



DISCIPLINARY PROCEDURE POLICY 5.24

DISCIPLINARY PROCEDURE

DIVISION: GOVERNANCE

PILLAR: GOVERNANCE

FILE / BINDER:

POLICY STATEMENT:

This policy is to provide guidelines for the implementation of disciplinary procedures to be used when issues cannot be resolved through ongoing performance management or involve gross misconduct or gross negligence. This policy is to be used in conjunction with relevant legislation and award provisions.

Discipline processes must be supported with appropriate documentation and follow up. Full details of the principles and processes for managing performance and examples of relevant documentation are contained in the Performance Management and Salary System Policy.

PERFORMANCE MANAGEMENT

Performance management ensures that not only are the business requirements of Council met, but employees are informed about what is expected of them and in particular what is acceptable behaviour in the workplace. Managing poor performance or inappropriate behaviour in the workplace can also prevent low morale amongst other employees.

RESPONSIBILITIES

1. It is the responsibility of Managers and Supervisors to monitor performance and to implement performance management and improvement measures when required.
2. It is the responsibility of employees to make every effort to improve unsatisfactory work performance or conduct when a need has been identified and co-operate with supervisors to implement improvement programs.
3. Employee Relations staff will provide advice and assistance to all parties involved in a disciplinary procedure.

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Managing performance effectively may often eliminate the need for disciplinary action, however sometimes despite all efforts, disciplinary action will be required.

Natural Justice and Procedural Fairness

At each stage of the following procedure the principles of natural justice and procedural fairness must be adhered to. These principles require that:

- An impartial and proper investigation of the facts and circumstances is conducted, taking into account any mitigating circumstances.
- The employee is given the opportunity and sufficient notice to present his/her response to allegations, decisions made and penalties proposed.
- The employee is made aware of his/her right to use the Council's grievance resolution procedures and/or to seek a union representative or support person at any stage.
- Any penalties imposed are lawful.
- An incremental disciplinary process is followed allowing for a number of warnings, unless circumstances warrant other action. These circumstances will generally relate to serious matters such as gross misconduct or gross negligence.

The incremental approach of three formal warning emphasises the increasing seriousness of the matter and provides time for improvement. However, in serious cases of misconduct the Award allows appropriate action to be taken at any stage and the process accelerated. An employee may be summarily dismissed at any stage if the circumstances are of such a serious nature to warrant it.

Step 1 Counselling and First Warning

The employee is to be counselled regarding their poor performance or conduct, as follows;

The Supervisor, Manager or Director is to:

- State the standard of work or conduct expected
- State where the employee is failing to meet these standards
- Discuss with the employee the reason/s for the poor performance or conduct
- Allow the employee a right of reply and provide consideration of their reply.
- Inform the employee of the consequence if the issue is not resolved
- Reach an agreement with the employee on an improvement plan and review period
- Prepare a written record of the discussion, improvement plan and agreed review period. The employee signs this record, adds any relevant comments and signs.

The written record shall be kept on the employee's personnel file and will be the **initial (first) warning**. The employee is entitled to sight and sign the written record and add any comments regarding its content.

Step 2- Second Written Warning

Counselling occurs again as above. If unsatisfactory work performance or conduct re-occurs, the employee is to be given a formal letter of warning (**Second Warning**)

Step 3 - Third and Final Written Warning.

Counselling occurs again, as above. If the employee's unsatisfactory work performance or conduct continues or resumes, a written third and final warning is to be given to the employee stating that if the issue is not immediately resolved further disciplinary action will be taken.

If the employee's actions are unlawful the matter may be reported to the police, the Independent Commission against Corruption or other relevant agency.

Step 4- Final Actions

After complying with the above procedure, Council may:

- Demote the employee to a lower paid position, provided that the employee shall not suffer a reduction in the rate of pay for 2 weeks from the date of the demotion.
- Suspend an employee without pay from work for a specified period of time.
- Terminate the employment of the employee.

NOTE:

1. This procedure shall not affect either party's right to institute the dispute procedure of the Award or to notify the Industrial Registrar as to the existence of an industrial dispute.
2. Employees shall have access to their personnel files and may take notes and/or obtain copies of the contents of the file.
3. An employee who has been the subject of disciplinary action during the period since the last review will not normally be considered for a step increase or bonus payment.

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RELEVANT LEGISLATION:	Local Government (State) Award 2007
RELATED POLICIES:	5.23 - Grievance Handling Procedure 5.30 - Performance Management & Salary System
DELEGATIONS:	N
SUSTAINABILITY ELEMENT:	N
STAFF TRAINING REQUIRED?	N

NEXT REVIEW DATE: November 2010

PREVIOUS POLICY

ADOPTED: 12 July 2001
MINUTE: GMs Delegation

DISCIPLINARY PROCEDURE

Performance Management is an ongoing process where supervisors and managers provide continuous feedback to employees regarding work performance and conduct.

