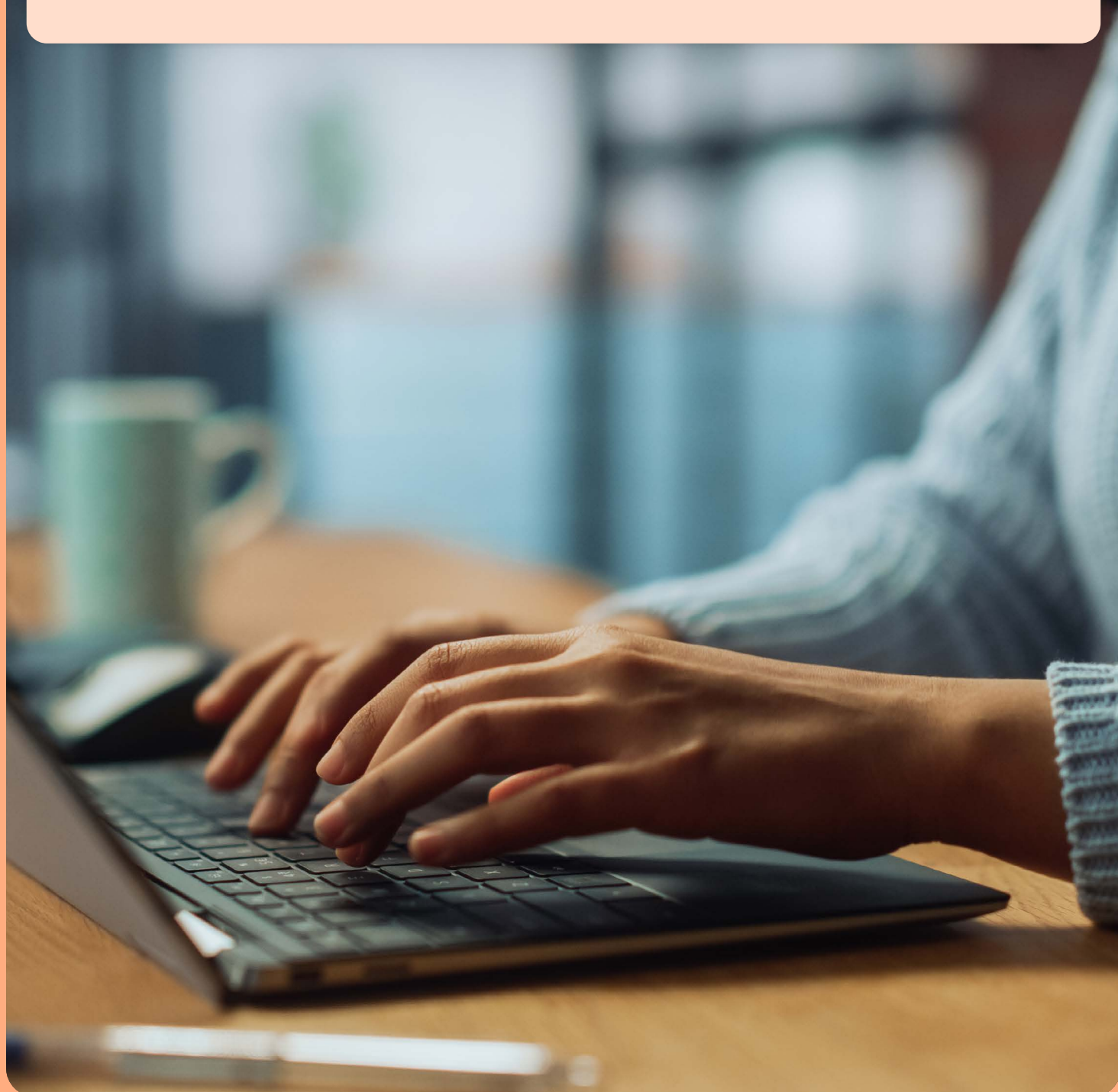


Understanding the disciplinary process in New Zealand



Contents

Introduction	3
Types of misconduct	4
Identifying the issue	7
Conducting a formal meeting	8
Making a decision	9
The employee termination process	10
Preventing future misconduct	11

Disclaimer:

The information in this guide is current as at 25 July 2023, and has been prepared by Employment Hero Pty Ltd (ABN 11 160 047 709) and its related bodies corporate (Employment Hero). The views expressed in this guide are general information only, are provided in good faith to assist employers and their employees, and should not be relied on as professional advice. The information is based on data supplied by third parties. While such data is believed to be accurate, it has not been independently verified and no warranties are given that it is complete, accurate, up to date or fit for the purpose for which it is required. Employment Hero does not accept responsibility for any inaccuracy in such data and is not liable for any loss or damages arising either directly or indirectly as a result of reliance on, use of or inability to use any information provided in this guide. You should undertake your own research and seek professional advice before making any decisions or relying on the information in this guide.

