

# Sport and Recreation Human Resources Guide



Department of  
Local Government, Sport  
and Cultural Industries

GOVERNMENT OF  
WESTERN AUSTRALIA



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# Human Resources Guide: Where would you like to go?



# Table of Contents

<u>5</u>	<b>Introduction: SSA Human Resources Guide</b>
<u>6</u>	<b>Recruitment &amp; Selection</b> <ul style="list-style-type: none"><li>• The Recruitment Process</li><li>• The Selection Process</li><li>• Where to find the Job Description, Recruitment Advertisements, Interview Checklist, Job Offer/Employment Contract &amp; Rejection Letters templates</li></ul>
<u>12</u>	<b>Employment Contracts &amp; Essentials</b> <ul style="list-style-type: none"><li>• The National Employment Standards</li><li>• Prevailing Awards and Agreements</li><li>• Employee Classifications</li><li>• Working with Children Checks and National Police Clearances</li></ul>
<u>26</u>	<b>Induction &amp; Onboarding</b> <ul style="list-style-type: none"><li>• Conducting a Successful and Effective Induction Process</li><li>• Where to find the Induction Checklist, Timesheet and Vacation Request Form templates</li></ul>
<u>30</u>	<b>Conduct at Work</b> <ul style="list-style-type: none"><li>• Use of Internet</li><li>• Use of Email</li><li>• Use of Social Media</li></ul>
<u>37</u>	<b>Employee Performance</b> <ul style="list-style-type: none"><li>• Planning the Performance Appraisal</li><li>• Conducting the Performance Appraisal</li><li>• Following the Performance Appraisal: Unacceptable Performance?</li><li>• Employee Exits</li><li>• Where to find the Performance Appraisal, Disciplinary &amp; Capability Letter, Study Support Program Letters, Expense Reimbursement Form and Employee Exit Checklist templates</li></ul>
<u>46</u>	<b>Building a Safe &amp; Inclusive Work Environment</b> <ul style="list-style-type: none"><li>• Preventing Bullying &amp; Harassment at Work</li><li>• Ensuring Equality in the Workplace</li><li>• Drug &amp; Alcohol Abuse</li><li>• Occupational Health &amp; Safety</li></ul>
<u>60</u>	<b>Disciplinary Procedures</b> <ul style="list-style-type: none"><li>• Suspension</li><li>• Counselling</li><li>• Formal Investigations</li><li>• Warnings for Employee Misconduct</li><li>• Appeals</li></ul>
<u>68</u>	<b>Handling Employee Concerns &amp; Complaints</b>

## Introduction: SSA Human Resources Guide

This HR guide is provided as a central human resources policy and process reference for effective human resources management within the organisation.

This guide is provided as a reference for the effective management of human resources within state sporting organisations.

SSAs should update policies, procedures and general processes from time to time to reflect changes in the workforce, employment trends, economic conditions and state and federal legislation. However, any changes will be consistent with the organisation's approach to:

- Communicate organisation standards and expectations in all aspects of employment including performance;
- Value diversity and assure equal employment opportunity and a workplace where relationships are based on mutual respect;
- Treat all staff, workers, contractors and stakeholders in a professional, non-discriminatory manner;
- Provide safe, effective working conditions; and
- Provide competitive employment terms and conditions.

Any changes will be fully consulted on and communicated to all staff through normal communication channels. This guides will also be updated as necessary.

### Note

Matters related to employment are governed by state and federal legislation and are subject to change. It is the responsibility of the organisation to ensure the policies and guidelines contained within this guide remain consistent and current with prevailing legislation.

Further information in this regard can be obtained at [www.fairwork.gov.au](http://www.fairwork.gov.au) which advises employers on issues related to the Fair Work Act, National Standards of Employment and Sporting Organisation Awards.

# Recruitment & Selection



# 1. Recruitment & Selection

## Contents

Topic	Page Number(s)
Recruitment Process	<a href="#">8</a>
Selection Process	<a href="#">9</a>
Where to find templates	<a href="#">11</a>

# 1. Recruitment & Selection



## THE LEGAL HR ESSENTIALS

### The Recruitment Process

The primary objectives regarding recruitment are that staff are employed fairly and expertly based upon relevant skills and experience, ensuring they are properly inducted, and ensuring they are aware of the required standards of business conduct including use of email and the internet.

#### Creating a Job Advertisement

In drawing up the job description and conditions of service you will need to ensure that no job applicant receives less favourable treatment than another on the grounds of disability, gender, race, religion or belief, age, sexual orientation, marital status, parental status, or caring responsibilities, and that no applicant is placed at a disadvantage unjustifiably by requirements or conditions which have a disproportionately adverse effect on a particular group.

The job advertisement should primarily include:

- A description of the job being advertised (list of the main duties and responsibilities)
- A specification of the qualifications and experience which candidates will be expected to possess
- Details of the appropriate conditions of service and details about the organisation
- A brief statement about the appointment procedure will also be provided and;
- If possible, an indication of the date (or week) when interviews will be held.

#### Publishing a Job Advertisement

Job vacancies will be advertised utilising a variety of methods and will not be confined to those media which, because of their particular source of applicants, provide only or mainly applicants of a particular group. Primary recruitment sites for the industry include;

- Sportspeople.com.au website
- WA Sports Federation website and weekly e-newsletter
- Department of Sport and Recreation website
- Seek.com.au

All vacancies will also be posted on the organisation's Intranet, and internal notice boards.



#### Best Practice:

Organisations should try to facilitate internal promotions wherever possible as development opportunities for current staff.

# 1. Recruitment & Selection



## THE LEGAL HR ESSENTIALS

### The Selection Process

#### Candidate Privacy

All submitted candidate applications forms must be kept private and confidential and should only be made available to those directly involved in the recruitment and selection process.

#### Organising Interviews

Once candidates have been shortlisted, time/dates for interviews should be organised and a set of interview questions will need to be agreed upon by the interview panel in advance.

The questions will need to be developed from the current job description for the post. The panel will also seek to develop questions which ask the candidates to give examples of their previous relevant experience and suitability for the role.

#### Interview Panel

The interview will need to be held by a panel comprising of ideally three persons, but a minimum of two persons to eliminate bias.



#### Best Practice:

- Time should be allocated between interviews for the panel to discuss each candidate and to assess the candidate's suitability for the role.
- It should be remembered that an interview is a two way process, and candidates will be given every opportunity to ask questions about the organisation, to ensure that they have a full understanding of the post for which they are applying and the way the organisation operates

#### Board Appointments

The selection and appointment of the Chief Executive must be made by members of the Board and the panel will be chaired by the Board Chairman.

#### Successful Candidates

All successful appointments must be made strictly on merit and related to the requirements of the job.

All offers of employment will be made conditional upon satisfactory results from the following:

- Two satisfactory references;
- Confirmation of the right to work in this country (if appropriate)
- Obtaining of certain job pre-requisites, e.g. Police Certificate, Working With Children Certificate

#### Unsuccessful Candidates

All interviewed candidates who were considered unsuccessful must be notified of the outcome of the selection process as soon as possible, either by telephone, email or letter.

All unsuccessful candidates' application forms and interview notes will need to be retained for one year from the date of interviews taking place. After this date they should be destroyed in a way which ensures confidentiality and a protection from privacy breach.

# 1. Recruitment & Selection



## THE LEGAL HR ESSENTIALS

### The Selection Process



#### Best Practice:

**References:** To ensure due diligence throughout the selection process, references for short-listed candidates for interview should be obtained. References will normally be sought post interview with any offer of employment made subject to receiving satisfactory references.

**Other Selection Techniques:** Outside of an interview, other selection techniques should be encouraged if relevant to the job vacancy. In such circumstances, reasonable notice and relevant information must be given to ensure that candidates have sufficient time and information to prepare.

All candidates will be asked the same questions in the same order, and their responses rated accordingly, e.g. on a scale of 1-10. The panel will each have a copy of the questions and will score independently of each other during the interview. Time should be allocated between interviews for the panel to discuss each candidate and to assess the candidate's suitability for the role (refer to the interview checklist template)

#### Probationary Period

All appointments of successful candidates into the organisation will be made subject to a probationary period of three calendar months, at which time a review meeting will take place between the post holder and their line manager to discuss progress.