In most cases, unacceptable behaviour can be corrected by discussing the issues with the employee and outlining expectations. However when corrective measures have been exhausted and poor performance or conduct continues, formal disciplinary action will need to commence.

The following procedure has been developed to assist in the correct implementation of disciplinary action.

The incremental approach of three formal warning emphasises the increasing seriousness of the matter and provides time for improvement. However, in serious cases of misconduct the Award allows appropriate action to be taken at any stage and the process accelerated. An employee may be summarily dismissed at any stage if the circumstances are of such a serious nature to warrant it.

Stage	Use When	Personnel Involved and Actions required
Informal counseling.	<p>The unacceptable behaviour would be best resolved via informal counselling.</p> <p>There is no limit to the number of informal counselling sessions. Formal counselling should however occur when it is evident that the behaviour has not improved to an acceptable standard.</p>	<p>Supervisor / Manager, representative from Employee Relations if required.</p> <p>Manager/Supervisor to keep diary notes which can be referred to if disciplinary action is undertaken at a later date.</p>
First Formal Warning	<p>The unacceptable behaviour continued, warranted more than informal counselling and a formal warning was deemed appropriate.</p> <p>(Process can be accelerated to a higher level or termination if warranted).</p>	<p>Supervisor or Manager, representative from Employee Relations. The Manager and Director to be informed if not to be present.</p> <p>Employee to be advised, in writing, at least twenty four hours prior to the meeting time. This advice must outline the issue/s to be discussed and to give the employee the opportunity to invite a support person to the disciplinary meeting.</p>

		<p>During this meeting the nature and details of the unsatisfactory performance or conduct, the expected level of performance and where the employee is failing to meet those expectations is to be outlined.</p> <p>The employee must be given the opportunity to provide an explanation or present any mitigating circumstances. These factors must be considered prior to making a decision.</p> <p>If it is decided that a formal warning is to be issued, this must clearly state that it is the first official warning, the reason for the warning, the required standard to be achieved, what is required to meet that standard and the consequences if the unsatisfactory performance or conduct were to continue.</p> <p>The warning should also make reference to the occasions when the issue/s has been brought to the employee's attention previously. The warning is to state that an immediate and sustained improvement is expected and the period of monitoring to be applied.</p> <p>Note; all formal warnings must be sighted by Employee Relations before being given to the employee.</p> <p>Any offers of assistance, including but not limited to the Employee Assistance Program, or suitable training should also be included in the correspondence.</p> <p>A copy of the formal warning is to be issued to the employee and a copy placed on the employee's personnel file. The employee to be requested to sign as acknowledgement of</p>
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		<p>receipt and understanding and advised of the opportunity to provide comment.</p> <p>Manager (if not present) and Director to be advised of the outcome.</p>
Second Formal Warning	<p>The misconduct or unacceptable behaviour continues and is serious enough for the warning to be the employee's second warning. Generally a recurrence of a previous disciplinary issue within a relevant timeframe.</p> <p>(Process can be accelerated to a higher level or termination if warranted).</p>	<p>Supervisor/Manager, representative from Employee Relations. Director to be informed.</p> <p>Employee to be given advance notice of the meeting as detailed above.</p> <p>Details of the unsatisfactory performance or conduct to be outlined as above and again the employee given the opportunity to respond.</p> <p>If it is decided that a second formal warning is to be issued the correspondence is to contain all the details as outlined previously and make reference to the previous warning and clearly state that this is the second official warning</p> <p>Note; all formal warnings must be sighted by Employee Relations before being given to the employee.</p> <p>Again a copy of the correspondence to be given to the employee and a copy to be placed on the Personnel File. Manager (if not present) and Director to be advised of the outcome.</p>
Final Warning Note; in some serious cases this may be first and final warning.	<p>The inappropriate behaviour/misconduct or incident was serious enough for the warning to be the employee's final warning. Generally a serious breach of policy or a second recurrence of a previous disciplinary issue within a relevant timeframe.</p>	<p>Supervisor, Manager, representative from Employee Relations. Director and General Manager to be informed.</p> <p>Advance notice of the meeting to be given.</p> <p>Details of the unsatisfactory performance or conduct to be</p>

