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Additional resources:

- Warning letter template

Employee dismissal

Having to dismiss an employee isn't fun, but sometimes it's the only option.

There are many fair reasons to terminate an employee's contract, including:

- poor performance
- misconduct
- dangerous behaviour
- refusing to follow instructions
- no further need for the position (retrenchment or redundancy)

Whatever the reason, it is imperative that the employer follow procedures consistent with the guidelines clearly spelt out at Fair Work Australia (in Australia) www.fairwork.gov.au and the Ministry of Business, Innovation and Employment (New Zealand) www.business.govt.nz.

Overall, the principles are the same, but there are some variations in detail and interpretation.

A common fault in many workshops is that when a decision is made to dismiss someone, they quickly realise that the correct guidelines haven't been followed or the right amount of evidence hasn't been properly filed.

There is no choice – follow the governing body's guidelines, or risk facing an unfair dismissal case and, even worse, getting stuck with under-performing staff.

Some key principles that must be followed, and that are consistent in Australia and New Zealand are:

Set the job expectation at the beginning

The first thing that must be in place is a document that outlines the workshop's expectations of each employee. These might be found in a job agreement or job description, a responsibility schedule, workplace policies, internal procedures and reinforced through employee training. Failure to have this in place will mean that the workshop will be unable to prove how the employee was underperforming. Whatever the documentation used, it should be signed by both parties and stored safely.

Probation period

Most employment agreements will include a trial or probation period. If employee issues are noticed almost immediately, take advantage of the probation period to discontinue the employment contract.

Immediate dismissal

An employee can be dismissed without notice or warning when an employer has reasonable grounds to prove that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct might include theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. It goes without saying that the employer must have reasonable grounds for making the report.

Act on issues immediately

Where an employee is behaving badly or underperforming, take immediate action. If poor behaviour is ignored, all the business is doing is empowering all employees to drop their game. Failure to take immediate action will indicate to fair work authorities that the issue could not have been that serious. Being too busy to deal with the employee is not a fair excuse.

Fair warning to terminate employment

The often quoted 'three-strikes policy' is not a legal requirement, but employees should be given fair warnings aimed at improving their performance. On-the-job assistance and extra training might be involved as well. The ruling on what is *'fair warning to improve performance'* is grey and it will be assessed on a case-by-case basis.

In these cases, the employer will give the employee a reason why they risk being dismissed. The reason must be valid and based on the employee's conduct or capacity to do the job.

The employee must be warned verbally, or preferably in writing, that they risk being dismissed if there is no improvement.

The employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem.

Rectifying the problem might involve the employer providing additional training and ensuring the employee knows the employer's job expectations.

At www.tatbiz.net.au/resources, there's a template that can be used for a warning letter.

Consistency in approach

Enforcement of workplace policies, procedures and standards needs to be consistent across the entire business. Owners must lead by example and the expectation for all employees needs to be the same. The authorities don't look favourably on instances of double standards.

Keep records

The responsibility for keeping records rests with the employer. All disciplinary discussions about job performance, formal or informal, and training on policies and procedures must be documented and preferably signed by both parties and stored in the employee's file.

In any unfair dismissal case if the employer can't provide the appropriate evidence the decision will usually be in favour of the employee.

Don't wait until employee issues get out of hand. A business must regularly review its human resource procedures to be fair on both parties.

The first step is to take the time to review the official policies at www.fairwork.gov.au (Australia) and www.business.govt.nz (New Zealand). Both are simple to follow and easy to understand.

The place to start is www.tatbiz.net.au/resources

Just go for it!