

Discipline and Dismissal Policy

What is the purpose of this policy?

1. This policy contains guidance for when poor performance and/or misconduct occur, and sets out the discipline and dismissal consequences that may follow. This policy is for general guidance only and aims to provide an understanding of the procedures that may be followed in certain circumstances due to poor performance (including but not limited to incompetence, inefficiency, carelessness or negligence), misconduct, or serious misconduct.
2. This policy should be read in conjunction with the individual terms and conditions of employment for each person.
3. Education New Zealand Manapou ki te Ao (ENZ) may introduce, vary, or remove this policy at any time.

Who is covered?

4. Whilst this policy is based on New Zealand legislation the intent applies to all ENZ employees. At times, other countries' legislation will also apply.

What constitutes poor performance?

6. Performance will be considered poor or unsatisfactory if an employee is repeatedly not meeting the requirements of their role (as set out in the employee's position description, contract of employment, performance development plan, ENZ policies, or as communicated to the employee otherwise). Poor performance may be observed by the employee's manager or other relevant person and may or may not be the result of a formal performance evaluation. Repeated poor performance including an inability to improve to the level required by ENZ may result in disciplinary action.

What constitutes misconduct?

7. Misconduct includes, but is not limited to:
 - Unauthorised absenteeism
 - Unacceptable behaviour towards others, including instances of harassment and/or bullying
 - Inappropriate or dishonest behaviour in the workplace
 - Non-compliance with ENZ policies, practices, or procedures
8. Serious misconduct is so named because it can have the effect of destroying or undermining the relationship of trust and confidence between an employer and employee, to the extent that the relationship can no longer continue. It also covers behaviour that seriously threatens the wellbeing of ENZ, its employees, or stakeholders.
9. Depending on the nature of the poor performance or misconduct, a number of disciplinary steps may be taken. The action taken will depend on the nature and severity of the conduct or

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performance. The steps below are listed in order of seriousness of the poor performance and/or misconduct, however do not need to be followed in sequential order. ENZ reserves the right to determine which steps are appropriate on a case-by-case basis.

Due Process

10. In all cases, ENZ's process will be fair and reasonable. The process will be driven by three fundamental aspects: -

- ENZ will have a good reason for undertaking the action
- ENZ will follow a fair process before making any decisions and acting on them
- ENZ will act in accordance with our Ngā Manapou



11. All disciplinary matters will be dealt with fairly, promptly, and consistently.
12. The process followed and action taken will be fair, free from bias, and soundly supported by evidence.
13. Aggrieved employees may challenge the reasons for their discipline/dismissal and the process by which they were disciplined/dismissed.
14. An employee may be suspended on pay while an investigation is carried out, if deemed appropriate.
15. The Chief Executive will be consulted in all cases before substantive decision or dismissal action is taken.

Informal Counselling

16. ENZ may informally counsel an employee to assist them to better understand workplace practices, the required level of conduct and/or performance or any other matter ENZ feels appropriate to raise with the employee for their development. If the employee continues to engage in the misconduct and/or poor performance which has been the subject of informal counselling, the employee may be subject to any of the disciplinary procedures set out below up to and including termination of employment.

Formal Disciplinary Process

17. Should the employee's performance and/or conduct warrant a formal disciplinary process, this process may be followed with or without prior informal counselling, dependent on the seriousness of the issue/s.
18. The employee will usually be given written notification to attend a meeting in relation to their performance and/or conduct. Generally, the employee will be given at least 24 hours' notice of the meeting. The notification will set out the performance and/or conduct issues to be discussed and advise the employee of the potential outcomes of the disciplinary process.
19. ENZ will offer the employee an opportunity to have a support person present during the meeting. The support person is not entitled to play an active role in the meeting nor to speak on behalf of the employee, but may provide support, guidance, and advice to the employee (in private if they so wish).
20. Generally, the following process will be followed in the disciplinary meeting:
 - ENZ will explain to the employee why their performance and/or conduct is not meeting the expected standards (by reference to the employee's job description, performance development plan, employment agreement, code of conduct etc) or elaborate on any allegations of misconduct
 - The employee will be provided with an opportunity to respond to all such issues
 - ENZ will explain the potential outcomes of the meeting and the employee will be given an opportunity to respond to this (for example, if termination is being considered, the employee should be given an opportunity to say why they feel this is inappropriate)
21. Possible outcomes of the meeting include (but are not limited to):
 - No action being taken
 - A need for further investigation
 - An oral warning
 - A performance improvement plan
 - A written warning
 - Termination of employment (with notice/payment in lieu of notice)
 - Termination of employment without notice (only in cases of serious misconduct)

No Action Taken

22. In certain circumstances ENZ will decide that no action will be taken against the employee (because, for example, the allegations of poor performance and/or misconduct are found to be unsubstantiated). In this situation, ENZ will generally confirm the outcome of the disciplinary meeting (and that no action is to be taken) in writing.

