



MANAGING COMPLAINTS, MISCONDUCT AND UNSATISFACTORY PERFORMANCE POLICY

Best Practice - Quality Area 4

Policy

This policy sets out the procedures and guidelines for:

- Staff counselling
- Disciplinary procedures

Purpose

The purpose of this policy is to guide the employer in managing concerns about an employee's work performance or conduct.

Issues related to employee's work performance or conduct will normally be addressed by the employer through a procedure that commences with discussion/counselling before proceeding to a formal and structured discipline procedure (however there may be instances where it is appropriate to have a formal discipline procedure enacted immediately particularly where there are allegations of serious and wilful misconduct).

Open communication is encouraged between the employer and employee to ensure that matters of concern are clearly articulated and both parties have the opportunity to address matters raised in the discussion.

The right of all parties to confidentiality must be respected. The procedures set out in this policy will be implemented within the context of rights and obligations on both employers and employees under relevant awards, industrial agreements or legislation.

Scope

This policy applies to the employer (Committee of Management) and all employees.

In implementing this policy, the employer will act in accordance with the requirements specified under relevant awards, industrial agreements or legislation, and in a fair and equitable manner.

Employees are to act in accordance with this policy.

Definitions

Counselling procedure: A method of dealing with the work performance of an employee, or a complaint relating to an employee, through discussion between the employer and employee without recourse to formal disciplinary procedures.

Discipline procedure: A formal procedure normally consisting of one or more written warnings and, if warranted, can result in termination of employment.

Definitions

Employer: For the purpose of this policy, a legally constituted committee or employing body.

Unacceptable conduct or misconduct: Behaviour of an employee that justifies the implementation of immediate disciplinary processes, which may lead to termination of employment, including termination without notice or pay in lieu of notice.

Warning: A formal discipline procedure issued in writing and also delivered verbally.

Procedures

Conflict of interest

Committee members, who may have lodged a complaint or have been personally involved in the matter, are not permitted to be involved in the discussion or decision making processes relating to the complaint or performance issues, or participating in the subcommittee investigating the issues.

Investigation and verification of the issues to be raised

In relation to complaints about a staff member's work performance or conduct, the committee will undertake an investigation as appropriate to determine if the allegations raised are substantiated or not. This includes reviewing all relevant evidence and adhering to procedural fairness/natural justice.

The committee delegates authority to the President to appoint any two committee members to a subcommittee to conduct an investigation into the matters raised. Where complaints have been received in relation to the conduct or performance of an employee, in accordance with procedural fairness, the individual employee concerned must be given the opportunity to respond to the allegations raised in the complaint as part of that investigation.

This subcommittee will, when it has completed its investigation, provide a report to the committee.

In ensuring that the principles of procedural fairness and natural justice are applied when managing complaints and work performance issues relating to employees, the following should be observed:

- the right of an employee to know the allegation/s being made against her or him
- the right of each party to be heard in respect to the allegations
- the right of each party to be treated fairly
- the right of the employee to have a support person present during interviews
- the right of each party to a decision maker who acts fairly and in good faith.

Committee approval

No action in relation to complaints or work performance of an employee will occur without the prior approval of the Committee of Management. All decisions relating to complaints or performance of staff will be made at a committee meeting, and all committee members will respect the confidentiality of the information discussed.

Work performance counselling procedure

Purpose of counselling

This counselling procedure will not apply in situations where there is conduct by the employee that justifies immediate disciplinary action, such as serious and wilful misconduct, which may result in a written warning or termination of employment.

The counselling procedure is intended to facilitate communication between the parties and to assist (where applicable) the employee to address matters related to their work performance or conduct, and for the employer to identify concerns raised and to articulate required conduct/work performance levels.

It provides an opportunity for the employer to discuss, and attempt to resolve concerns relating to an employee's work performance/conduct, without needing to issue a formal written warning.

In the event that the concerns relating to an employee's work performance or conduct are not improved to the satisfactory level within a reasonable timeframe, the matters would be dealt with under the formal discipline procedure.

Counselling procedure

The employee must be notified in writing of the date, time and venue of the counselling meeting and the nature of concerns to be discussed/complaints made.

The employer should meet with the employee to discuss identified areas of concern related to the employee's work performance or conduct. Discussions should identify what changes or outcomes are required to address the concerns raised by the employer and to provide the employee with an opportunity to respond. During the counselling meeting, both the employer and employee should listen to, and carefully consider, the views, reasoning and explanations provided by the other party.