		<p>outlined as above and the employee given the opportunity to respond and this response to be considered.</p> <p>If it is decided that a final warning is to be issued the correspondence is to contain all the details as outlined previously.</p> <p>Note; all formal warnings must be sighted by Employee Relations before being given to the employee.</p> <p>This warning is to clearly state that it is the final warning and that further instances of unsatisfactory performance or conduct could result in termination of employment.</p> <p>A copy of the final warning to be given to the employee and copy placed on the Personnel File. The Director and General Manager to be advised of the outcome.</p>
<p>Disciplinary action (e.g.: demotion, suspension) or termination of employment</p>	<p>At least three formal counselling or warning sessions have been undertaken and there has been no substantial improvement OR the misconduct or incident was serious enough to warrant disciplinary action which could include termination of employment (i.e. serious misconduct), in which case previous warnings can be bypassed and the process upgraded.</p>	<p>Supervisor/Manager, Director. Matter to be discussed with Manager Employee & Community Relations who will discuss and obtain instructions from the General Manager.</p> <p>Employee to be given notice of the meeting and provided with the opportunity to invite a representative to the disciplinary meeting.</p> <p>If the employee is a union member it may be prudent to advise the union of the proposed action prior to instigation.</p> <p>During the meeting the reason for any proposed action is to be outlined, the employee is to be provided with a further opportunity to put forward a</p>

		<p>defence and any reasons or mitigating circumstances put forward by the employee are to be considered.</p> <p>If it is decided to instigate disciplinary action e.g. demotion, suspension or to terminate the employee's employment the employee is to be issued with correspondence to that effect. The letter is to detail the reason/s, previous warnings, the fact that performance/conduct has not improved and the fact that the employee was given a final opportunity to provide reasons or any mitigating circumstances. The final decision i.e. demotion, suspension or termination to be outlined and any entitlements the employee is to receive</p>
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RECORD KEEPING & SUPPORTING DOCUMENTS

- It is recommended that the meeting be recorded and structured in a 'Question and Answer' format. This approach usually follows the style of a counselling interview with the manager/supervisor asking questions and the employee responding. The manager/supervisor may prepare some of their questions prior to the meeting, adding others following the employee's response.
- The record must be as accurate as possible and should be signed by the parties.
- Records of meeting must show accurate and specific information discussed during the meeting including:
 1. the date, time, place and who was present at the meeting;
 2. any history of previous relevant meetings including relevant formal and informal disciplinary meetings;
 3. particulars of the issue/s including dates, times and evidence;
 4. a clear outline of the relevant expectations, standards and performance requirements;
 5. a summary of the employee's explanation or response to the allegations;
 6. proposed solutions, action plans and timeframes for improvements;
 7. any impact on future employment or consequences for recurrence of similar behaviour;
 8. A nominated date to review work behaviour or performance.

- The employee is to be given a copy of the warning letter to sign. Signing indicates their acknowledgment of the accuracy of the documentation. Either party may request that comments be added to the documentation.
- A refusal to sign the document will not invalidate the record, however the reasons for declining should be noted, along the lines 'John declined to sign the document citing the following reasons
- Both the manager/supervisor and any other witness present at the meeting must also sign the documentation.
- If an action plan has been devised, follow up and review must be a structured process. It is the manager/supervisor's responsibility to ensure that at the close of all stages the follow-up process is undertaken.
- At the review meeting, a file note should be made of the progress in achieving the outcomes of the action plan. If the performance or behaviour has improved, it should be noted in the file note of the meeting. The file note should then be placed on the employee's Personnel File. If the performance or behaviour has not improved, the next stage of the disciplinary process should be followed.

TERMINATION OF EMPLOYMENT

- **No employee's employment will be terminated on disciplinary grounds without the prior approval of the relevant Director and Employee Relations Manager who will gain advice/approval from the General Manager prior to such action being taken.**
- In the event that an employee wishes to lodge a grievance in respect of termination of employment, demotion or transfer to another position, such a grievance should be lodged to Council in writing.
- Council can terminate an employee's service by giving the appropriate period of notice, in accordance with the Award. This is subject to correct counselling and disciplinary procedures having been followed. Care needs to be exercised so that any proposed termination is appropriate and reasonable in the circumstances.

UNFAIR DISMISSALS

If an employee lodges an Unfair Dismissal Claim, the Industrial Relations Commission make take into account certain matters in determining whether the Dismissal is considered harsh, unjust or unreasonable. These may include:

- Whether a reason for dismissal/threatened dismissal (constructive dismissal) was given.
- If the applicant sought, but was refused, reinstatement or re-employment.
- Was a reason given for the refusal to reinstate or re-employ
- Nature of the reason for refusal. Did it have a basis in fact
- Was the applicant given the opportunity to defend or explain himself/herself
- Were warnings given prior to dismissal
- What was the nature of the applicant's duties prior to dismissal
- What is the likely nature of duties if the applicant is reinstated or re-employed?