At the end of the probationary period, and subject to a satisfactory report by the appropriate head of section or line manager, employees will be notified in writing that they have successfully completed their probationary period. The probationary period may be extended by a further 3 months should the individual's line manager consider this appropriate.

# 1. Recruitment & Selection



## THE LEGAL HR ESSENTIALS

All the templates below can be found in the ‘Templates Pack’ document at these locations

Template/Form	Page Number(s)
Job Description Templates	1 - 11
Recruitment Advertisements	12
Interview Checklist & Example Interview Questions	13 - 16
Job Offer (Employment Contract) & Unsuccessful Letters	17 - 23

# Employment Contracts & Essentials



## 2. Employment Contract and Essentials

### Contents

Topic	Page Number(s)
National Employment Standards	<a href="#">14</a>
Prevailing Awards and Agreements	<a href="#">21</a>
Employee Classifications	<a href="#">22</a>
Checks and Clearances	<a href="#">24</a>
Is your Organisation Legally Compliant	<a href="#">25</a>

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

The National Employment Standards (NES) are 10 minimum employment entitlements that have to be provided to all employees. The national minimum wage and the NES make up the minimum entitlements for employees in Australia. An award, employment contract, enterprise agreement or other registered agreement can't provide for conditions that are less than the national minimum wage or the NES.

The 10 minimum entitlements of the NES are:

1. **Maximum Weekly Hours**
2. **Requests for Flexible Working Arrangements**
3. **Parental Leave and Related Entitlements**
4. **Annual Leave**
5. **Personal Carers Leave and Compassionate Leave**
6. **Community Service Leave**
7. **Long Service Leave (Western Australia)**
8. **Public Holidays**
9. **Notice of Termination and Redundancy Pay**
10. **Fair Work Information Statement**

#### 1 - Maximum Weekly Hours

Ordinary hours are an employee's normal and regular hours of work, which do not attract overtime rates. Awards, enterprise agreements and other registered agreements set out any maximum ordinary hours in a day, week, fortnight or month, minimum ordinary hours in a day, times of the day ordinary hours can be worked (e.g. between 7am - 7pm). The ordinary hours can be different for full-time, part-time and casual employees.

An employee can work a maximum of 38 ordinary hours in a week.

#### 2 - Requests for Flexible Working Arrangements

Certain employees have the right to request flexible working arrangements. Employers can only refuse these requests on reasonable business grounds.

Examples of flexible working arrangements include changes to hours of work (e.g. changes to start and finish times), patterns of work (e.g. split shifts or job sharing), and locations of work (e.g. working from home).

Employees who have worked with the same employer for at least 12 months can request flexible working arrangements if they:

- are the parent, or have responsibility for the care, of a child who is school aged or younger;
- are a carer (under the Carer Recognition Act 2010);
- are 55 or older;

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

- are experiencing family or domestic violence, or;
- provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence.

Requests for flexible working arrangements have to:

- be in writing;
- explain what changes are being asked for;
- explain the reasons for the request.

Employers who receive a request must give a written response within 21 days saying whether the request is granted or refused. They can only refuse a request on reasonable business grounds. If a request is refused the written response must include the reasons for the refusal.

Employers don't have to choose between accepting or rejecting a request in full. Once a request has been made, employers and employees can discuss and negotiate to come to an arrangement that balances both of their needs.

Reasonable business grounds can include:

- the requested arrangements are too costly;
- other employees' working arrangements can't be changed to accommodate the request;
- it's impractical to change other employees' working arrangements or hire new employees to accommodate the request;
- the request would result in a significant loss of productivity or have a significant negative impact on customer service.

### 3 - Parental Leave and Related Entitlements

Employees can get parental leave when a child is born or adopted. Parental leave entitlements include:

- maternity leave;
- paternity and partner leave;
- adoption leave;
- special maternity leave;
- a safe job and no safe job leave;
- a right to return to old job.

Employees are entitled to 12 months of unpaid parental leave. They can also request an additional 12 months of leave.

All employees in Australia are entitled to parental leave.

Employees are able to take parental leave if they:

- have worked for their employer for at least 12 months:
  - before the date or expected date of birth if the employee is pregnant
  - before the date of the adoption, or
  - when the leave starts (if the leave is taken after another person cares for the child or takes parental leave)
  - have or will have responsibility for the care of a child.

Employees who have taken parental leave don't have to work for another 12 months before they can take another period of parental leave with that same

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

##### 4 - Annual Leave

Annual leave (also known as holiday pay) allows an employee to be paid while having time off from work. Awards, enterprise agreements and other registered agreements can't offer less than the NES but they can give more annual leave. All employees (except for casual employees) get paid annual leave. Full-time and part-time employees get 4 weeks of annual leave, based on their ordinary hours of work. Annual leave accumulates from the first day of employment, even if an employee is in a probation period.

The leave accumulates gradually during the year and any unused annual leave will roll over from year to year. Annual leave accumulates even when an employee is on paid leave including paid annual leave and personal leave. Annual leave does not accumulate when the employee is on unpaid annual leave, unpaid sick/carer's leave or unpaid parental leave. The Australian Government's Paid Parental Leave Scheme is not considered to be paid leave. An employee does not accumulate annual leave while being paid by the Paid Parental Leave Scheme.

##### 5 - Personal Carers Leave and Compassionate Leave

###### *Carer's Leave:*

Sick and carer's leave (also known as personal leave or personal / carer's leave) lets an employee take time off to help them deal with personal illness, caring responsibilities and family emergencies.

An employee may have to take time off to care for an immediate family or household member who is sick or injured or help during a family emergency. This is known as carer's leave but it comes out of the employee's personal leave balance. An immediate family member is defined as a spouse, de facto partner, child, parent, grandparent, grandchild, sibling, or child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

###### *Compassionate Leave:*

All employees (including casual employees) are entitled to compassionate leave (also known as bereavement leave).

Compassionate leave can be taken when a member of an employee's immediate family or household dies or suffers a life-threatening illness or injury.

Immediate family is defined as an employee's spouse, de facto partner, child, parent, grandparent, grandchild, sibling, child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner.

Employees will be able to take compassionate leave for other relatives (e.g. cousins, aunts and uncles) if they are a member of the employee's household, or if the employer agrees to this.

All employees are entitled to 2 days compassionate leave each time an immediate family or household member dies or suffers a life threatening illness or injury.

The compassionate leave can be taken as:

- a single continuous 2 day period, or;
- 2 separate periods of 1 day each, or;
- any separate periods the employee and the employer agree.

An employee does not accumulate compassionate leave. It can be taken any time an employee needs it.

If an employee is already on another type of leave (e.g. annual leave) and needs to take compassionate leave, the employee can use compassionate leave instead of the other leave.

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

Full-time and part-time employees receive paid compassionate leave and casual employees receive unpaid compassionate leave.

Full-time and part-time employees are paid at their base pay rate for the ordinary hours they would have worked during the leave.

This doesn't include separate entitlements such as incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates.

An employee taking compassionate leave must give their employer notice as soon as they can (this may be after the leave has started). The employee must tell the employer of the period, or expected period, of the leave.

#### 6 - Community Service Leave

Employees, including casual employees, can take community service leave for certain activities such as voluntary emergency management activities and jury duty (including attendance for jury selection).

With the exception of jury duty, community service leave is unpaid.

An employee engages in a voluntary emergency management activity if:

- the activity involves dealing with an emergency or natural disaster;
- the employee engages in the activity on a voluntary basis;
- the employee was either requested to engage in an activity, or it would be reasonable to expect that such a request would have been made if circumstances had permitted;
- the employee is a member of, or has a member-like association with a recognised emergency management body.

An employee is entitled to take community service leave while they are engaged in the activity and for reasonable travel and rest time. There is no limit on the amount of community service leave an employee can take.

An employee who takes community service leave must give their employer:

- notice of the absence as soon as possible (this may be after the leave starts);
- the period or expected period of absence.

An employer may request an employee who has given notice, to provide evidence that they're entitled to community service leave.

#### 7 - Long Service Leave (Western Australia)

Long service leave is an additional paid leave entitlement for employees who have worked in a business for a long period of time. Full time, part time and casual employees are entitled to long service leave.

Long service leave is 8 ⅓ weeks of paid leave after 10 years' service working in the same business. For every five years of continuous employment after this initial 10 years, an employee is entitled to 4 ⅓ weeks of paid long service leave.

