



# FAIR WARNING – FAIR ACTION

Empowering managers to support professional behaviour

## What authority do managers have to deal with employees who repeatedly engage in unacceptable behaviour that does not reach the threshold of misconduct?

The Code of Conduct outlines the standards of behaviour that are expected of employees. The Code is not an exhaustive or prescriptive list, but employees are expected to undertake their duties in a timely and professional manner and follow the reasonable instructions of executive staff.

If an employee engages in behaviours that are disruptive to the effective functioning of a workplace, managers should respond promptly by using a “fair warning” approach to address the behaviours.

Managers should initially counsel the employee. If the poor behavior persists, they should meet with the employee and provide them with an opportunity to respond to identified concerns. If necessary, the Manager may subsequently provide a written direction. If poor behaviour occurs again, managers have the authority to give the employee a further written direction not to engage in the conduct and a warning that repeated unacceptable behaviour will result in disciplinary action being taken.

If the Code of Conduct is breached a third time, managers have the authority to refer the matter to the Employee Performance and Conduct

Directorate (EPAC) with a recommendation that action be taken.

## What sorts of behaviours may constitute misconduct?

Managers must make a professional judgment about the sorts of behaviours that may constitute misconduct within the context of their workplace. For example – behaviours such as consistently being late for work, failing to attend duties, refusing reasonable instructions or treating colleagues discourteously may all constitute minor misconduct.

In some circumstances, however, the behaviour may be so extreme that it requires an immediate referral to EPAC for investigation.

## What might result from misconduct?

Depending on the nature of the misconduct, disciplinary actions include a caution and reprimand, a fine, demotion, a direction to resign or dismissal.

## How is this different from current processes?

It provides a clear, fair warning process for managers to follow. Currently, managers do not always feel they have the authority to act immediately to address employee behaviour, or do not refer matters to EPAC until the relationship between the employee and the executive has seriously deteriorated.

This has sometimes resulted in workers compensation claims and allegations of bullying from one or both parties.

## Is this process procedurally fair?

Yes. An employee has the right to know the basis for any concerns about their conduct and the right to respond to those concerns and be fairly heard. Managers must ensure they have clearly advised the employee about the concerns. This should be done in a face to face meeting. The employee may bring a support person to the meeting and either respond at the meeting or within an agreed timeframe.

If an employee refuses to meet to discuss the concerns, managers should make a note of their efforts to meet with the employee and should then proceed with the process, which may include forwarding them a letter of direction.

Copies of written directions must be kept in a secure place and if required, forwarded to EPAC if the conduct matters are not resolved.

## Employee Performance and Conduct Directorate

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