**Managing under performance and/or poor behaviour**

**Overview**

Where a staff member’s work performance does not meet a satisfactory standard a process of investigation and corrective action should be taken. It’s crucial to ensure that actions taken are done according to the principles of natural justice and procedural fairness.

The Act makes no mention of an appropriate disciplinary procedure (such as three written warnings etc). Instead, the fairness of a disciplinary procedure has been determined by precedent case law as applied by various industrial courts and tribunals.

The disciplinary procedure of the issuing of warnings etc, would appear adequate on the issue of 'procedural fairness' However, an employee must be given a reasonable chance to rectify the problem before a subsequent warning is issued — this may involve counselling the employee or providing additional training

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee’s conduct is sufficiently serious to justify immediate dismissal. This is referred to as ‘summary dismissal’ and is a separate matter. The procedure in this example is not suitable for summary dismissal.

**The principles of natural justice are:**

1. All parties will have the right to be heard and judged without bias.
2. All issues are investigated thoroughly and justly.

**The principles of procedural fairness are:**

1. The standards of conduct and job performance are made clear to the staff member (Policies / job description)
2. The staff member will be made aware of the likely next steps in the event that satisfactory performance or conduct is or is not maintained.
3. The staff member has the right to be accompanied and represented by a representative at discussions at any level of a disciplinary process.
4. When a complaint about performance or conduct is brought to the supervisor’s attention by a third party, the substance of the complaint should be verified before any action is taken on the matter.
5. These procedures do not replace the normal responsibility to discuss work or conduct issues with staff members, to ensure that staff members have a clear understanding of the work and conduct expected of them and to provide appropriate feedback on their performance. The emphasis should always be on early intervention and informal resolution of a problem, as opposed to a more formal intervention at a later time.

In any event, unless the matter is of a serious nature, the formal disciplinary process outlined below should only be commenced when it becomes clear that a work performance or conduct problem has not been corrected through relatively informal discussion between the supervisor and staff member.

# Procedure

This stage should be followed where informal talks (record these) about performance or behaviour have not been successful and where there are still concerns regarding a staff member’s performance or behaviour.

**Step 1 - First Meeting**

1. When approaching the staff member about the need to meet, you should:
* attempt to put the staff member at ease
* approach the staff member respectfully and discreetly making sure that he or she does not lose face in front of work colleagues
* let the staff member know in advance the purpose of the meeting
* invite them to bring a representative for support
1. At the meeting:
* The staff member must be told in clear and precise terms exactly what you are dissatisfied with; for example, "continued late attendance such as that which has occurred on…" or "too many inaccuracies in the processing of payroll ".
* It is **not sufficient** to make broad statements such as "We are not happy with your performance," or "Your attitude will need to improve."
* Ask the staff member to respond to each example and record and consider the responses. Where responses require further investigation, conduct those and follow up on those matters at a subsequent meeting.
* Seek to ascertain any underlying cause of the problems. There may be personal, health or other workplace issues impinging on the employee’s capacity to perform to the required standards. In these circumstances seek to address and agree on solutions to these issues but at the same time reiterate your expectations.
* Consider whether the staff member’s responses excuse the performance or behaviour levels; if they do, consider other courses of action.
* If you consider the responses unsatisfactory, inform the staff member of the following
1. that in your view the responses do not justify the poor performance and/or behaviour
2. in clear terms the performance and/or behavioural expectations that are required
3. that the purpose of this process is to assist the staff member to meet the performance and/or behavioural expectations which have been discussed
4. that failure to improve and achieve the required standards of performance and/or behaviour will lead to further disciplinary action
5. that their performance and/or behaviour will be reviewed within a specified time, or earlier. New matters should not be raised during this review period unless considered of a serious nature.
6. discuss with the staff member any measures that are necessary to improve the performance and/or behaviour, such as, further training.
7. Conclude the meeting, ensuring that:
* the staff member clearly understands the issues that have been discussed and what is required of them
* an improvement plan, including review dates that meets your needs and is agreeable
* you have offered your assistance but do not allow the staff member to shift responsibility back to you
* you have invited the staff member to notify you if he or she encounters any obstacles or barriers to meeting the required standards.
* Have the staff member sign a copy of the documentation to indicate receipt and that it is a true and accurate record of what was discussed. If the staff member disagrees with the content of the document or wishes to make additional comments, they may provide a written statement in response. If the staff member refuses to sign, add this to the comments.
* As soon as possible, but within 5 working days, issue a written warning and the improvement plan

**Step 2**

1. Monitor the staff member’s performance and/or behaviour.
2. Meet with the staff member as agreed.

**Step 3**

1. If after a reasonable amount of time it appears that the staff member has reached the agreed expectations, then the process will come to an end.
2. If after a reasonable amount of time it appears that satisfactory progress is not being made, move on to Step 4. ‘Reasonable amount of time’ will vary depending on the timeframe as set out in the improvement plan.

**Step 4** - The second meeting

1. Advise the staff member of the reason for the meeting / issues that need to be covered
2. Follow the procedures in Step 1 and issue a 2nd letter of warning outlining the issues

**Step 5** – Follow up from second meeting

* + 1. If after a reasonable amount of time it appears that the staff member has reached the agreed expectations, then the process will come to an end.
		2. If after a reasonable amount of time it appears that satisfactory progress is not being made, move on to Step 6. ‘Reasonable amount of time’ will vary depending on the timeframe as set out in the improvement plan.

**Step 6** - Final warning

1. When the staff member has been given a reasonable number of opportunities to improve their performance and/or behaviour, and they have not done so, have a final counselling session and issue a final warning. Make sure a period of time is again specified for the staff member to improve and that the consequences of failing to perform satisfactorily are understood.

**Step 7** – Follow up from Final Warning

1. If after a reasonable amount of time it appears that the staff member has reached the agreed expectations, then the process will come to an end.
2. If after a reasonable amount of time it appears that satisfactory progress is not being made, move on to Step 8.

**Step 8** – Termination

1. If the staff member’s response at the meeting is unsatisfactory as to why their performance has not achieved the required standard, meet with the employee and provide them with a letter of termination.
2. It is important to carefully explain the information in the letter of termination of employment and ensure that the employee understands. Invite them to ask questions
3. Ensure to keep a copy of the letter of termination as well as all other correspondence regarding the matter (such as warning letters, improvement plan etc).