

Disciplinary And Warning Policy

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Policy Statement

The purpose of this policy is to establish a fair, equitable and consistent process for addressing unsatisfactory work performance and/or behaviour and conduct in the workplace. Should an issue or concern arise, ARA Property Services / ARA Indigenous Services (the **company**) will endeavour to offer the opportunity to improve unacceptable performance or behaviour to consistently achieve the required standards. However, in cases of serious misconduct, immediate dismissal may be warranted. All persons have the right to have the principles of natural justice and procedural fairness observed, which means:

- All parties must have the right to be heard
- All relevant submissions and evidence must be considered
- The decision-maker must be impartial, fair and just
- Investigations and proceedings that are conducted honestly, fairly and without bias
- No undue delay in investigations and proceedings.

Scope

This policy applies to all employees, contractors and volunteers of the company.

Responsibilities

It is the responsibility of all parties involved in consultation or disciplinary action to participate fully in the resolution process in good faith. Confidentiality must be respected and maintained at all times within the constraints of the need to fully investigate the matter, subject to any legal requirements for disclosure and consistent with the principles of natural justice. People and Culture is only authorised to issue formal correspondence to the parties involved.

Policy

Disciplinary action, except in cases of serious misconduct, may be an incremental process which can be terminated at any stage. In managing the performance or behaviour and assessing any disciplinary action, which may be appropriate, the seriousness of the unacceptable performance and/or behaviour must be considered.

Typically, performance counselling, verbal warnings will be provided before disciplinary warnings are given. However, in some circumstances, the company may proceed to a formal written warning, without undertaking counselling, verbal warning or coaching first. In cases of serious misconduct, termination

of employment may be considered to be the appropriate disciplinary action, without the employee having been given formal or other warnings and/or without any prior counselling or coaching.

Step 1 – Guidance, Counselling, Feedback

- Where an employee’s work performance or conduct is considered to be unsatisfactory, the employee shall be informed, in the first instance, of the nature of the unsatisfactory performance or conduct and of the standard that is required to be achieved.
- The employee will be given the opportunity to respond to the allegation(s) by their immediate supervisor/manager and given the option of having their support person present.
- The purpose of the interview will be to identify the causes of the problem and agree on solutions. Where the problem is acknowledged by the employee, a corrective action/performance management plan will be agreed upon by the employee. A review date will also need to be agreed upon to allow reassessment of the employee to be discussed and assessed.
- At this stage, a verbal warning may be issued with documented expectations of improvement.
- Any subsequent improvements will be acknowledged by the supervisor/manager, and no further action will be taken. If no satisfactory improvement occurs, then the matter will proceed to step 2.
- A file note of the verbal warning and the interview will be kept on file in the employee’s file, and a copy will be given to the employee concerned for their own records.
- In the case of an employee in the probation period, all support and guidance will be given to improve areas of concern. If, after four (4) months of employment, the concerns still continue to be valid, then the manager, in consultation with People and Culture, will proceed towards termination under the probationary clause in the employment contract.

Step 2 – Formal Disciplinary Process

- Where there is a recurrence of unsatisfactory work performance or conduct, and further coaching is not a useful consideration, the employee shall be taken through the formal disciplinary process by People and Culture in consultation with the manager.
- People and Culture must be consulted before any recommendation is made by the manager to take the employee through the disciplinary process.
- In the event that the investigation requires the employee to be removed from the workplace, the company may suspend an employee with or without pay during the investigation process provided that:
 - if, after investigation, the reasons for the suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension.
 - The suspension shall not affect the employee’s continuity of service for the purpose of accruing leave entitlements.
 - The company will not unreasonably refuse an application for paid leave under this provision.
 - By agreement, consideration may be given to transferring the employee to another position or place of work or work from home if possible.
- The employee shall also be counselled. Counselling should reinforce the standard of work or conduct that is expected and advise on the severity of the situation and whether disciplinary

action will follow if the employee's work performance or conduct does not improve. A suitable review period for monitoring the employee's performance will be set at this time.

- A written record shall be kept of this formal warning and counselling. The employee will be entitled to sight and sign this written record and add any notations regarding the contents of such record.

First warning

- Where an employee's work performance or conduct is considered unsatisfactory, the employee will be given an opportunity to respond to the allegation(s) or concern (s). The employee will be invited for a meeting formally outlining the allegation(s) or concern (s). Further, employees will be given the opportunity to bring a support person if they wish.
- If the response is unsatisfactory, a first written warning will be issued to the employee advising of the nature of the poor performance or conduct and any corrective action required.
- The manager may endeavour to reach an agreement with the employee about the Improvement Plan / Performance Improvement Plan (PIP) (setting out required actions and outcomes), but if that is not reasonably possible in the circumstances, the manager may determine those matters.
- A date may be agreed upon in the future to review the employee's performance or conduct.

Second and further warnings

Same as above.