Introduction

There's so many elements to HR – from building a strong culture to promoting career development. Some elements, however, are less fun. No one likes to deal with misconduct but the reality of a workplace is that sometimes, you're going to have to go through the disciplinary process.

That's why we've created this guide: to break down the key forms of misconduct and how you can respond in an effective way.

Misconduct in the workplace can come in many forms, from lateness and absenteeism all the way to more serious issues like harassment.

It's important as an employer to take a formal and structured approach when dealing with employee misconduct. By doing this, you're providing a clear message to your employees that unacceptable behaviour won't be tolerated in the workplace.

In our experience, a verbal warning is usually enough to stop bad behaviour in its tracks, but if it's not, we've got some suggestions for next steps.

We hope you find this guide useful in the event it's required.

- The Team at Employment Hero.



Types of misconduct

Misconduct in the workplace is when an employee engages in conduct which breaches standards of acceptable behaviour. These standards may sometimes be set out in company policies, employment contracts or applicable laws.

This can happen if unacceptable behaviour is observed by employers or if other employees report misconduct in the workplace.

Dealing with employee misconduct at work can be tricky even for the most seasoned business owner. If you have an employee who's

not meeting expectations or is not behaving in an appropriate way, you must deal with the issue head-on and make a plan to improve it.

Of course, there are varying degrees or types of employee misconduct, so how you deal with the issue head-on depends on the severity of the matter.

To understand how to manage misconduct, it's important to understand what employee misconduct examples look like.

Examples of general misconduct

General misconduct is any behaviour that doesn't meet the standards of acceptable workplace behaviour. This can be seen as minor misconduct.

[Some examples](#) of general misconduct in the workplace include:

- Lateness to work
- Using inappropriate language
- Wearing inappropriate clothing
- Internet misuse
- Failing to follow reasonable instructions

Examples of serious misconduct

Gross misconduct is a more serious breach than simple misconduct and is usually offensive behaviour that, if proven, would result in immediate termination.

[Some examples](#) of gross misconduct in the workplace include:

- Violent behaviour
- Harassment and bullying
- Negligence
- Theft or fraud
- Endangering the health and safety of the employee and others
- Use of illegal drugs at work

Misconduct outside of working hours

While misconduct during work clearly falls under the employer's remit to address, [misconduct that occurs outside of working hours](#) can be confusing for employers to navigate. In short, these instances should be considered on a case-by-case basis.

Generally, employers have no right to control or regulate an employee's 'out of hours' conduct, unless there is a sufficient connection to the employment relationship. Therefore, not all misconduct will be grounds for dismissal or disciplinary action.

However, if the employee's conduct might be viewed as having a negative impact on the reputation of the employer's business, then this could be seen as misconduct.

Influencing factors may involve:

- Where the misconduct occurred
- Who was involved in the misconduct
- Whether the misconduct damages the employer's interests and reputation
- Whether the misconduct is incompatible with an employee's obligations
- Whether the misconduct takes place while the employee was in uniform or representing the company

In today's digital world, we often see how people's online life can affect their employment. For example, personal social media posts that are critical of a person's employer or divulge sensitive information could be seen as a matter for the employer.

We recommend employers to set up a clear social media policy, detailing their expectations of online behaviour, both during and outside of work. Consider putting a clause in the employment agreement around how 'out of hours' behaviour could affect employment.





Case example

[John \(aged 18\) worked for a supermarket.](#)

After work one evening, he and some of his workmates popped into the pub across the road for an after work drink. While they were there, they got into an argument with another patron, and a fight between John and the other patron followed.

The patron was a truck driver for the food distribution company that supplies the supermarket John worked for, and he easily identified John and his colleagues as supermarket employees because they were wearing their supermarket uniforms. He complained to the supermarket and, after an investigation, John was instantly dismissed for bringing the supermarket into disrepute, and his colleagues reprimanded for their part in the incident.