The general content of the counselling meeting, and any specific outcomes and the timelines for these to be achieved, should be recorded in writing, a copy of which will be kept by the employer and a copy will be given to the employee.

Work discipline procedure

Purpose of the discipline procedure

The discipline procedure is intended to address areas of concern related to the employee's performance or conduct, through a formal structured process within reasonable timelines, using relevant strategies for conflict resolution and a process of evaluation/review.

Following completion of the formal investigation and where the allegations/complaints are substantiated, the employee will be given a warning, issued in writing as well as verbally, in relation to the conduct/work performance issues. It is important for employees to understand that the discipline procedure normally consists of two warnings and, if necessary, will end in termination of employment where the performance or conduct of an employee fails to meet the required standard within appropriate timelines. Conduct that falls within the scope of unacceptable behaviour or serious and wilful misconduct, that justifies disciplinary action may also result in termination of employment.

Discipline procedure following an investigation of substantiated/partially substantiated allegations

The employee will be notified in writing of the date of the disciplinary meeting and the issues of concern.

The employee may request the attendance of a union representative or other support person at the meeting.

During the disciplinary meeting, both the employer and employee should listen to and carefully consider the views, reasoning and explanations provided by the other party. The general content of the disciplinary meeting, and any specific outcomes, will be recorded in writing by the employer and a copy given to the employee. Records of disciplinary procedures and the issuing of warnings will be kept on the employee's personnel file normally for a period of twelve months, after which, if there are no further warnings, they will be removed and either destroyed or returned to the employee at the discretion of the employer.

The employer will respect the right of the employee to request in writing a review of the decision to issue a warning in light of any additional information provided by the employee.

The employer will abide by any obligations relating to disciplinary procedures, including maintaining employee entitlements, contained in any relevant industrial agreement, to which the employer is a respondent party.

The section *Guidelines for meeting with employees* on the following pages contains some guidelines for meetings between employers and employees convened as part of this procedure.

Unacceptable conduct by employees

The employer is required to promote an environment that is free of any harassment (including sexual and sex-based harassment), bullying, discrimination,, intimidation or abuse.

Employees must not treat children, parents, visitors or other employees in a manner involving any form of harassment (including sexual and sex-based harassment), bullying, discrimination, intimidation or any treatment of a demeaning, threatening or abusive manner. Staff will at all times act in accordance with the requirements of the *Children's Services Act 1996* and *Children's Services Regulations 2009*.

Conduct that falls within the scope of unacceptable behaviour or serious and wilful misconduct, that justifies disciplinary action and that may result in termination of employment including instant dismissal, includes, but is not limited to:

- verbal abuse or threats
- any form of physical abuse or corporal punishment
- any form of verbal abuse that is of a discriminatory nature
- remarks that could be seen as offensive or constitute sexual harassment or sex-based harassment

- intimidatory behaviour
- treatment, particularly of children, that involves frightening, threatening or demeaning techniques
- a serious breach of the *Children's Services Act 1996* or *Children's Services Regulations 2009*.

Specific examples relating to an early childhood service include:

- failing to take every reasonable precaution to protect children from any hazard likely to cause injury
- failing to ensure that any child is adequately supervised
- subjecting children to any form of corporal punishment
- any discipline of children that is unreasonable in the circumstances
- endangering the health and safety of the children
- fraud and theft
- attendance at work while under the influence of alcohol or non-prescription/illicit drugs.

In the event of a suspected breach of this policy related to unacceptable conduct or serious and wilful misconduct, an investigation of the suspected breach will be undertaken by the employer as soon as possible, giving consideration to the relevant circumstances. The committee delegates authority to the president to decide whether a suspected breach of this policy has occurred, and the president will appoint two committee members to a subcommittee to conduct an investigation. The subcommittee should report their findings back to the committee.

Where the employer has reasonable grounds to conclude that a breach of this policy may have occurred, the employee may be suspended from duty without loss of ordinary pay, pending an investigation. The committee delegates to the president the authority for any decision relating to the standing down/suspension of employees with pay, pending an investigation.

As part of the investigation process and in accordance with procedural fairness and natural justice, the employee will be given an opportunity to respond to the matters raised prior to the employer making any final decision.

The committee (excluding the investigation sub committee) will meet as soon as possible after the investigation has been completed and, based on the report received from the subcommittee, will decide action to be taken.