If an employee resigns, are dismissed (except for serious misconduct) or made redundant, they are entitled to be paid out long service leave if they have worked continuously with the business (even if there have been different owners) for at least 7 years. If they have between 7 and 10 years' service the long service leave payment owed is worked out on a pro-rata basis for the entire period of employment, including years, months and days. If an employee leaves after working 10 or more years, their payment is worked out on completed years of service only.

More information regarding WA specific legislation can be found at:

<https://www.commerce.wa.gov.au/labour-relations/long-service-leave-0>

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

##### 8 - Public Holidays

Employees must be paid at least their base pay rate for all hours worked on a public holiday.

Awards, enterprise agreements and other registered agreements can provide entitlements for working public holidays, including:

- extra pay (e.g. public holiday rates);
- an extra day off or extra annual leave;
- minimum shift lengths on public holidays;
- agreeing to substitute a public holiday for another day;

##### Employees don't have to work on a public holiday.

However, an employer can ask an employee to work on a public holiday, if the request is reasonable. An employee may refuse a request to work if they have reasonable grounds.

The following need to be taken into account when deciding if a request is reasonable:

- the employee's personal circumstances, (e.g. family responsibilities);
- whether the employee will get more pay (e.g. penalty rates);
- the needs of the workplace;
- the type of work the employee does;
- whether the employee's salary includes work on a public holiday;

- whether the employee is full-time, part-time, casual or a shift worker;
- how much notice the employee was given about working;
- the amount of notice the employee gives that they refuse to work.

##### 9 - Notice of Termination and Redundancy Pay

A notice period is the length of time that an employee or employer has to give to end employment. To end an employee's employment (also known as firing or terminating employment), an employer has to give them written notice of their last day of employment.

An employer can give notice to the employee by:

- delivering it personally
- leaving it at the employee's last known address, or
- sending it by pre-paid post to the employee's last known address.

Employees who are resigning don't need to give notice in writing - they can give it verbally.

Employment can be terminated during leave, but the correct amount of notice still needs to be given.

##### Can notice be paid out instead of worked?

Yes. An employer can either:

- let the employee work through their notice period, or
- pay it out to them (also known as pay in lieu of notice).

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

If the employer pays out the notice, the amount paid to the employee must equal the full amount the employee would have been paid if they worked until the end of the notice period. This includes:

- incentive-based payments and bonuses
- loadings
- overtime
- penalty rates
- any other separately identifiable amounts.

If an employee's employment is ended while they're on probation, they still have to get or be paid out notice based on their length of service.

When an employee is terminated on the grounds of serious misconduct, the employer does not have to provide any notice of termination. However, the employer does have to pay the employee all outstanding entitlements such as payment for time worked or annual leave.

#### **Redundancy:**

Redundancy happens when an employer either:

- doesn't need an employee's job to be done by anyone, or
- becomes insolvent or bankrupt.

Redundancy can happen when the business:

- introduces new technology (e.g. the job can be done by a machine)

- slows down due to lower sales or production
- relocates interstate or overseas
- restructures or reorganises because a merger or takeover happens.

A genuine redundancy is when:

- the person's job doesn't need to be done by anyone
- the employer followed any consultation requirements in the award, enterprise agreement or other registered agreement.

When an employee's dismissal is a genuine redundancy the employee isn't able to make an unfair dismissal claim.

A dismissal is not a genuine redundancy if the employer:

- still needs the employee's job to be done by someone (e.g. hires someone else to do the job)
- has not followed relevant requirements to consult with the employees about the redundancy under an award or registered agreement or
- could have reasonably, in the circumstances, given the employee another job within the employer's business or an associated entity.

All awards and registered agreements have a consultation process for when there are major changes to the workplace, such as redundancies.

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### The National Employment Standards

The consultation process sets out the things the employer needs to do when they decide to make changes to the business that are likely to result in redundancies. This has to be done as soon as possible after the decision has been made to make these changes.

Consultation requirements include:

- notifying the employees who may be affected by the proposed changes
- providing the employees with information about these changes and their expected effects
- discussing steps taken to avoid and minimise negative effects on the employees
- considering employees ideas or suggestions about the changes.

#### 10 - Fair Work Information Statement

Employers have to give every new employee a copy of the Fair Work Information Statement (the Statement) before, or as soon as possible after, they start their new job.

The Statement provides new employees with information about their conditions of employment.

The Statement has information on:

- the National Employment Standards
- right to request flexible working arrangements

- modern awards
- making agreements under the Fair Work Act
- individual flexibility arrangements
- freedom of association and workplace rights (general protections)
- termination of employment
- right of entry
- the role of the Fair Work Ombudsman and the Fair Work Commission.

Providing the Statement:

- The Statement can be given to new employees:
- in person
- by mail
- by email
- by emailing a link to the Fair Work website
- by fax.

You can download the Fair Work Information Statement (PDF 128.8KB) in English: <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards/fair-work-information-statement>

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### Prevailing Awards and Agreements

Minimum conditions at work are based upon registered agreements, awards or legislation. When a business has a registered agreement in place and it covers the work that the employee does, then the minimum pay and conditions in the agreement will apply. If there's no registered agreement that applies and an award covers the business and the work the employee does, then the minimum pay and conditions in the award will apply.

There are 122 awards that cover most people working in Australia, which means many employees who aren't covered by an agreement will most likely be covered by an award.

Where no award or agreement applies, the minimum pay and conditions in the legislation will apply.

#### Agreements

Enterprise agreements and other registered agreements set out minimum employment conditions and can apply to:

- one business
- a group of businesses, or
- an individual employee (but these types of agreements can't be made anymore).

When a workplace has a registered agreement, the award doesn't apply. However:

- the pay rate in the registered agreement can't be less than the pay rate in the award
- the National Employment Standards still apply
- any terms about outworkers in the award still apply.

Registered agreements apply until they are terminated or replaced.

#### Modern Awards

The minimum wages and conditions an employee is entitled to are set out in awards (also known as modern awards).

Awards don't apply when a business has an enterprise agreement or other registered agreement and the employee is covered by it.

Awards apply to employees depending on the industry they work in or the job that they do.

There are 122 awards that cover most people working in Australia and the 2010 Sporting Award can be found at the Fair Work Australia website

<http://www.fairwork.gov.au/awards-and-agreements>

A business can be covered by more than one award depending on the jobs the employees do within the organisation.

It is a legal requirement that that copies of this award and the National Employment Standards are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

#### Employment Contracts

An employment contract is an agreement between an employer and employee that sets out terms and conditions of employment. A contract can be in writing or verbal.

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### Employee Classifications

Employees receive different entitlements depending on their type of employment.

An employment contract cannot provide for less than the legal minimum set out in:

- the National Employment Standards (NES)
- awards, enterprise agreements or other registered agreements that may apply.

All employees are covered by the National Employment Standards, regardless of whether they've signed a contract. A contract can't make employees worse off than their minimum legal entitlements.

#### Full Time Employees

A full-time employee has ongoing employment and works, on average, around 38 hours each week. The actual hours of work for an employee in a particular job or industry are agreed between the employer and the employee and/or set by an award or registered agreement.

Employees can be hired as permanent employees or on a fixed term contract.

Permanent employees are employed on an ongoing basis until the employer or employee ends the employment relationship.

Fixed term means that the employee is employed for a specific period of time or task, for example a 6 or 12 month period, and employment ends on the date specified in the contract.

#### Part Time Employees

A part-time employee:

- works, on average, less than 38 hours per week

- usually works regular hours each week
- is entitled to the same benefits as a full-time employee, but on a pro rata basis
- is a permanent employee or on a fixed-term contract.

Part-time employees get the same minimum entitlements (such as sick leave and holiday leave) as a full-time employee, based on how many hours they work each week.

#### Casual Employees

A casual employee:

- has no guaranteed hours of work
- usually works irregular hours
- doesn't get paid sick or annual leave
- can end employment without notice, unless notice is required by a registered agreement, award or employment contract.

Casual employees are entitled to:

- a higher hourly pay rate than equivalent full-time or part-time employees. This is called a 'casual loading' and is paid because they don't get benefits such as sick or annual leave
- 2 days unpaid carer's leave and 2 days unpaid compassionate leave per occasion
- unpaid community service leave

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### Employee Classifications

After 12 months of regular employment, and if it's likely the regular employment will continue, a casual employee can:

- request flexible working arrangements
- take parental leave.