Final Warning

- If the employee's unsatisfactory work performance/conduct continues or resumes following the formal warnings and counselling, the employee shall be given a final warning in writing, giving notice of disciplinary action, including termination, should the unsatisfactory work performance/conduct not cease immediately.
- As performance and/or conduct must be assessed on a case-by-case basis, it will not always be appropriate to provide three (3) warnings before considering termination.

The disciplinary procedures in this document will be considered a guideline only, and the company reserves the right to provide fewer than three (including none) warnings before terminating an employee's employment based on the seriousness of the matter. In situations of serious concern, the company may issue a first and final written warning.

Step 3 – Further Disciplinary Action

If, after careful consideration and investigation, it is concluded that the alleged offender is guilty of a breach of discipline which warrants penalty, the Manager may impose one or more of the following:

- A change of duties
- Closer supervision
- Lateral transfer

- Demotion
- Suspension or termination of employment

Serious Misconduct

The termination of an employee's employment in circumstances of serious misconduct (also known as a 'summary dismissal') are complex, and there is no single definition or list of what conduct can be categorised as warranting such a dismissal. The below extract, from the Fair Work Regulations 2009 (Cth) however provides some guidance.

- 1) For the definition of serious misconduct in section 12 of the Fair Work Act 2009 (Cth), serious misconduct has its ordinary meaning.
- 2) 2) For sub-regulation (1), conduct that is serious misconduct includes both of the following:
 - (a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
 - (b) conduct that causes serious and imminent risk to:
 - (i) the health or safety of a person; or
 - (ii) the reputation, viability or profitability of the employer's business.
- 3) For sub-regulation (1), conduct that is serious misconduct includes each of the following:
 - (a) the employee, in the course of the employee's employment, engaging in:
 - (i) theft; or
 - (ii) fraud; or
 - (iii) assault; or
 - (iv) sexual harassment
 - (b) the employee being intoxicated at work;
 - (c) The employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- 4) 4) Sub-regulation (3) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- 5) 5) For paragraph (3) (b), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.

The company will conduct its own enquiry, even if the matter has been referred to the Police, the Anti-Corruption investigators or the Ombudsman.

Non-attendance at disciplinary meetings

In the event that an employee refuses to attend a scheduled meeting, an attempt will be made to provide the employee another opportunity. If the non-attendance reoccurs, then a decision will be made based on available information in writing to the employee in their absence.

Disciplinary Procedures

Informal Process

An informal process is appropriate for minor performance/conduct improvement where matters may not have been brought to the employee's attention, or expectations may not be clearly communicated or understood. For example, poor performance/conduct may be caused by different factors such as lack of skills, training and/or guidance.

Informal Discussion

This may include on the spot feedback or comments relating to a specific aspect of performance and may be enough to guide the employee in the right direction.

Informal Coaching / Counselling

Discuss performance/conduct with the employee, giving examples where possible and detailing the employer's requirements and expectations:

- Give the employee an opportunity to respond.
- Detail any action required to rectify the issue. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).
- Document the discussion. The employee should sign the documentation to confirm the discussion in the counselling session. Keep a copy on the employee's file and provide the employee with a copy.
- Include a review timeframe if appropriate/required.

The employee's performance should be monitored and if the informal process does not resolve the performance/conduct issues you may need to proceed to a formal warning process.

Formal Process

Before making any decisions on disciplinary matters, ensure the person has the opportunity to consider the claims against them and respond accordingly.

The following standards are often used when determining whether allegations of misconduct are substantiated:

1. the balance of probabilities, i.e. whether there is sufficient evidence to substantiate allegations; and
2. the *Briginshaw Standard*, which relates to the standard of evidence required if allegations involve a crime, fraud or other type of moral wrong doing, which if proven, would have serious consequences for the alleged wrong doer.

The *Briginshaw standard* outlines that the more serious the allegation against an individual is, the higher the standard of proof should be. Whilst this standard is not a requirement in workplace matters, it is a good test as to whether the matters and decisions would be defensible in a court.

The standard of proof differs between civil and criminal matters. In civil matters, the established standard is the 'balance of probabilities'. This is a lesser standard than the proof required in criminal matters, which is 'beyond reasonable doubt'.

First Written Warning

1. Arrange a formal meeting with the employee. People and Culture will draft the meeting invitation letter in consultation with the manager/supervisor .
2. Advise the employee that they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person must NOT act in a professional capacity (such as a lawyer) and is there only to support the employee, not to participate in the discussions.
3. For the manager/supervisor conducting the meeting, a representative from People and Culture, or an alternative representative, may also be present at the meeting.
4. Manager should explain the exact nature of the problem, giving examples where possible.
5. Detail any history of counselling (previous related matters within the last 12 months).
6. Detail any action required to rectify the performance/conduct. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).
7. The Employee should be asked whether he/she fully comprehend the nature of the problem and the recommended solution.
8. Give the employee the opportunity to respond to the allegations.
9. Consider the employee's response to the allegations before deciding whether the matter warrants a warning.
10. Advise the employee of the consequences that, if there is no improvement within the required timeframe, or a repeat of issues in the case of misconduct, further disciplinary action may be taken, up to and including termination of employment.
11. Document the discussion. The employee should sign the documentation to confirm their understanding of the discussion.
12. Keep a copy on the employee's file and provide the employee with a copy.
13. People and Culture will draft the meeting outcome letter in consultation with the manager/supervisor.

