

Managing Employees – The Warning Process

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The Employer Assist team often receive calls from employers who are dealing with employees who are not performing their duties to a standard reasonably expected or who are engaging in unsatisfactory workplace conduct.

In these circumstances, we advise the employer to issue the offending employee with a written warning which sets out clear expectations and consequences for the employee. This article details the preferred process employers should take when issuing an employee with a formal warning.

Step 1 - Identify the issues

Before discussing the matter with the employee, it is important that you identify the issue/s so that you can clearly articulate your concerns with the employee. Does the issue relate to the employee's performance or conduct? Has there been a breach of the employment contract or a policy? Has the employee failed to follow a reasonable and lawful direction?

If the issue relates to the employee's duties, you should review the employee's contract of employment, letter of offer and position description in order to confirm that the employee has been instructed to perform those duties. Alternatively, if the issue relates to the employee's conduct, you should review any workplace policies which might relate to such conduct. The policy may include a formal process which should be followed to address the issue.

It is important to record any times and dates that the employee has not performed or has engaged in unsatisfactory conduct. Particularly if the issue relates to the employee's failure to follow directions.

It is not uncommon for employers to identify a combination of the above.

Step 2 –Investigate the issue

You should take steps to investigate the matter before you issue the employee with the warning letter. It is important to provide procedural fairness to the employee and have gathered all facts and evidence before proceeding to the formal warning stage.

This may even involve meeting with any employees involved to obtain their statements. If the issue was raised by a customer, if appropriate you may need to discuss the matter with the customer or review the complaint in detail. It may even be necessary to have a preliminary discussion with the relevant employee.

Step 3 - Prepare warning letter

Once you have completed the above steps, you should put the warning in writing.

If the issue is only a minor issue, a first warning should be sufficient. However, if the issue is more serious, a first and final warning would be more appropriate. It is best to seek advice before making a decision about how best to proceed.

The main elements of a warning letter include:

- Details of the performance or conduct issue;
- Why the performance or conduct is unsatisfactory;
- If the issue involves a breach of contract or workplace policy, refer to the document and provide the employee with a copy;

- Details of expectations of the employee going forward and actions required by the employee;
- If appropriate, a timeframe for improvement; and
- Confirm that if the performance or conduct issue does not improve, disciplinary action may be taken against the employee up to and including termination of the employee's employment.

Note: The above is a guide only and as warnings are regularly relied upon in the case of unfair dismissal applications it is best to seek advice before attempting to draft your own warning letters.

Step 4 – Meet with the employee

Once you have prepared the warning letter, you should arrange a meeting with the employee to discuss the issue and allow the employee to respond. Whilst you are providing them with an opportunity to respond this does not mean that you have an obligation to change your mind. You can simply accept the employee's response and proceed if they have not provided you with any new information.

Note: Always ensure that you provide the employee with an opportunity to have a support person present at any disciplinary meeting.

You can provide the employee with a copy of the warning letter at the meeting or email it to them afterwards.

Step 5 – Follow up

Once a warning letter has been issued, you should monitor the employee to ensure their performance or conduct has improved. If a timeframe or review date was included in the warning letter, it is important that you have a review meeting with the employee in accordance with the letter. This will show that you are treating the matter seriously.

If the employee's performance or conduct has not improved, further disciplinary action may be required up to and including termination of the employee's employment. For instance, a show cause process may be appropriate where the employee has not made any attempts to improve or has continued to perform poorly or engage in unsatisfactory conduct.

If the warning letter was a final warning and the employee has not improved, termination may be the next step. Before you proceed to termination, you should contact Employer Assist to discuss the process and obtain advice on whether the process has been procedurally fair and your grounds for termination can be relied upon.

Need assistance?

Employer Assist provides all HVIA members with advice regarding all aspects of employment matters, including warning, show cause, disciplinary action, and termination processes.

For more information please contact Employer Assist on **1300 MY HVIA (1300 694 842)** or hvia@employerassist.com.au.

We look forward to hearing from you.

Emma Dalley and the **HVIA Employer Assist** team