John raised a personal grievance with his employer, claiming he was dismissed unfairly. He argued that what he did in his personal time was his business, not that of his employer. The matter eventually went as far as the Employment Court, which found that John's actions had an adverse impact on his employer's reputation and business because he was identified as an employee of the supermarket; and his behaviour seriously breached the trust and confidence in the employment relationship. The Court confirmed John's dismissal.



Quinn's Hero Tip

If the thought of drafting up a policy from scratch sounds like a chore, check out our pre-set [social media policy template](#).

This template and many more are available on the [Employment Hero platform](#) too, so you can easily send it out to all employees in one go. You can also track who has acknowledged the policy and who is still to check it over.

Identifying and addressing the issue

A disciplinary procedure is a formal way for an employer to deal with an employee's unacceptable or improper behaviour. Employers should seek to resolve any issues informally wherever possible. However, if an employer feels that this has not resolved the issue and they need to start a disciplinary process, they should follow [Employment New Zealand's guidelines](#).

This starts by checking details of the misconduct or allegations of the actions in question. As it's still in the early stage, make sure to keep any initial investigation under wraps in the workplace. This could include checking emails or speaking to witnesses of the alleged misconduct.

Once you've clarified whether there is enough reason to begin a disciplinary process, it's time to notify the employee. For a lot of general misconduct, an informal verbal warning might be enough to stop any future recurrence of the behaviour. Excellent! However, for more serious misconduct or repeated disregard of warnings, it's time to take formal steps.

First of all, give the employee an invitation to a disciplinary meeting, with information about the alleged misconduct, and outlining the possible consequences. A date for a formal meeting should be set that gives the employee enough time to prepare and bring a support person or representative. This is a meeting where the employer will hear the employee's feedback to the allegations made against the employee.

Suspending an employee

There are a few instances where during this initial investigative phase, the employee at the centre of the allegations should be [suspended so they're no longer in the workplace](#) until a resolution has been reached. Here are a couple of example scenarios where you might consider suspending an employee.

For health and safety reasons

If you find that the employee poses a risk to health and safety – for example, by being under the influence of drugs/alcohol in a safety-sensitive area – you may decide to suspend them.

When the employee could affect the investigation

If your employee is suspected of gross misconduct such as fraud, it may be prudent to remove the employee so that the investigation can continue unimpeded.

Suspension is a big move so it's crucial that you consider your options carefully. Employers generally must have a right to suspend based on the employment agreement. Where an employer can lawfully suspend, it should only be as long as the time needed to conduct the investigation and the employee should remain on full pay during the suspension. A suspension deemed as unfair can leave the employer open to a personal grievance claim from the employee.

Conducting a formal meeting

Now that the employee has had notice and an invitation to a disciplinary meeting, it's time to conduct a [formal meeting](#).

During the meeting, it is essential that a decision-making member of the employer's staff takes charge and leads the proceedings. The employer should present the complete set of allegations, concerns, and the results of any investigations to the employee.

This is an opportunity for the employee to provide their feedback to the allegations raised by the employer. Where appropriate, the employer can also provide any further information that has been asked or requested by the employee.

Once the employee has addressed the employer's initial findings, the meeting should come to a close. The employer's decision-

maker should have ample time to carefully consider all the information presented before reaching a final decision. It is crucial that the decision-maker doesn't make any decisions during or at the conclusion of the meeting.

If the employer wishes to introduce new issues, they must provide written details to the employee of any further allegations and then schedule another meeting at a later time. This allows the employee enough time to consider and respond to these additional matters.

Lastly, make sure that all conversations and discussions during the process are recorded in writing, including records of any meetings held. This will ensure a transparent decision-making process. Prior to commencing the meeting, it is best to notify the employee that the employer will be taking meeting minutes.



Making a decision

Once this meeting has concluded, the employer should consider what was discussed and make a **'preliminary decision'**, including any proposed disciplinary action. If further investigation is required, then the employer must undertake this before providing a preliminary decision. It's critical that the employee has a chance to respond to this.

You may wish to set up another meeting to do this but ensure that you document everything that is said in the meeting.

It's expected that the employer considers the employee's feedback to the preliminary decision with an open mind before they reach a final decision.