Second or Further Written Warnings

Follow the above process.

Final Written Warning

1. Arrange a formal meeting with the employee. People and Culture will draft the meeting invitation letter in consultation with the manager/supervisor .
2. Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is there only to support the employee, not to participate in the discussions.
3. For the manager/supervisor conducting the meeting, a representative from Human Resources, or an alternative representative, may also be present at the meeting.

4. Detail any history of counselling (previous related matters and warnings).
5. Clearly detail the employee's performance since the previous warning.
6. The Employee should be asked whether he/she fully comprehends the nature of the problem and the recommended solution.
7. Give the employee the opportunity to respond to the allegations.
8. Consider the employee's response to the allegations before deciding whether the issue warrants a final written warning.
9. Advise the employee of the consequences that, if there is no improvement within the required timeframe, or a repeat of issues in the case of misconduct, their employment may be terminated.
10. Clearly outline the action required to rectify the performance/conduct. This may include counselling, training, workload adjustments or improved performance (give specific examples of where the improvement is required).
11. Document the discussion. The employee should sign the documentation to confirm they understand and are fully aware of the consequences if there is no improvement.
12. Keep a copy on the employee's file and provide the employee with a copy.
13. People and Culture will draft the meeting outcome letter in consultation with the manager/supervisor.

Termination of Employment

1. Arrange a formal meeting with the employee. People and Culture will draft the meeting invitation letter in consultation with the manager/supervisor .
2. Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is only there to support the employee, not to participate in the discussion.
3. For the manager/supervisor conducting the meeting, a representative from Human Resources, or an alternative representative, may also be present at the meeting.
4. Detail any history of counselling (previous related matters and warnings).
5. Detail the employee's performance/conduct since the previous warning.
6. The Employee should be asked whether he/she fully comprehends the nature of the problem and the recommended solution.
7. Give the employee the opportunity to respond to the allegations.
8. Consider the employee's response to the allegations. If the response is not regarded as satisfactory, termination can follow.
9. Take sufficient time to weigh up the employee's response. Often this may involve scheduling a second meeting to advise decision and outcome.
10. Provide the employee with the reason for the termination in writing.
11. If the termination is not related to serious misconduct, ensure the employee is given the appropriate notice (or payment in lieu of notice), any outstanding wages and entitlements accrued such as annual leave, long service leave (if applicable) etc.
12. Payment for outstanding entitlements should be made on the day of termination or within the next pay cycle. Please refer to the relevant industrial instrument to confirm any outstanding entitlements and when they need to be paid by.

Serious Misconduct

An employee who has committed serious misconduct can be dismissed without notice following the substantiation of allegations.

Serious misconduct includes, in the course of employment, the employee engaging in theft, fraud, assault, intoxication at work, a serious breach of policies and procedures or conduct that causes serious and imminent risk to the health or safety of a person or the reputation, viability or profitability of the employer's business.

Serious Misconduct Process

Immediately arrange a meeting with the employee when you become aware of the employee's suspected misconduct:

1. Advise the employee of the allegations.
2. The Employee should be asked whether he/she fully comprehends the nature of the problem and the recommended solution.
3. Advise them of the process to be followed.
4. If necessary, suspend the employee with full pay while the employer investigates the allegation.
5. Alternatives to suspension include placing the employee on supervised shifts, or other interventions that minimise the potential risk of the person remaining in the environment at that time (for example, if someone is accused of assaulting a client, it would be unwise to leave them in an unsupervised environment whilst the matters are unresolved or unclear).

Ensure to:

- Give the employee an opportunity to respond to the allegations during the process.
- Document all conversations and findings of the investigation (this may include statements from other employees, clients etc.).
- On completion of any investigation, arrange a meeting with the employee to discuss findings.
- Advise the employee they have the option to have a support person present to assist with any discussions relating to their performance/conduct. The support person is of their choice; however, the person is NOT to act in a professional capacity (such as a lawyer) and is there only to support the employee, not to participate in the discussion.
- For the manager/supervisor conducting the meeting, a representative from Human Resources, or an alternative representative, may also be present at the meeting.
- Discuss the findings of the investigation with the employee and allow them to see any evidence, documentation, witness statements etc., and consider the employee's response.
- Consider the employee's further response to the investigation. If not satisfactory, the employee can be terminated immediately.
- Provide the employee with the reason for the termination in writing.
- Pay the employee any outstanding wages and entitlements (always check the binding industrial instrument and seek further clarification if required).
- Payment for outstanding entitlements should be made at the time following termination.