



THE DISCIPLINE & DISMISSAL TOOLKIT

TABLE OF CONTENTS

| | |
|---|-----------|
| THE DISCIPLINE & DISMISSAL TOOLKIT | 4 |
| ABOUT THIS TOOLKIT | 4 |
| THE TOOLKIT GUIDE..... | 4 |
| TEMPLATES | 4 |
| DISCIPLINARY ACTION - WHAT IS IT AND WHEN IS IT NEEDED?..... | 5 |
| WHAT IS DISCIPLINARY ACTION? | 5 |
| WHAT IS SERIOUS MISCONDUCT?..... | 5 |
| INVESTIGATING MISCONDUCT | 6 |
| RESPONDING TO MISCONDUCT | 6 |
| WHEN SHOULD YOU START DISCIPLINARY ACTION? | 6 |
| DETERMINING WHAT DISCIPLINARY ACTION TO TAKE..... | 7 |
| TYPES OF DISCIPLINARY ACTION | 7 |
| ISSUING A WARNING | 8 |
| SUSPENDING DUTIES OR EMPLOYMENT | 8 |
| DISMISSING A WORKER | 9 |
| SUMMARY DISMISSAL FOR SERIOUS MISCONDUCT..... | 9 |
| YOUR LEGAL RISKS AND OBLIGATIONS..... | 10 |
| LEGAL RISKS OF DISCIPLINING WORKERS | 10 |
| ADVERSE ACTION CLAIMS | 10 |
| DISCRIMINATION | 12 |
| RELEVANT LEGISLATION | 12 |
| UNFAIR DISMISSAL | 15 |
| WHEN WOULD A DISMISSAL BE UNFAIR?..... | 15 |
| WHO CAN BRING A CLAIM?..... | 15 |
| DEFENDING AN UNFAIR DISMISSAL CLAIM | 16 |

| | |
|---|-----------|
| ACTIONS TO MINIMISE RISK | 17 |
| WHAT IS REASONABLE MANAGEMENT ACTION? | 17 |
| WHAT IS NOT REASONABLE MANAGEMENT ACTION? | 17 |
| BULLYING COMPLAINTS IN RELATION TO MANAGEMENT ACTION..... | 17 |
| WHEN CAN AN EMPLOYEE BRING A BULLYING COMPLAINT?..... | 18 |
| WHEN SHOULD YOU UNDERTAKE PERFORMANCE MANAGEMENT? | 19 |
| RESPONDING TO UNSATISFACTORY PERFORMANCE | 19 |
| PERSONAL ISSUES AND EMPLOYEE ASSISTANCE PROGRAMS | 20 |
| THE IMPACT OF PERSONAL CIRCUMSTANCES..... | 20 |
| EMPLOYEE ASSISTANCE PROGRAMS..... | 21 |
| REWARDING EMPLOYEES WHO PERFORM WELL | 21 |
| THE ROLE OF POLICIES & PROCEDURES | 22 |
| CONCLUSION..... | 23 |

© All rights reserved. No part of this publication may be reproduced or transmitted in any form by means of electronic or mechanical without permission granted in writing from Employment Toolkits. The authors believe the information in this toolkit to be accurate and sound at the time it was made publically available. The info contained in this toolkit is intended as a guide only and is not a substitute for professional advice. Legislation differs from state to state and is subject to change.

Employment Toolkits is not responsible for any errors or omissions.

THE DISCIPLINE & DISMISSAL TOOLKIT

ABOUT THIS TOOLKIT

This toolkit will show you how to;

- Identify when discipline and dismissal is required
- Understand your legal obligations and risks
- Use the correct methods so that disciplinary action doesn't break you or your business.

There are two parts to this toolkit:

THE TOOLKIT GUIDE

This is an overview of the discipline and dismissal process.

TEMPLATES

These are designed to help you implement the knowledge you've gained from the guide. The templates, procedures and checklists are in a separate folder ready for you to brand and use.

DISCIPLINARY ACTION - WHAT IS IT AND WHEN IS IT NEEDED?

WHAT IS DISCIPLINARY ACTION?

Disciplinary action refers to the steps taken when an employee has been engaging in some kind of misconduct. There are several responses, including terminating the employee's employment.

Disciplinary action may be needed if an employee has been:

- Underperforming and has not improved in response to remedial action
- Engaging in misconduct, e.g. sexual harassment or bullying or a WHS breach.

Disciplinary action can include:

- Issuing a verbal or written warning
- Suspending a worker from their duties or employment pending an investigation
- Demoting a worker to a lower position or pay grade
- Dismissing a worker.

WHAT IS SERIOUS MISCONDUCT?

Serious misconduct can include, but isn't limited to:

- Theft
- Fraud
- Violence
- Serious breaches of health and safety policies and procedures.

In many cases, serious misconduct creates risks for employees and others in the workplace, including:

- Bullying or harassment that results in a serious assault
- Falsification of records, putting the health and safety of others in jeopardy
- Driving a company vehicle under the influence of alcohol when a zero-tolerance policy is in place or driving over the limit prescribed by the relevant workplace policy or law.
- Breaking the law
- Fraud

Employees can be summarily (immediately) dismissed for serious misconduct.

Be warned - it's recommended that you seek advice before you make this decision.

INVESTIGATING MISCONDUCT

You should always get the facts before you discipline someone in response to misconduct. This is especially important if the matter is serious.

Whether the investigation is conducted formally or informally, there are a number of documents that may need to be created during the process, including:

- Witness statements
- Emails
- Photographs, e.g. showing where the incident occurred
- Copies of company policies and procedures.
- Documented conversations addressing performance issues or misconduct

An investigation into an employee's conduct may form part of a broader investigation into a serious incident. For example, if a forklift driver is distracted by wearing headphones, ignores dedicated markings in the factory and drives into an area where pedestrians are walking.



An employee may deny wrongdoing and blame your company processes and procedures. When this happens, the investigation may also look into your systems and processes. If they are found to be inadequate, your company and its directors could face hefty penalties.

RESPONDING TO MISCONDUCT

There are factors you need to consider when responding to misconduct:

- How serious is it?
- Are there any extenuating circumstances?
- What is the employee's performance history and employment tenure?
- Have they taken responsibility for their misconduct?
- What can your company do to improve performance
- Have you previously attempted to assist the employee to improve