

Misconduct Policy

For Australian Small & Medium Enterprises

Template Version 1.0 | December 2024

Important Notice

This template provides general guidance on managing misconduct. It should be customised to your specific workplace needs and used in conjunction with legal advice. Employers must ensure fair process and comply with unfair dismissal laws.

1. Purpose

This policy establishes a fair and consistent framework for addressing employee misconduct at [Company Name]. It ensures that all employees are treated equitably, investigations are conducted properly, and appropriate disciplinary action is taken when necessary.

2. Scope

This policy applies to:

- All employees regardless of position or length of service
- Conduct during work hours and on company premises
- Work-related conduct outside normal hours
- Conduct at work functions and events
- Online conduct that affects the workplace

This policy does not apply to performance or capability issues (refer to Capability Management Policy).

3. Types of Misconduct

3.1 Misconduct

Misconduct refers to behaviour that breaches company policies or standards. Examples include:

- Lateness or absenteeism without proper notification
- Minor breaches of workplace policies
- Inappropriate language or behaviour
- Failure to follow reasonable instructions
- Minor safety breaches
- Unauthorised use of company property
- Poor work attitude

3.2 Serious Misconduct

Serious misconduct is behaviour so serious that it justifies immediate dismissal. Examples include:

- Theft, fraud or dishonesty
- Violence or physical assault
- Serious safety breaches endangering others
- Being under the influence of drugs or alcohol at work
- Serious harassment, bullying or discrimination
- Wilful damage to company property
- Serious breach of confidentiality
- Refusal to carry out lawful and reasonable instructions
- Serious insubordination

4. Principles

[Company Name] is committed to:

- Procedural fairness in all disciplinary matters
- Treating employees with dignity and respect
- Consistent application of standards
- Providing employees the opportunity to respond before decisions are made
- Confidentiality to the extent possible
- Timely resolution of matters

5. Informal Resolution

For minor issues, managers may address matters informally:

- Discuss the concern with the employee privately
- Clarify expectations and standards
- Provide guidance on appropriate behaviour
- Document the conversation
- Monitor for improvement

Informal counselling is not disciplinary action but sets clear expectations.

6. Investigation

6.1 Investigation Process

Before formal disciplinary action, an investigation should be conducted:

- Appoint an appropriate investigator
- Gather relevant evidence and documents

- Interview witnesses if applicable
- Interview the employee (with support person if requested)
- Consider all available information
- Document findings

6.2 Investigation Principles

- Investigations should be thorough and impartial
- All parties should be treated fairly
- Confidentiality should be maintained
- No predetermination of outcome
- Reasonable timeframes should apply

6.3 Suspension During Investigation

In some cases, suspension on full pay may be appropriate:

- Where the allegation is serious
- To protect the integrity of the investigation
- To protect other employees
- Suspension is not a determination of guilt
- Suspension should be as brief as possible

7. Formal Disciplinary Process

7.1 Step 1: Written Notification

- Employee receives written notice of allegations
- Specific details of conduct are provided
- Notice of disciplinary meeting is given
- Right to bring support person is explained
- Reasonable time to prepare is provided

7.2 Step 2: Disciplinary Meeting

- Allegations are explained clearly
- Evidence is presented
- Employee is given opportunity to respond
- Support person may be present
- Meeting is documented
- No decision made at the meeting

7.3 Step 3: Decision

After considering all information, a decision is made:

- Consider the evidence and employee response
- Assess the seriousness of the conduct
- Consider mitigating factors
- Review consistency with previous matters
- Determine appropriate outcome
- Communicate decision in writing

8. Disciplinary Outcomes

8.1 Possible Outcomes

- No further action
- Informal counselling
- First written warning
- Final written warning
- Demotion
- Transfer
- Termination with notice
- Summary dismissal (for serious misconduct)

8.2 Warnings

Written warnings should include:

- Description of the misconduct
- Expected standards of conduct
- Consequences of further misconduct
- Duration the warning remains active (typically 12 months)
- Right to appeal

8.3 Termination

Termination may be appropriate where:

- Serious misconduct has occurred
- Previous warnings have not resulted in improvement
- The conduct makes continued employment untenable

Termination must comply with unfair dismissal laws and contractual requirements.

9. Support Persons

Employees may have a support person present at disciplinary meetings:

- Support person must be advised in advance
- Support person can be a colleague, union representative or other person
- Support person provides emotional support
- Support person is not an advocate and does not answer on behalf of the employee
- Meetings may be rescheduled once to allow a support person to attend

10. Appeals

Employees have the right to appeal disciplinary decisions:

- Appeals must be lodged in writing within 5 working days
- Appeals should state grounds for appeal
- Appeals are reviewed by a more senior manager or HR
- Outcome of appeal is final
- This does not affect statutory rights

11. Record Keeping

- All disciplinary matters are documented
- Records are kept confidentially
- Warnings are kept on personnel file
- Records are retained as required by law
- Employees may access their personnel file

12. Relationship with Other Policies

This policy should be read in conjunction with:

- Code of Conduct
- Anti-Discrimination and Equal Opportunity Policy
- Bullying and Harassment Policy
- Work Health and Safety Policy
- IT and Internet Use Policy
- Social Media Policy
- Termination of Employment Policy

13. Responsibilities

13.1 Managers

- Address misconduct promptly and consistently
- Follow proper procedures
- Maintain appropriate documentation
- Seek HR advice when required
- Treat employees with respect

13.2 Employees

- Comply with company policies and standards
- Report misconduct they witness
- Participate honestly in investigations
- Accept responsibility for their conduct

13.3 HR

- Provide guidance on policy application
- Ensure consistency across the organisation
- Support managers through disciplinary processes
- Maintain confidential records

14. Review

This policy will be reviewed:

- At least annually
- When relevant legislation changes
- When business needs change
- Following significant issues or complaints

Employee Acknowledgement

I acknowledge that I have read and understood [Company Name]'s Misconduct Policy. I understand the standards of conduct expected and the process that will be followed if misconduct occurs.

Employee Name: _____

Signature: _____

Date: _____