#### Probation

Employers can put their employees on a probation period (also known as a probationary period) to assess if employees are suitable for the role and business.

The employer decides on the length of the probation period. It can range from a few weeks to a few months at the start of employment.

Probation periods aren't a separate period of employment. While on probation, employees continue to receive the same entitlements as someone who isn't in a probation period.

If hired on a permanent basis, an employee on probation is entitled to accrue and access their paid leave entitlements such as annual leave and sick leave.

If an employee doesn't pass their probation, they are still entitled to receive notice when employment ends and have their unused accumulated annual leave hours paid out.

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### Checks and Clearances

##### Working with Children Checks

Organisations have legal obligations under the Working with Children (Criminal Record Checking) Act 2004. It is important to know your obligations as non-compliance can result in fines of up to \$60,000 and five years imprisonment.

##### Obligations for Employers and Volunteer Organisations Include:

- All employees, volunteers, students and self employed contractors who carry out child-related work must have applied for, or currently hold a valid WWC Card.
- Ensure employees, volunteers, students and self employed contractors renew their WWC Card prior to it expiring if they are continuing in child-related work.
- Keep records to demonstrate your compliance.
- Do not engage a person in child-related work if they have been convicted of a Class 1 offence committed as an adult.
- Do not engage a person in child-related work if they are issued with an Interim Negative Notice or Negative Notice or have withdrawn their application for a WWC Check.
- Notify the WWC Screening Unit if you reasonably suspect an employee, volunteer or student has been charged with or convicted of an offence which makes it inappropriate for them to continue child-related work.

Further information regarding the Working With Children Check, related processes and exclusions can be found at <https://workingwithchildren.wa.gov.au/employers-organisations>

##### National Police Clearance

A National Police Certificate, (NPC) lists an individual's criminal and WA traffic court outcomes and pending charges that are deemed disclosable at the time of application. Applications for a WA Police NPC also include a request to spend any eligible WA convictions.

Application forms are available at participating Australia Post outlets or online. Once complete, present the form along with the application fee and 100 points of identification to any participating Australia Post outlet.

An application for a NPC can take up to 15 working days to process. Once complete, your NPC will be posted to the address nominated on the application form.

For more information visit <https://www.police.wa.gov.au/Police-Direct/National-Police-Certificates>

## 2. Employment Contracts & Essentials



### THE LEGAL HR ESSENTIALS

#### Is Your Organisation Legally Compliant?

The checklist below represents some of the workplace essentials, standards and practices your organisation must have in place, i.e. those that are required by legislation. If the organisation has not fulfilled a particular category, please refer to the relevant subheading within this section.

Subject	Yes/No	Action Required if 'NO'
Does your organisation meet the requirements of the National Employment Standards?		Review the NES and develop a plan for implementation
Do your existing employee contracts meet the requirements of the National Employment Standards		Amend contracts accordingly and ensure new contracts include the requirements of the NES
Are employees given a copy of the National Employment Standards factsheet upon commencement of employment?		Download a copy from the Fair Work website <a href="http://www.fairwork.gov.au/employee-entitlements/national-employment-standards">http://www.fairwork.gov.au/employee-entitlements/national-employment-standards</a>
Is a copy of the 2010 State Sporting Award available for employees to access?		Download a copy of the Award from the Fair Work website <a href="http://www.fairwork.gov.au/awards-and-agreements">http://www.fairwork.gov.au/awards-and-agreements</a>
Does your organisation meet the requirements of the Working with Children Check legislation?		For additional information including obligations, legal requirements, process and exclusions visit the WWC website <a href="https://workingwithchildren.wa.gov.au/employers-organisations">https://workingwithchildren.wa.gov.au/employers-organisations</a>
Does your organisation possess adequate and current Workers Compensation Insurance?		For guidelines and information related to workers compensation requirements and legislation go to <a href="http://www.workcover.wa.gov.au">http://www.workcover.wa.gov.au</a>

# Induction & Onboarding



## 3. Induction and Onboarding

### Contents

Topic	Page Number(s)
Creating a Successful and Effective Induction Process	<a href="#">28</a>
Where to find templates	<a href="#">29</a>

## 3. Induction & Onboarding



### CREATIVE STRATEGIES

#### Conducting a Successful and Effective Induction Process

Preparations should be made for the arrival of the new entrant well in advance. For example, arrangements should be made to provide desk, equipment, business cards, network accessibility and email address etc. All new employees must also be given timely induction training. This training is regarded as a vital part of staff recruitment and integration into the working environment.



#### **Best Practice: Induction Checklist**

The Induction checklist is a very useful way of ensuring that information is imparted to new employees when they are likely to be most receptive (the induction checklist can be found in the appendix of this document). It avoids overloading employees with information during the first weeks whilst ensuring that all areas are covered.

Managers/supervisors should ensure that these matters have been properly understood whilst the checklist is being completed, perhaps in the form of a weekly chat with the new entrant.

At the end of the process the induction checklist should be signed by the relevant parties and placed in the member of staff's personnel file.

Further examples of Induction and other human resources policies, processes and templates can be found at the following websites;

<http://www.fairwork.gov.au/about-us/policies-and-guides/templates> (provides free, editable templates, policies, practices and on-line development tools)

<https://www.ahri.com.au/> (Member based human resources organisation, fees apply)

<http://www.commerce.wa.gov.au/labour-relations> (provides free advice to business regarding statutory requirements together with best practice solutions for employers)

## 3. Induction & Onboarding



### THE LEGAL HR ESSENTIALS

All the templates below can be found in the 'Templates Pack' document at these locations

Template/Form	Page Number(s)
Induction Checklist	24 - 26
Vacation Request Form	31 - 33
Timesheet Template	34
Expense Reimbursement Form	35

# Conduct at Work



## 4. Conduct at Work

### Contents

Topic	Page Number(s)
Information, Communication and Technology Policies	<a href="#">32</a>
Use of Internet	<a href="#">33</a>
Use of Email	<a href="#">34</a>
Use of Social Media	<a href="#">36</a>

## 4. Conduct at Work



### THE LEGAL HR ESSENTIALS

#### Information Communication and Technology Policies

This policy sets out the obligations and expectations on employees of the organisation including contractors and temporary staff, who use the organisation's IT facilities for internet and email purposes. IT facilities are provided to assist with day to day work. It is important that they are used responsibly, are not abused, and that individuals understand the legal professional and ethical obligations that apply to them.

##### Authorisation

No person is allowed to use Organisation IT facilities who has not previously been authorised to do so by the Organisation IT Department / Line Manager. Unauthorised access to IT facilities is prohibited and may result in either disciplinary action or criminal prosecution.

##### Legislation

All users shall comply with the relevant legislation regarding data protection.

Users need to be sure that they are not breaching any data protection when they write and send emails. This could include but is not limited to:

- Passing on personal information about an individual or third party without their consent.
- Keeping personal information longer than necessary.

Email should where possible be avoided when transmitting personal data about a third party. This includes comment and opinion, as well as factual information. Therefore this should be borne in mind when writing emails, and when keeping them.

##### Responsibilities

All Users are expected to act in a manner that will not cause damage to IT facilities or disrupt IT services. Any accidental damage or disruption must be reported to IT / Line Manager as soon as possible after the incident has occurred. Users are responsible for any IT activity which is initiated under their username.

## 4. Conduct at Work



### THE LEGAL HR ESSENTIALS

#### Use of Internet

Use of the Internet by employees is encouraged where such use is consistent with their work and with the goals and objectives of the organisation in mind.

#### Reasonable personal use is permissible subject to the following:

- **Defamatory Material:** Users must not participate in any online activities that are likely to bring the organisation into disrepute, create or transmit material that might be defamatory or incur liability on the part of the organisation, or adversely impact on the image of the organisation.
- **Illegal and Inappropriate Material:** Users must not visit, view or download any material from an internet site which contains illegal or inappropriate material. This includes, but is not limited to, pornography (including child pornography), obscene matter, race hate material, violence condoning messages, criminal skills, terrorism, cults, gambling and illegal drugs.
- **Viruses:** Users must not knowingly introduce any form of computer virus into the organisation's computer network.
- **Storage and Capacity:** Personal use of the internet must not cause an increase for significant resource demand, e.g. storage, capacity, speed or degrade system performance.
- **Third Party Material:** Users must not download commercial software or any copyrighted materials belonging to third parties, unless such downloads are covered or permitted under a commercial agreement or other such licence.
- **Financial Gain:** Users must not use the internet for personal financial gain.

