

Disputes in the workplace

Effective dispute resolution can help employers to maintain good relationships with their employees by dealing with workplace issues at an early stage. Employees need to know that their grievances will be taken seriously by an employer. A good dispute resolution process may help to avoid the costs of resolving a claim externally; for instance, via arbitration before Fair Work Commission or through litigation in the Federal Court of Australia.

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Poor performance and warnings

An employee can be dismissed for poor performance. If an employer or manager is unhappy with the performance of an employee, they should make the worker aware of their concerns and give them time to improve.

However, it is a good idea for businesses to have policies in place that outline the number of written and verbal warnings that will be issued to an employee before they are dismissed. It is also a good idea to communicate these policies to all employees so that they understand the process and are aware of their rights and responsibilities.

An employee can also be dismissed for breaking company rules or policies – but only if the rules have been made clear and the employer is confident the employee was made aware of and understood the rules in the first place.

There are times when employees will formally express dissatisfaction about a situation in the workplace. A grievance will usually be raised by an individual employee, but it may also be initiated by a group of employees or a union acting on their behalf.

Developing grievance and dispute procedures will help employers to resolve problems at the workplace level. These formal procedures set agreed guidelines to be followed to resolve workplace problems. Grievance procedures may be developed internally or set out as a provision in an award or agreement.

Workplace counselling may also assist employees who are having difficulties at work. Counselling can help employees to identify and deal with the causes of work-related problems before they become a major issue.

It is good practice to keep a record of significant problems encountered by employees, including any measures taken to deal with these problems, for example, counselling, further training or warnings about poor performance.

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Counselling and disciplinary procedures

Counselling skills are skills that employers/managers must learn and practice in order to improve them. They must also be aware of their limitations when counselling employees. They can't solve all the life problems of their staff but they should be able to assist them with difficulties they may be having at work.

How to conduct an effective counselling session

Counselling at work is to help people identify the causes of work-related problems, such as poor performance. The employer/manager should not feel that they must identify and solve the causes of personal problems such as depression, alcoholism or marital problems for an employee. If personal problems do become apparent, it is important that employers refer the employee to the appropriate experts.

The following checklist should assist:

Do's	Dont's
Give the employee recognition	Don't assume the role of a parent scolding a child
Provide a warm atmosphere of communication	Don't moralise
Encourage the employee to gain insight into the problem	Don't threaten the employee of the likely consequences if they don't get their act together
Give the employee a clear picture of their strengths and weaknesses	Don't get into an argument
Encourage the employee to bring out any conflicts, personal problems and ideas	Don't cut off an employee's comments
Suggest positive steps to rationalise the problem or improve performance	Don't give the employee false hope
Create a desire with the employee to change Build a level of support that is conducive to both friendliness and efficiency	Don't expect a dramatic change in the employee because of one counselling session

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What if counselling doesn't solve the problem?

Do not expect improvement immediately or after one counselling session. An employee may need an adjustment period and probably some time to steadily improve. Employers/managers must also be committed to the counselling process and reward and recognise the employee's efforts to improve.

If the counselling doesn't solve the problem, an employer may have to formally discipline the staff member.

To do this, employers must have a disciplinary procedure in place and every employee should be familiar with this system and understand the steps involved.

If an employer is facing a situation where an employee may be dismissed, it is essential that they can document and substantiate their actions.

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Sample disciplinary procedure

Step 1 - Employees who are performing unsatisfactorily will be counselled so they understand the standards expected of them. They will be offered assistance and guidance in achieving the expected standards.

Step 2 - Confidential records of any counselling undertaken will be made. The employee will be shown and given a copy of the written records and will have an opportunity to comment on its contents. This can be done either in writing or orally. The record will only be placed on the employee's personal file when the employee has been given the opportunity of responding to the record and adding any notations regarding the contents of the record.

Step 3 - Employees whose performance or behaviour is unsatisfactory will be given adequate time to demonstrate a willingness to improve. If at the end of this period the employee shows no willingness to improve in the opinion of the employer, a final warning in writing will be issued to

the employee. This notice will inform the employee in writing that disciplinary action up to and including dismissal may be taken if the employee does not cease the unsatisfactory performance or behaviour immediately.

Step 4 - The employer also has the right to summarily dismiss an employee for serious and wilful misconduct.

Step 5 - At every stage of the disciplinary process, the employee has the right to have another employee or union representative present as a witness.

How many warnings should an employee be given before disciplinary action occurs?

There is no hard and fast rule. The employer/manager should give their employee a number of chances to improve their behaviour or conduct. But the employer should not issue a large number of warnings as this could give the staff member the impression that his or her conduct is not really serious and will not merit dismissal.

In general, three warnings would be considered adequate. It is suggested employers make sure that their employee realises the number of warnings to be given will not be open-ended.

