason;
- Consistently failing to meet deadlines;
- Unsatisfactory behaviour towards other people; or
- Producing substantially inaccurate or incorrect work.

Misconduct

Misconduct matters arise when an employee does something with a wrongful intention.

Examples of misconduct matters include:

- Being dishonest;
- Failing to comply with our policies and procedures, including the Code of Conduct;
- Neglecting to perform duties or failing to follow a reasonable direction;
- Obstructing the work of others; or
- Demonstrating unprofessional behaviours.

Your manager will outline his or her concerns about your performance, and you will be given an opportunity to respond. You will work together to reach a mutually agreed pathway to better performance and conduct. This may involve setting performance goals and providing you with support. A record will be kept of the discussion.

Your performance or conduct will be monitored in light of the mutually agreed pathway. If you meet the required level of performance or conduct, a second counselling discussion will not take place.

If, however, you do not meet the required the required level of performance or conduct, further counselling discussion may take place. There are other measures that may take place: formal counselling, and if the offence is serious enough, summary dismissal.

Formal counselling

Formal counselling is a formal discussion about a disciplinary matter between you and your manager. It will be used as a starting point for more serious matters, or if informal counselling has not achieved an appropriate result.

You will be provided with a written notice of the meeting by the Human Resources Manager. The notice will say that you will be allowed to bring a support person if you would like to. The Human Resources Manager may also be present at the meeting, as may a note taker.

During the discussion, your manager will outline their concerns about your performance or conduct. You will be given an opportunity to respond to these concerns. Your manager will listen to your response and take these into account.

At the conclusion of the meeting, the manager will formulate a performance or conduct improvement plan. This is a formal plan which specifies objectives which you must meet, outlines the support services which will be available to you to help you meet these objectives, and states the consequences of failing to meet the objectives. It will set a reasonable timeframe within which you must meet the relevant objectives. You will be required to report regularly to your manager on your progress with the plan.

You may also be issued with a formal warning. This warning will be given to you in writing and will be recorded in your employee file.

If you do not meet the specified objectives within a reasonable period of time, your manager may give you a final formal warning. This warning will be given to you in writing and will be recorded in your employee file. You will be required to attend a final formal counselling discussion, which will take the same form as the first formal counselling discussion. You will be issued with a further performance or conduct improvement plan.

If you do not meet the objectives specified in the further performance or conduct improvement plan, we may take disciplinary action to remedy the situation. Such action could include demoting you or terminating your employment with notice.

Summary dismissal

Summary dismissal involves the termination of your employment without notice. It may occur in cases of serious misconduct.

Such serious misconduct could include:

- Conduct that causes a serious risk to the health and safety of others;
- Unlawful or illegal conduct, such as theft, fraud, assault or property damage;
- Refusing to follow lawful and reasonable instructions;
- Discriminating against or harassing your colleagues or our clients; or
- Being severely intoxicated at work.

If we suspect that you have engaged in serious misconduct, we will commence a formal workplace investigation. This may be conducted by the Human Resources Manager or an external investigator.

You will be provided with notice of the investigation. It will inform you of the serious misconduct that you have been accused of, and the time frame of the investigation. You will be stood down while the investigation takes place. You will be given an opportunity to participate in the investigation and to put your case to the investigator.

If the investigation concludes that you engaged in serious misconduct, we will summarily terminate your employment.

Can I appeal?

If you wish to complain about, or appeal against, a formal disciplinary decision, you can contact our Grievance Officer.

What next?

If you would like to speak to someone about implementing a disciplinary policy, call us on (02) 9199 8597 or email us at wehelp@jfmlaw.com.au.

Further information can also be found on our website at www.jfmlaw.com.au.