- **Illegal Activities:** Users must not use the Internet for illegal or criminal activities, such as, but not limited to, software and music piracy, terrorism, fraud, or the sale of illegal drugs.

- **Sending Offensive Material:** Users must not use the internet to send offensive or harassing material to other users.

- **Personal Use:** Use of the internet for personal reasons (e.g. online banking, shopping, information surfing) must be limited, reasonable and done only during non-work time such as lunch-time.

#### Breach of Policy

Staff may face disciplinary action or other sanctions (see disciplinary policy below) if they breach this policy and/or bring embarrassment on the Organisation or bring it into disrepute. Where appropriate, breaches of the law will be reported to the police.

## 4. Conduct at Work



### THE LEGAL HR ESSENTIALS

#### Use of Email

Emails sent or received on the email system form part of the official records of the organisation; they are not private property. The organisation does not recognise any right of employees to impose restrictions on disclosure of emails within the organisation. Users are responsible for all actions relating to their email account/pc username and should therefore make every effort to ensure no other person has access to their account.

#### When using organisation email, users must:

- **Storage and Capacity:** Ensure they do not disrupt the organisation's wider IT systems or cause an increase for significant resource demand in storage, capacity, speed or system performance (e.g. by sending large attachment to a large number of internal recipients, without receiving prior authorisation)
- **Defamatory Actions:** Ensure they do not harm the organisation's reputation, bring it into disrepute, incur liability on the part of the organisation, or adversely impact on its image.
- **Restricted Access:** Not seek to gain access to restricted areas of the network or other "hacking activities" is strictly forbidden
- **Offensive Material:** Must not use email for the creation, retention or distribution of disruptive or offensive messages, images, materials or software that include offensive or abusive comments about ethnicity or nationality, gender, disabilities, age, sexual orientation, appearance, religious beliefs and practices, political beliefs or social background. Employees who receive emails with this content from other employees of the organisation should report the matter to their line manager or supervisor
- **Bullying and Harassment:** Not send email messages that might reasonably be considered by recipients to be bullying, harassing, abusive, malicious, discriminatory, defamatory, and libellous or contain illegal or offensive material, or foul language
- **Illegal and Inappropriate Material:** Not upload, download, use, retain, distribute, or disseminate any images, text, materials, or software which might reasonably be considered indecent, obscene, pornographic, or illegal

- **Receiving Improper Emails:** Staff who receive improper email from individuals inside or outside the organisation, should discuss the matter in the first instance with their line manager or supervisor.
- **Privacy and Confidentiality:** Not engage in any activity that is likely to be a breach of copyright or license provision with respect to both programs and data (including intellectual property rights) or corrupt or destroy other users' data

#### Breach of Policy

Staff may face disciplinary action or other sanctions (see disciplinary policy below) if they breach this policy and/or bring embarrassment on the Organisation or bring it into disrepute. Where appropriate, breaches of the law will be reported to the police.

#### Working Remotely

Employees may sometimes need to use organisation equipment and access the organisation network while working remotely, whether from home or while travelling. The standards set out in this document apply whether or not organisation equipment and resources are being used.

## 4. Conduct at Work



### THE LEGAL HR ESSENTIALS

#### Use of Email



#### **Best Practice: Working with Emails**

**Out of the Office:** When staff are out of the office for longer than three days, staff should activate the "out of office" facility where messages should name an alternative member of staff for correspondents to contact if necessary. This will ensure that any important messages are picked up and dealt with within required timescales. The employee (or manager) should also endeavour to make arrangements for notification and access by another appropriate member of staff.

**Sensitive and Confidential Information:** Where sensitive and confidential information needs to be sent via email for practical reasons, please be aware that email is essentially a non-confidential means of communication. Emails can easily be forwarded or archived without the original sender's knowledge. They may be read by persons other than those they are intended for.

**Drafting Emails:** Users must exercise due care when writing emails to

avoid being rude or unnecessarily terse. Emails sent from the organisation may be interpreted by others as organisation statements. Users are responsible for ensuring that their content and tone is appropriate. Emails often need to be as formal and businesslike as other forms of written correspondence.

**Personal Emails:** Users should delete all personal emails and attachments when they have been read and should also delete all unsolicited junk mail. In the process of archiving emails, users should ensure inappropriate material is not archived

**Unknown Senders:** Caution should be used when opening any attachments or emails from unknown senders. Users must best endeavour to ensure that any file downloaded from the internet is done so from a reliable source. Any concerns about external emails, including files containing attachments, should be discussed with the IT / Line Manager.

## 4. Conduct at Work



### THE LEGAL HR ESSENTIALS

#### Use of Social Media

Social media offers the opportunity for people to gather in online communities of shared interest and create, share or consume content. As a member based organisation, the benefits of social media are an important tool of engagement and enrichment for our stakeholders. It is therefore important that the reputation of the organisation and the sport generally is not tarnished by anyone using social media tools inappropriately, particularly in relation to any content that might reference the organisation.

This policy aims to provide some guiding principles to follow when using social media. The intent of this policy is to include anything posted online where information is shared that might affect members, colleagues, sponsors or the organisation and the reputation of the sport in general.

#### Personal Use of Social Media

This policy does not apply to the personal use of social media platforms by members or staff that makes no reference to the organisation or any related issues.

#### Organisation Use of Social Media

The use of social media by members, officers and staff on behalf of the organisation:

- Must not contain, or link to, libelous, defamatory or harassing content;
- Must not comment on, or publish information that is confidential in anyway
- Must not bring the organisation or the sport into disrepute.
- Under no circumstance should offensive comments be made about the sports members, volunteers or staff online.

#### Breach of Policy

If detected or reported a breach of this policy may result in disciplinary action being taken. This may involve a verbal or written warning or in serious cases, termination of employment or engagement with the organisation including suspension of membership.

# Employee Performance



## 5. Employee Performance

### Contents

Topic	Page Number(s)
Planning the Performance appraisal	<a href="#">39</a>
Conducting the Performance appraisal	<a href="#">40</a>
Following the Performance appraisal: Unacceptable performance?	<a href="#">41</a>
Employee Exits	<a href="#">44</a>
Where to find Templates	<a href="#">45</a>

## 5. Employee Performance



### THE LEGAL HR ESSENTIALS

#### Planning the Performance Appraisal

The performance appraisal policy supports the performance appraisal scheme. The scheme is a formal process centered on an annual meeting of each employee and their line manager to discuss his/her work. The purpose of the meeting is to review the previous year's achievements and to set objectives for the following year. These should align individual employees' goals and objectives with organisational goals and objectives.

#### Scheduling the Appraisals

Performance appraisal discussions will be held over a designated 4 week period on an annual basis. They will be arranged by the appraisee's line manager (who must be familiar with the appraisee's work). Line managers are encouraged to provide the opportunity for an additional 6 month verbal appraisal review, mid-year and other informal reviews as necessary throughout the year. A time and venue for the discussion will be advised at least one week before the meeting takes place.

#### Privacy and Confidentiality

The discussion will be held in private. Information shared during the appraisal will be shared only with senior management. Confidentiality of appraisal must be respected.

#### Essential Documents for Appraisal

All appraisal documents should be issued to both parties prior to the discussion, in order to allow time for both parties to reflect and prepare. These will provide a framework and focus for the discussion.

## 5. Employee Performance



### THE LEGAL HR ESSENTIALS

#### Conducting the Performance Appraisal

The performance appraisal policy supports the performance appraisal scheme. The scheme is a formal process centred on an annual meeting of each employee and their line manager to discuss his/her work. The purpose of the meeting is to review the previous year's achievements and to set objectives for the following year. These should align individual employees' goals and objectives with organisational goals and objectives.

##### Performance Agenda

The appraisal discussion will allow an opportunity for both the appraisee, and the appraiser to reflect and comment on the previous year's achievements. It will praise achievement and encourage the appraisee in his/her role.

##### Providing Feedback

The appraiser is accountable for giving the employee constructive, timely and honest appraisals of their performance, which should take into account both the goals of the organisation and of the individual.

##### Maintaining Positive Dialogue

The discussion should be a positive dialogue, and will focus on assisting the appraisee to acquire the relevant knowledge, skills and competencies to perform his/her current role to the best of his/her abilities.