Once these steps have been completed, employers must then meet again with the employee to give the final decision. As with other disciplinary meetings, the employee should be permitted to have a representative or support person present, and the final decision should be confirmed in writing.

There are plenty of potential actions that an employer might choose, including:

- No penalty
- A first written warning
- A final written warning
- A first and final written warning
- Termination of employment



The employee dismissal process

If an employer has decided that the misconduct was serious enough to warrant dismissal, they must still undertake a fair and reasonable process to justify that termination is necessary:

Dismissal should only be considered as a final resort. If an [employee is dismissed](#), the employer has to have:

- Acted in good faith
- Shown good reason
- Followed a fair and reasonable process

The employer should also think about getting independent advice from an employer association or lawyer.

The process to terminate an employee's work contract usually involves a period of notice that states in writing when their employment will end. The length of this period varies, depending on what is specified in their employment agreement.

Summary dismissal

[Summary dismissal](#) is when an employee is dismissed without notice. This means they are not able to work out their notice period, and are not paid out for their notice period.

An employee may be summarily dismissed if (and only if) they are found guilty of serious misconduct that has deeply impaired the working relationship. This is generally a high threshold termination.

Employers should have conducted a fair investigation and disciplinary process to get to this point, and they should get independent legal advice before making this move.

It is not necessary for the employment agreement to have a clause outlining summary dismissal, but it can be useful to have one in case of a personal grievance.



Preventing future misconduct

Nobody likes to go through the processes we've outlined. They're tough on everyone and they can significantly affect the morale and culture of a workplace. Prevention is always the best cure, and employers should be doing everything in their power to prevent misconduct from occurring. Here are some key measures to implement within your business.

Policies

Policies are an important measure for preventing misconduct. When you have clear documents that explicitly state what kind of behaviour will not be accepted by the company, employees know what is expected of them from day one.

[Workplace policies](#) also safeguard an organisation from risk. A well-written policy will protect your business from a range of disciplinary scenarios, whether it's misuse of social media, inappropriate computer use, discrimination or harassment. If you don't have a policy, then it's very difficult to defend certain claims that might be brought by an employee.

The definition of misconduct should be clearly outlined in your policies, along with penalties that employees may receive if they breach the policy, from disciplinary action to termination of employment. In the same document, include a clear process on how to report misconduct. Provide up-to-date contact details of who reports should be made to, and a clear process for the person to follow.

Supplying this kind of information will help you ease your employees' concerns about reporting. You're conveying that you have considered this situation and are prepared to respond and give support.

Creating a culture of support

Have you ever had a manager who has been dismissive and unresponsive towards you? They don't appear to be interested in your professional or personal experiences, they're always too busy to catch up with you and they're just generally absent from your working life. If you are subject to any kind of misconduct, how comfortable would you feel about reporting this to your manager?

The reality is that you're probably more likely to keep the incident to yourself. [Creating a culture of support and transparency](#) isn't only important in helping your team perform their best in the workplace. Good relationships between managers and colleagues can provide comfort when bad things happen.

Preventing and responding to misconduct

How can you improve communication with your team? We believe the best way to build these relationships is by [having regular 1:1 meetings](#). 1:1's are a scheduled catch up that an employee has with their direct manager. This is time dedicated for the employee to talk through how their past week or fortnight has gone, as well as commit to things for the future.

Although there's still structure to 1:1's, it's an informal way to catch up on the week that was. 1:1's empower accountability and trust, and are a great way to discuss goals, engagement, career development and roadblocks. They can also be a time to discuss critical issues the employee may be facing.



Take misconduct seriously

Sometimes it's easy to sweep smaller issues under the carpet, but here's why you shouldn't. When you work in an environment where general misconduct, disrespectful language or microaggressions go un-acknowledged by management, you send a message to your team that it's acceptable to engage in this behaviour. This creates a toxic culture. If your team members know that bad behaviour won't be addressed and resolved by management, incidents of misconduct can progress into something more destructive.

Of course, any penalty should be proportionate to the behaviour. There's no reason to take major disciplinary action over a rude comment. Instead, pull them aside and acknowledge the incident, explain why it's not acceptable to the business and what they can do to improve their behaviour.