Further investigation

23. In some circumstances ENZ will need to undertake further investigation following the disciplinary meeting in order to decide on the appropriate action to take. This may occur when, for example, there are conflicting versions of events and ENZ is not in a position to make a finding on the issues/allegations.

Oral warning

24. An oral warning will generally be appropriate where the employee's performance and/or conduct has not improved following informal counselling, or in relation to an incident that is not serious enough to warrant a written warning. An oral warning will involve warning the employee that if their performance and/or conduct does not improve, they may be subject to more serious disciplinary action.
25. A written record of the oral warning should be kept.

Performance Improvement Plan (PIP)

26. A PIP is generally used when issues have been identified in an employee's performance that need to be improved. A PIP will set clear goals or targets that the employee is expected to

meet by certain dates. ENZ will review the employee's performance during the period of the PIP and assist the employee in trying to improve their performance. If the employee's improvement is not sufficient, they may be required to attend a disciplinary meeting and may be issued with a written warning. If the employee's performance is still cause for concern after being issued with one or more warnings, they may be required to attend a disciplinary meeting and (if no reasonable excuse can be given for failure to improve sufficiently) their employment may be terminated.

Written Warning

27. If ENZ has serious concerns about an employee's performance and/or conduct, a written warning may be issued. This may (but will not necessarily) occur following continued or repeated behaviour raised in earlier informal counselling or in an oral warning. There may be instances where a written warning may be issued in the first instance, based on the seriousness of the poor performance and/or conduct.
28. A written warning will generally inform the employee:
 - Of the employee's performance and/or conduct issues that are of concern
 - Why ENZ did not find the employee's response to such issues in the disciplinary meeting to be acceptable
 - Of a reasonable timeframe within which the employee must remedy their poor performance and/or conduct
 - That if the employee continues to underperform and/or engage in misconduct other disciplinary action may be taken up to and including termination of employment
29. A copy of the written warning should be kept on the employee's personnel file.

Termination of Employment (with notice / payment in lieu of notice)

30. Poor performance and/or misconduct may lead to the termination of an employee's employment (either with notice or payment in lieu of notice).
31. The number of warnings provided to an employee prior to termination of their employment may vary depending on the situation.
32. In extreme cases of poor performance and/or misconduct it may be appropriate to terminate employment without any previous warnings having been given.
33. At the disciplinary meeting the employee will be given an opportunity to explain why they consider termination of employment to be not appropriate prior to ENZ making a final decision.
34. Only the Chief Executive (or Acting Chief Executive) has the authority to determine whether termination of employment is appropriate.

Termination of Employment Without Notice aka Summary Dismissal

35. In cases of serious misconduct, often defined as willful and/or deliberate behaviour inconsistent with the continuation of employment, including but not limited to:
 - A material breach of the employee's contract
 - Serious failure in the performance of duties or improper/inappropriate use of the employee's position
 - Willful violation of any law or rule of a regulatory body
 - Accepting bribes
 - Any conduct that in the reasonable opinion of ENZ constitutes a serious or potentially serious conflict of interest, including working for dual or more employers without ENZ's permission
 - Refusal to comply with a lawful and reasonable direction given by management or any other person duly authorised by ENZ
 - Dishonest behaviour and/or acting in a way that is inconsistent with the best interests of ENZ
 - Deliberately providing false or misleading information to ENZ

- Being convicted of a criminal offence, which, in the reasonable opinion of ENZ, may have the effect of bringing ENZ into serious disrepute or affecting the ability of the employee to meet obligations under the employee's employment agreement
- Theft or misappropriation of ENZ property
- Being under the influence of alcohol and/or illegal drugs whilst at work or on ENZ property
- Acting in a way which in the reasonable opinion of ENZ may injure or be likely to injure the business or reputation of ENZ
- Acts of bullying, harassment, or discrimination
- Threatening, violent, or offensive behaviour
- Conduct that causes imminent and serious risk to the health or safety of a person or the reputation or viability of ENZ

The following process will apply.

36. At the disciplinary meeting, the employee will be given an opportunity to explain why they consider termination of employment without notice is not appropriate prior to ENZ making a final decision.
37. Only the Chief Executive (or Acting Chief Executive) has the authority to determine whether termination of employment is appropriate.

Record Keeping

38. All letters and other records will be placed on the employee's personnel file.

Other Policies

39. Employees are encouraged to read this policy in conjunction with other relevant ENZ policies, including
 - Code of Conduct
 - Equal Opportunities Policy
 - Workplace Anti-Harassment Policy

Support

The People, Culture and Capability team can help with any aspect of this policy.