##### Essential Documents for Appraisal

The appropriate forms will be completed and signed by both parties. The appraisee will be given the opportunity to note any comments that he/she does not agree with and complete a self-assessment.

##### Create/Update a Personal Development Plan

The appraisee and line manager should agree on a Personal Development plan for the appraisee for the following year.

This will reflect the appraisee's aspirations and the organisation's requirements, and should align personal and organisational goals. The organisation and the line manager will support the individual to achieve these goals during the forthcoming year.

##### Training and Development

Any training needs, future training requirements, planned qualifications, development opportunities and career planning should be discussed in the light of the Personal Development Plan.



#### Best Practice: Holding a Successful Performance Appraisal

Further information and resources regarding performance appraisal processes can be found at;

<http://humanresources.about.com/od/performance/a/perfmgmt.htm>

<http://www.australianbusiness.com.au/lawyers/expertise/employment-law/guidelines-on-how-to-conduct-a-performance-apprais>

<http://www.fairwork.gov.au/about-us/policies-and-guides/templates>  
(provides free, editable templates, policies, practices and on-line development tools)

## 5. Employee Performance



### THE LEGAL HR ESSENTIALS

#### Following the Performance Appraisal: Unacceptable Performance?

Great importance must be based on maintaining levels of performance at an acceptable standard. If a member of staff fails to overcome their difficulties, following a procedure which monitors performance and makes every attempt to assist the employee correct their performance provides a fair and objective process to enable managers to ensure that those performance standards are met in every aspect of the organisation's operations.

#### The organisation must ensure that there is:

- A means of monitoring performance and establishing performance criteria for members of staff.
- A degree of consistency in how staff with widely differing responsibilities and duties are given opportunities to attain satisfactory levels of performance.
- Assistance in identifying the most appropriate form(s) of support and providing that support.

#### If a member of staff fails to overcome their performance difficulties, any consequent action will be based on:

- Adequate evidence that the member of staff is incapable of performing their duties satisfactorily.
- A fair procedure.
- The fact that the member of staff was given all reasonable assistance to overcome such failings.



#### Best Practice: Implementing a Capability Procedure

##### Stage 1: Informal Procedure

Where an employee of the organisation exhibits an inability to perform their duties satisfactorily:

- The organisation will attempt to resolve the matter informally via a meeting between the Line Manager and the member of staff.
- The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the satisfaction of the Line Manager.
- At this meeting, the line manager will agree performance standards with the member of staff, and a time period (normally three months) over which improvement will be expected. They will also agree how the individual's performance will be monitored.

If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the formal procedure will be invoked by the Line Manager as set out in stage 2.

## 5. Employee Performance



### CREATIVE STRATEGIES

#### Following the Performance Appraisal: Unacceptable Performance?



#### Best Practice: Implementing a Capability Procedure (continued)

##### Stage 2: Formal Procedure – Information Collection:

The Senior Manager / Director of the Line Manager concerned may call on the support of an external advisor or another member of the Management Team to:

- Undertake the collection of necessary information.
- Interview the member of staff concerned and the Line Manager, as well as any other appropriate individuals (The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague)

Draft a written report based on evidence gained (e.g. by interviews and observation of performance will be prepared by the advisor / Manager). The report should be precise and specific in the observations and comments it makes and shall contain clear information on:

- Areas where the member of staff is failing to perform adequately
- Actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored
- Whether the member of staff acknowledges a problem and shows a willingness to improve
- The impact of the individuals failings on colleagues and work output
- Any other mitigating factors

##### Stage 3: Holding a Capability Hearing

The Senior Manager/Director will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter shall contain:

- The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness
- The time, date and venue of the interview
- The person who will conduct the interview, usually the Senior Manager/Director
- A statement that all employees have the right to be accompanied by a trade union representative or work colleague at any interview or hearing held under the provision of these procedures
- At least 10 day's notice of the hearing

At the hearing, the member of staff will be given the opportunity to:

- Put forward a defence, to bring witnesses in support of their defence
- Present mitigating circumstances and to make a full statement.
- Be provided with a written copy of the procedure to be adhered to during the hearing

## 5. Employee Performance



### CREATIVE STRATEGIES

#### Following the Performance Appraisal: Unacceptable Performance?



##### **Best Practice: Implementing a Capability Procedure (continued)**

If the allegation is found to be justified, then a decision on the action to be taken must be made. Depending on the nature, frequency and seriousness of the allegation(s) it is expected that at this stage a Warning will be given and this will be confirmed in writing (see below for guidelines on drafting a Written Warning).

A letter should be sent to the member of staff confirming the decision and the reason(s) why it was made. The letter will also indicate that the member of staff's progress will continue to be monitored and how this will be carried out. A time scale for performance to improve and a review date(s) will be specified.

If the failings are found to be not sufficiently serious to warrant a formal warning or where there are mitigating circumstances, then monitoring should be discontinued subject to a clear indication to the member of staff that it may be reintroduced if the problem(s) reappear.

##### Stage 4: Second Capability Hearing

If poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the complaint(s).

If the conclusion of the second hearing is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a final warning should be issued.

The letter confirming the decision as well as covering the points made at Stage 3, should clearly state that if an improvement is not forthcoming, the Organisation will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability.

##### Stage 5: Third Capability Hearing:

The appropriate Director will conduct the third hearing at which if previous advice, training and warnings have not had the desired effect, he/she will terminate the contract of the employee concerned. The procedures outlined in Stage 3 will be followed.

##### Appeals against the Capability Procedure:

An appeal against any decision to terminate the employee's contract of employment on the grounds of capability may be made in writing within 14 days of the decision. The employee's appeal will be heard by the appropriate Senior Manager or Director. Decisions made on appeal shall be final.

## 5. Employee Performance



### THE LEGAL HR ESSENTIALS

#### Employee Exits

All employees who leave the employment of the organisation voluntarily will have an exit interview with their manager before their last day of employment.

The appropriate line manager should receive all appropriate information, such as recommendations made for change, or significant issues raised in the questionnaire, whilst bearing in mind confidentiality issues. The exit interview questionnaire will be retained on the employee's personal file.

Exit interviews provide the opportunity for departing employees to discuss their reasons for leaving. The information provided is useful in identifying trends, learning and development and evaluating the effectiveness of the organisation's human resources policies and practices.

## 5. Employee Performance



### THE LEGAL HR ESSENTIALS

All the templates below can be found in the 'Templates Pack' document at these locations

Template/Form	Page Number(s)
Performance Appraisal Template	27
Study Support Program Letters	29 - 30
Disciplinary & Capability Letter	36
Employee Exit Checklist	37

# Building a Safe & Inclusive Work Environment



## 6. Building a Safe and Inclusive Work Environment

### Contents

Topic	Page Number(s)
Preventing Bullying and Harassment at Work	<a href="#">48</a>
Ensuring Equality in the Workplace	<a href="#">49</a>
Drug and Alcohol Abuse	<a href="#">51</a>
Occupational Health and Safety	<a href="#">55</a>

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Preventing Bullying & Harassment at Work

The organisation is committed to encouraging and maintaining good employee relations within a working environment which fosters team working and encourages employees to give their best.

##### Organisation Responsibilities:

The Organisation will provide and sustain a safe working environment in which everyone is treated fairly and with respect. Those working or dealing with the Organisation (whether in a volunteer, contractor or employee capacity) must not encounter harassment, intimidation or victimisation on the basis of gender, race, colour, ethnic or national origin, sexual orientation, marital status, religion or belief, age, disability, offending background or any other personal characteristic.

The organisation will investigate vigorously any allegations of bullying or harassment, regardless of whether the matter has been raised formally or informally.

##### Staff/Volunteer Responsibilities:

Each member of staff has a responsibility to report any instance of bullying or harassment which they witness or which comes to their attention. Employees have a responsibility to act as role models, pro-actively addressing instances of bullying and harassment. Managers should also make themselves aware of their responsibility.



##### Best Practice: Differentiating the Terms to Staff

###### What is Bullying?

Bullying is unlikely to be a single or isolated instance. It is persistent behaviour which is offensive, abusive, intimidating, malicious or insulting. Bullying includes, but is not limited to:

- Conduct which is intimidating, physically abusive or threatening

- Conduct that denigrates, ridicules or humiliates an individual, especially in front of colleagues
- Humiliating an individual in front of colleagues
- Consistently undermining someone and their ability to do the job
- “Cyber bullying” i.e. bullying via e-mail

###### What is Harassment?

Harassment may be an isolated occurrence or repetitive. It may be defined as any conduct which is:

- Unwanted by the recipient
- Is considered objectionable
- Causes humiliation, offence, distress or other detrimental effect.