Regularly audit

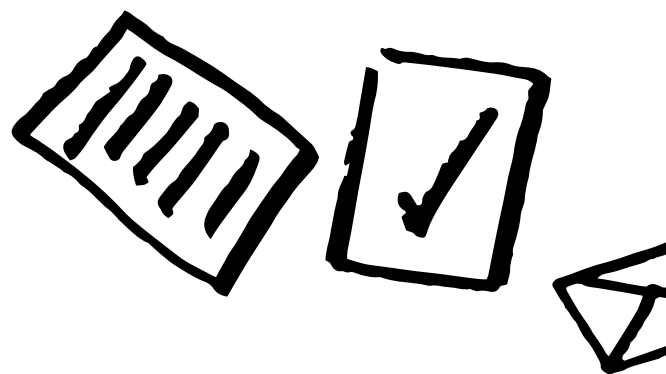
This tip specifically applies to financial fraud or misreporting from staff. A great way to prevent this from happening is to have a regular audit scheduled that all staff are aware of.

Have your senior members of staff conduct these audits at regular intervals. Create an auditing process so that each one is conducted in a structured fashion. Following the audit, have your auditors present their findings and workflow to the head of the company.

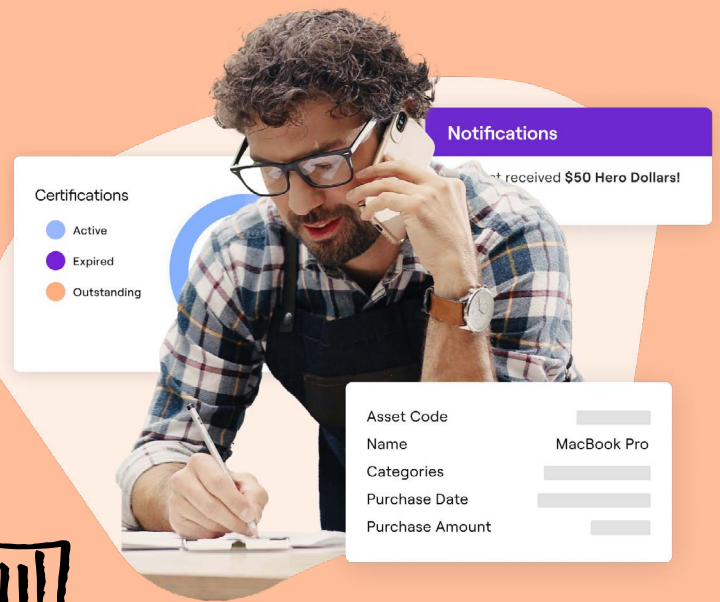
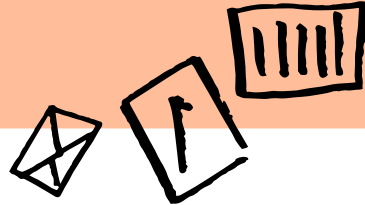


Quinn's Hero Tip

Employment Hero has a dedicated 1:1 feature, which allows both parties to share their honest thoughts and talking points before the meeting. You can also record key points reached in the 1:1 meeting, creating a digital record to refer back to.



About Employment Hero



Employment Hero is the smarter way to manage HR, payroll and recruitment for SMEs with big ambitions.

It's an all-in-one HR and payroll software that empowers SMEs by providing automated solutions to help launch them on the path to success.

Employment Hero services over 200,000+ SMEs supported globally, with 1 million+ employees on our platform.

We're launching employers toward their goals, powering more productive teams and taking employment to rewarding new heights.



Our features include:

- Recognition
- Shout Outs (Peer to peer recognition)
- Policy templates
- Letter templates
- Applicant tracking system
- Employee happiness scores
- Feedback
- 1:1s
- Performance reviews
- Learning management system (LMS)
- OKRs (Objectives and Key Results)
- Custom surveys
- And so much more...

For more information on how we can help transform your business, book a demo today.

 [BOOK A DEMO](#)

WORK EASY

The smarter way to manage people, payroll and productivity. For SMEs with big ambitions.



Notifications

You just received \$50 Hero Dollar
1 min ago

Hi Jane!

Quick links Add +

Action items

15 Items to action today

- Sara Conner needs annual leave approved.
01 Nov - 14 Nov 2022
- You have a 1:1 with Kirk Hammet today.
-
-
- Tax Declaration 50%

Leave Balance

Annual Leave	89.56 hours
Personal Leave	34.90 hours

Submit leave request

+ New Checklist