The employer will notify the employee in writing of the outcome of the investigation and any appropriate actions to be taken by the employer.

Guidelines for meeting with employees

Convening a meeting with employees

The procedures in this policy may necessitate meetings between a subcommittee, or committee members appointed by the committee, and employees to discuss and address concerns raised. Please note, the employee may elect to have a support person accompany them to any or all meetings to discuss concerns raised and investigation outcomes.

The following are guidelines for the conduct of these meetings.

During the meeting with employees:

- The subcommittee/committee members will summarise the employee's work performance issues or conduct that are of concern, and refer as appropriate to the employee's position description.
- The subcommittee/committee members will provide details to the employee of specific instances/examples in which there has been a failure to comply with requirements relating to work performance or conduct.
- The employees will be given an opportunity to comment on and explain their own view of the work performance issues or conduct.
- The subcommittee/committee members will outline the required outcomes in relation to the particular work performance issues or conduct.
- Employees may request the attendance of a union representative at a warning meeting, where this is consistent with a relevant federal award or industrial agreement.

Outcomes

- The subcommittee/committee members will clearly identify and inform the employee of necessary requirements and/or changes so that the employee can address issues related to work performance or conduct.
- The subcommittee/committee members will consider any requests made by the employee for appropriate and affordable training or support that could be of assistance to the employee in addressing their performance concerns..
- Where appropriate, a monitoring period and date will be set to review performance/conduct.

Record of meetings

Where appropriate, the content and any specific outcomes or requirements identified during the meeting with the employee will be recorded in writing by the subcommittee/committee members and a copy given to the employee. In situations where interviews or meetings are conducted with employees as part of the discipline procedure, an appropriate written record of the meeting will be prepared by the subcommittee/committee members and a copy given to the employee.

Key responsibilities and authorities

The committee will determine whether it is necessary to take action under this policy in relation to:

- counselling procedures
- disciplinary procedures, including the handling of unacceptable conduct or serious and wilful misconduct by employees.

All employees and members of the committee need to be aware of the policy and its contents.

The committee will provide a copy of the policy to:

- all current employees
- all new employees as part of orientation process
- all committee members when policy is adopted and as part of the handover process each year.

Resources and support

- *ELAA Employee Management and Development Kit*
<https://elaa.org.au/resources/free-resources>
- ELAA industrial relation advisers will provide advice and support when required.

Evaluation

To assess whether this policy has achieved the purposes outlined in this policy, the committee will:

- obtain feedback from employees and committee members on the effectiveness of the policy
- assess whether the issues dealt with under the policy were resolved.

Authorisation

This policy was approved on by the Clyde St Kindergarten Inc. Committee of Management at its committee meeting on 8 December 2021.

Review Date

This policy will be subject to review by the Committee in consultation with employees (and parents of students, as appropriate) every 2 years with the next review due in October 2023.

Appendix

Explanatory notes

The employer is responsible and accountable for the standard and content of the program, care and education provided by the service, and for ensuring that it meets both the needs of families using the service and the requirements of relevant government legislation and funding agreements.

Staffing will change from time-to-time and problems may arise with employees that cannot be resolved other than through formal complaints processes. Therefore employers are advised to adopt a policy on managing complaints about staff behaviour and performance as part of the service's staff policies. This will ensure that if the need arises, a fair process ensuring principles of natural justice are observed, will be applied in a way that allows the employer to address the issues of concern while still protecting the rights of employees. Even if counselling or disciplinary processes are used, the aim should always be to try and resolve the issue positively.

The attached policy, which has been developed following consultation with the unions – the Australian Education Union (AEU) and the Liquor Hospitality and Miscellaneous Union (LHMU) – clearly sets out, for the employer and employees, the procedures to be followed if a problem arises in relation to an employee's performance or conduct.

Important actions required to adopt the policy

- Draft policy circulated to all committee members and employees.
- Discussions held with all employees in relation to the draft policy, prior to the committee meeting at which it is to be discussed and adopted.
- Draft policy is placed on the agenda for committee meetings, and at the meeting the committee discusses both the policy and comments from employees.
- Committee formally adopts the policy at the committee meeting.

Implementation of policy

- Copy of policy placed at the service.
- Committee provides all employees with a copy of the final policy.
- Copy of the policy provided to all new employees as part of their orientation process.
- Copy provided to all new committee members as part of the handover process each year.
- ELAA is contacted if any further information is required, or assistance is needed in implementing the policy.