It may occur against one or more individuals in the form of:

**Physical contact** – ranging from touching to serious assault, gestures, intimidation, aggressive behaviour.

**Verbal** – unwelcome remarks, suggestions and propositions, malicious gossip, jokes and banter, offensive language.

**Non-verbal** – offensive literature or pictures, graffiti and computer imagery, isolation or non-co-operation and exclusion or isolation from social activities.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Ensuring Equality in the Workplace

The organisation must ensure that discrimination and victimisation is unacceptable and that it is in the interests of the Organisation and its employees to utilise the skills of the total workforce.

#### Organisation's Responsibilities

It is the responsibility of the organisation to ensure no employee or job applicant will receive less favourable facilities or treatment (either directly or indirectly) in recruitment or employment on grounds of age, disability, gender / gender reassignment, marriage / civil partnership, pregnancy/maternity, race, religion or belief, sex, or sexual orientation (the protected characteristics).

1. The aim is that our workforce will be truly representative of all sections of society and each employee feels respected and able to give of their best.
2. We oppose all forms of unlawful and unfair discrimination or victimisation. To that end the purpose of this policy is to provide equality and fairness for all in our employment.
3. All employees, whether part-time, full-time or temporary, will be treated fairly and with respect. Selection for employment, promotion, training or any other benefit will be on the basis of aptitude and ability. All employees will be helped and encouraged to develop their full potential and the talents and resources of the workforce will be fully utilised to maximise the efficiency of the organisation.
4. Our staff will not discriminate directly or indirectly, or harass customers or clients because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation in the provision of the Organisation's goods and services.
5. This policy and the associated arrangements shall operate in accordance with statutory requirements. In addition, full account will be taken of any guidance or Codes of Practice issued by the Equality and Human Rights Commission, any Government Departments, and any other statutory bodies.

#### Organisation's Commitment

- To create an environment in which individual differences and the contributions of all our staff are recognised and valued.
- Every employee is entitled to a working environment that promotes dignity and respect to all. No form of intimidation, bullying or harassment will be tolerated.
- Training, development and progression opportunities are available to all staff.
- To promote equality in the workplace which we believe is good management practice and makes sound business sense.
- We will review all our employment practices and procedures to ensure fairness.
- Breaches of our equality policy will be regarded as misconduct and could lead to disciplinary proceedings.
- This policy is fully supported by senior management and has been agreed with trade unions and/or employee representatives.
- The policy will be monitored and reviewed annually

#### Responsibilities of Management

Responsibility for ensuring the effective implementation and operation of the arrangements will rest with the Chief Executive.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Ensuring Equality in the Workplace

Directors / Managers will ensure that they and their staff operate within this policy and arrangements, and that all reasonable and practical steps are taken to avoid discrimination. Each manager will ensure that:

- all their staff are aware of the policy and the arrangements, and the reasons for the policy;
- grievances concerning discrimination are dealt with properly, fairly and as quickly as possible;
- proper records are maintained.

Senior Management will be responsible for monitoring the operation of the policy in respect of employees and job applicants.

#### Responsibilities of Staff

Responsibility for ensuring that there is no unlawful discrimination rests with all staff and the attitudes of staff are crucial to the successful operation of fair employment practices. In particular, all members of staff should:

- comply with the policy and arrangements;
- not discriminate in their day to day activities or induce others to do so;
- not victimise, harass or intimidate other staff or groups who have, or are perceived to have one of the protected characteristics.
- ensure no individual is discriminated against or harassed because of their association with another individual who has a protected characteristic.

- inform their manager if they become aware of any discriminatory practice.

#### Third Parties

Third-party harassment occurs where an Organisation employee is harassed, and the harassment is related to a protected characteristic, by third parties such as clients or customers. The organisation will:

- Not tolerate such actions against its staff, and the employee concerned should inform their manager / supervisor at once that this has occurred.
- Fully investigate and take all reasonable steps to ensure such harassment does not happen again.

#### Grievances/Discipline

- Employees have a right to pursue a complaint concerning discrimination or victimisation via the Grievance or Harassment Procedures.
- Discrimination and victimisation will be treated as disciplinary offences and they will be dealt with under the organisation Disciplinary Procedure.

#### Review

The effectiveness of this policy and associated arrangements will be reviewed annually under the direct supervision of the Organisation Chief Executive.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Drug and Alcohol Abuse

The organisation must ensure that alcohol and drug abuse related problems are an area of health and social concern. It must also recognise that a member of staff with such problems need help and support from their employer. The organisation also recognises that alcohol and drug abuse problems can have a detrimental effect on work performance and behaviour. The organisation has a responsibility to its employees and customers to ensure that this risk is minimised.

**There are two approaches to managing drug and alcohol related abuse:**

**Approach 1:** Providing reasonable assistance to the member of staff with an alcohol or drug abuse problem who is willing to co-operate in treatment for that problem.

**Approach 2:** Disciplinary rules, enforced through disciplinary procedures, where use of alcohol or drugs (other than on prescription) affects performance or behaviour at work, and where either (1) an alcohol or drug dependency problem does not exist or (2) where treatment is not possible or has not succeeded.

The organisation does not have the internal resources to provide or arrange treatment or other forms of specialist assistance. Such services are provided by doctors, hospitals and other agencies. Through this policy the organisation will seek both to assist a member of staff in obtaining such specialist help, and to protect his/her employment.

#### **Assistance for a Member of Staff**

The Organisation will, where possible, provide the following assistance to a member of staff:

- Helping the member of staff to recognise the nature of the problem, through referral to a qualified diagnostic or counselling service.
- The opportunity to remain or return to work following the completion of a course of treatment, as far as is practicable, in either the employee's own post or an alternative post.

- Support during a period of treatment. This may include a period of sick leave or approved other leave, continuation in post or transfer to other work, depending upon what is appropriate in terms of the staff member's condition and needs of the organisation.

**The Organisation's assistance will depend upon the following conditions being met:**

- The Occupational Health Service / Organisation Approved Doctor diagnoses an alcohol or drug dependency related problem.
- The member of staff recognises that he/she is suffering from an alcohol or drug abuse problem and is prepared to co-operate fully in referral and treatment from appropriate sources.

**The organisation and its employees must recognise the following limits to the assistance the organisation can provide:**

- Where a member of staff fails to co-operate in referral or treatment arrangements, no special assistance will be given and any failure in work performance and behaviour will be dealt with through the Disciplinary Procedure.
- If the process of referral and treatment is completed but is not successful, and failure in work performance or behaviour occurs, these will be dealt with through the Disciplinary Procedure.
- A member of staff's continuation in his/her post or an alternative post during or after treatment will depend upon the needs of the Organisation

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Drug and Alcohol Abuse

##### Disciplinary Action

In line with the Organisation's disciplinary rules, the following will be regarded as serious misconduct:

Attending work and/or carrying out duties under the influence of alcohol or drugs.

Consumption of alcohol or drugs whilst on duty (other than where prescribed or approval has been given).

Breach of these rules will normally result in summary dismissal, and only in exceptional cases will either notice or the reduced disciplinary action of a final written warning be applied.

Where a breach of these rules occurs, but it is established that an alcohol or drug abuse related problem exists, and the member of staff is willing to co-operate in referral to an appropriate service and subsequent treatment, the organisation will suspend application of the Disciplinary Procedure and provide assistance as described above. Staff who do not comply with the treatment suggested or continue to abuse alcohol or drugs will be subjected to the application of the Disciplinary Policy.

##### Procedures

The procedures define management responsibilities and provide guidelines on:

- Where assistance to a member of staff should be provided and the nature of and limits to such assistance.

- The application of the Organisation's Disciplinary Procedure.

Through the Occupational Health Service / Approved Organisation Doctor the Organisation will provide:

- Advice and support to managers on
- Whether an alcohol or drug related problem exists
- progress in treatment
- re-establishment or continuation at work of a member of staff or other appropriate arrangements.
- Assistance to members of staff with alcohol or drug abuse related problems.

