

WE KNOW

HUMAN RESOURCES

HOW TO GIVE A WARNING

QUICK GUIDE

This Quick Guide provides summarised information about the process an employer should follow to give an employee a formal warning.

INTRODUCTION

As an employer you must be able to potentially justify any warning you issue to an employee by showing that such action was, on an objective basis, (a) fair and reasonable in all the circumstances, and b) determined after following fair process. The act of issuing a warning is open to challenge in the same way that dismissal may be challenged. It is important therefore that employers approach the disciplinary process with care and thoroughness.

Below is a five step process that you should follow prior to issuing an employee with a warning. Additionally, you must ensure that you meet any requirements regarding disciplinary action that exist in the employee's employment agreement or your organisation's house/work rules.

This five step process is only a guide and you are strongly encouraged to seek advice from an adviser at the Employers' Chamber before commencing a disciplinary investigation or issuing a warning. You may wish to engage one of our specialist Employment Lawyers to conduct the process for you. You can contact us by phoning 03 366 5096 or by emailing info@cecc.org.nz.

For more detailed information on disciplinary processes, including information about how many and what types of warnings should be issued before an employee is dismissed, see our Quick Guide to The Warning Process, available on www.cecc.org.nz

STEP ONE – INVESTIGATE

Conduct an investigation into the alleged misconduct or poor performance. This must be full and fair. Gather information from all possible sources (review records, interview witnesses, familiarise yourself with any relevant provisions of the applicable employment agreement etc.) and compile the information to establish whether there is a case for the employee to answer.

STEP TWO – ARRANGE TO MEET WITH THE EMPLOYEE

Write a letter to the employee inviting them to attend a meeting so that they can provide an explanation in response to the information you have compiled in step one. The letter should:

- Clearly inform the employee of the alleged misconduct or poor performance providing sufficient detail to enable the employee to fully understand your concerns (attach relevant information and any documentary evidence).
- Inform the employee that they are entitled have a representative or support person present at the meeting.
- Inform the employee of the possible outcome of the investigation (e.g. a written warning), making it clear that no decision will be made without considering the employee's explanation.

- Appoint a time and place for the meeting

(A template letter is available from the Chamber.)

You should give at least 2-3 days advance notice of the meeting. If you are conducting the meeting yourself, it is wise for you to have a witness present to take notes.

STEP THREE – MEET WITH THE EMPLOYEE

At the meeting go over the alleged misconduct or poor performance in detail, ensuring that the employee has been provided with all relevant information. Then listen to the employee's explanation. Remember this is an investigation: an employer should do more than passively receive an explanation. If you believe the employee's explanation to be less than credible or conflict with other accounts, you need to put that view to the employee and note and consider their response. Regardless of what the employee says (or doesn't say) do not make a decision at the meeting. Adjourn to consider the employee's explanation and make a reasoned decision on the action you will take. Be prepared to consider the necessity for further investigation as a result of the employee's explanation.

STEP FOUR – FURTHER INVESTIGATION AND MEETING

If no further investigation is required you can skip step four. If the employee provides information at the initial meeting requiring further investigation then you must be prepared to do so. All new information that is gathered must be communicated to the employee and you must meet with the employee (and their representative or support person) again to allow them to provide any further explanation(s) in response to the additional information. The basic principle is to ensure that any information which you intend to reply upon in support of disciplinary action must have first been put to the employee so that they have had an opportunity to refute or explain.

STEP FIVE – MAKE AND COMMUNICATE DECISION

Once the investigation is complete and you have heard and considered the employee's explanation you can make a decision on what action, if any, you will take. It is crucial that you keep an open mind and do not make a decision until you reach this stage of the process.

You must decide whether the employee's conduct, on an objective basis, warrants disciplinary action or whether it should be handled in a different manner, e.g. retraining.

You can initially convey your decision to the employee verbally, but if you decide to issue a warning then a written copy should be subsequently provided to the employee.

A warning should include:

- A statement of the misconduct or poor performance which occurred.
- A record of the date(s) upon which you met with the employee and whether or not the employee elected to have a representative or support person present.
- The employee's explanation, if any.
- Whether or not you accept their explanation.
- Your decision (warning/final warning/dismissal).
- The remedial action the employee is required to take.
- The consequences should there be any further instances of misconduct or poor performance, e.g. final warning/dismissal.
- Optionally, the requirement for a review after a specified period of time.
- The period during which the warning will remain valid (optional).
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(A template warning letter is available from the Employers' Chamber.)

Finally, ensure that the warning or the need for other remedial action is recorded and retained on the employee's personnel file.

For further information regarding How to give a Warning or other aspects of Employment Relations, please contact The Chamber, email info@cecc.org.nz or phone 03 366 5096.