This does not include directly providing treatment or specialist help which is the responsibility of GPs, hospitals and other agencies working in the field. The Occupational Health Service / Organisation Approved Doctor, in close liaison with these persons and agencies, will assist staff referred in the following ways:

- through counselling encourage them to come to a better understanding of their problem and the benefits of seeking treatment or help;
- providing advice and direction regarding obtaining treatment and specialist help;
- assisting in continuing at or achieving a return to work.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Drug and Alcohol Abuse

Alcohol or drug abuse related problems can come to the notice of management through:

- Failures in work performance or behaviour necessitating use of the Disciplinary Procedure. In such situations the procedure described above should be followed.
- Other means, where a member of staff seeks or agrees to accept assistance on a voluntary basis. In such situations, the procedures described above should be followed.

#### **Diagnosing the existence of an alcohol or drug abuse problem:**

Should the interviews lead to the conclusion that an alcohol or drug abuse problem might exist and the member of staff accepts referral, the manager should refer the matter to the Occupational Health / Organisation Approved Doctor, who will be responsible for establishing whether or not a diagnosis of alcoholism or drug dependence can be made.

Disciplinary action should be suspended until diagnostic advice is obtained. Where appropriate, suspension arrangements in the Disciplinary Procedure should be followed.

If the interview fails to lead to the conclusion that an alcohol or drug abuse problem exists, or the member of staff rejects, or fails to co-operate in referral, disciplinary action should be continued, where and as the situation justifies.

#### **Confirmation that a problem exists and treatment arrangements:**

If a positive diagnosis of an alcohol or drug abuse problem is made, and the member of staff agrees to co-operate in treatment, treatment arrangements should commence.

Where necessary, the Occupational Health Service / Organisation Approved Doctor will advise the member of staff regarding treatment and will be responsible for monitoring progress with treatment and advising the manager concerned. This advice should be available at least monthly following commencement of treatment and thereafter as appropriate. (Disciplinary action should be discontinued unless the member of staff fails to co-operate on the treatment arranged.)

Should a diagnosis of alcoholism or drug dependence not be confirmed or should the member of staff refuse to co-operate in treatment, disciplinary action should be continued. The Occupational Health Service / Organisation Approved Doctor will advise on whether a situation has been reached where there is a lack of progress with treatment or lack of co-operation by the member of staff. Managers must review the facts and consider whether or not there needs to be a return to the use of Disciplinary Procedures.

Where medical certificates are submitted, sick leave should be given. Should the employee continue to be fit for work during the period of treatment, he/she should be permitted to continue in his/her post or alternative work unless such an arrangement would have an adverse effect on Organisation services. In such circumstances, annual or unpaid leave should be approved or, exceptionally, suspension arranged.

If a member of staff has been off work during the period of treatment, before returning to duty, he/she will be seen by the Occupational Health Service / Organisation Approved Doctor who will advise management regarding capability for continuation in his/her own post and whether any special supervision or other arrangements are required.

Every effort should be made to comply with the advice provided by the Occupational Health Service / Organisation Approved Doctor. If it is not reasonably practicable to do so, and as a result, the member of staff is not able to resume duty, employment may be terminated on the grounds of incapacity (ill health).

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Drug and Alcohol Abuse

If a member of staff is again involved in disciplinary situations resulting from alcohol or drug abuse related problems, a second referral to the Occupational Health Service / Organisation Approved Doctor and suspension of the disciplinary procedure may be appropriate. If they advise positively on the possibilities of further treatment or help and the willingness of the member of staff to co-operate, the disciplinary procedure may be suspended again to permit treatment and help to be undertaken. This second referral will not apply if the further disciplinary problems involve serious misconduct. Third and subsequent referrals are not permissible.

#### **Situations where a Disciplinary Situation does not exist:**

There may be situations where the possible existence of alcohol or drug abuse problems affecting a member of staff comes to a manager's attention, although there is, or has been, no discernible affect on work performance or behaviour.

This could arise if a member of staff confides in his/her manager about an alcohol or drug abuse problem, or a manager could see a need to approach a member of staff after observing possible "indicators" of an alcohol or drug abuse problem (i.e.) an absence pattern, information provided by the member of staff's colleagues, etc.

In such situations, the Organisation would wish staff to feel they could seek help from their employer (in complete confidence) without worry that their job security would be in jeopardy. Accordingly if managers should be faced with a situation of this type they should:

- seek the advice of the Occupational Health Service / Organisation Approved Doctor regarding whether and how the matter could be dealt with;
- counsel the member of staff and, if appropriate, arrange for the member of staff to be interviewed by the Occupational Health Service / Organisation Approved Doctor.

- as in the procedure described above, the Occupational Health Service / Organisation Approved Doctor will play a facilitating role (ie) seeking to establish whether a problem exists, advising and directing the member of staff towards appropriate forms of treatment and help.

These steps cannot be taken without the co-operation of the member of staff. If the member of staff does not wish to co-operate, no further action should be taken.

Should a member of staff take up the opportunity of assistance on this voluntary basis there need be no further formal involvement of management in terms of action or the right to learn of progress with treatment. It may be however that the member of staff would wish, or agree to, further involvement of management as a means of assisting progress with treatment.

Use of the disciplinary procedures and/or the application of the approach described above would only be appropriate if subsequently, the member of staff is involved in a breach of disciplinary rules.

Should the problems of the member of staff develop to an extent that his/her continuation in post or employment became impossible, it may be necessary to identify alternative work or arrange for termination, on the same basis as the Organisation operates for staff with problems of incapacity due to ill health.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Occupational Health & Safety

The organisation fully accepts the obligations placed upon it by state and federal law covering health and safety. The organisation requires its Chief Executive to ensure that the following policy is implemented and to report annually on its effectiveness. This policy has been prepared and published under the requirements of Health & Safety at Work legislation. The purpose of the policy is to establish general standards for health and safety at work and to distribute responsibility for their achievement to all managers, supervisors, and other employees through the normal line management processes.

#### OH&S Responsibilities of Management

##### Chief Executive

- The Chief Executive has overall responsibility for the implementation of the Organisation's policy. In particular they are responsible for ensuring that the policy is widely communicated and that its effectiveness is monitored.

##### Senior Managers

- These managers are wholly accountable to the Chief Executive for the implementation and monitoring of the policy within the area of their specified responsibility.

##### Safety Officer

- The Safety Officer is a nominated manager responsible for coordinating effective health and safety policies and controls across the organisation.

The Safety Officer is responsible for:

- the production and maintenance of the Organisation's policy and ensuring that Department Guidelines are consistent with policy;
- its application;

- the provision of general advice about the implication of the law;
- the identification of health and safety training needs;
- the production and maintenance of Health and Safety Codes of Practice for each aspect of the services within the organisation.

#### Occupational Health and Safety Management Process

The Organisation believes that consideration of the health, safety and welfare of staff is an integral part of the management process and that associated and regulated Codes of Practice will be adopted as required standards within the organisation.

Responsibility for health and safety matters shall be explicitly stated in management job descriptions.

The organisation requires managers to approach health and safety in a systematic way, by identifying hazards and problems, planning improvements, taking executive action and monitoring results so that the majority of health and safety needs will be met from locally held budgets as part of day-to-day management, although many health and safety problems can be rectified at little additional cost.

For major additional expenditure, cases of need will be submitted to the Chief Executive.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Occupational Health & Safety

If unpredictable health and safety issues arise during the year, the Chief Executive must assess the degree of risk, in deciding the necessary resources and actions to commit to addressing these issues.

#### Health, Safety and Welfare Guidelines

It shall be the responsibility of the manager to bring to the attention of all members of his or her staff, the provisions of the guidelines, and to consult with appropriate Health and Safety Representatives about the updating of these guidelines. The model contents of a guideline are:

- a clear statement of the role of the department;
- regulations governing the work of the department;
- clear reference to safe methods of working;
- information about immediate matters of health and safety concern, such as fire drills, fire exits, first aid;
- training standards;
- the role and identity of the Health and Safety Representative (Safety Officer);
- names of specialist advisers who can be approached about the work of the department;
- the manager responsible for organisation and control of work;
- accident reporting procedures;
- departmental safety rules;

- fire procedures;
- policies agreed by the Organisation.

#### Identification of Health and Safety Hazards

##### ANNUAL AUDIT AND REGULAR RISK ASSESSMENTS

It is the policy of the organisation to require a thorough examination of health and safety performance against established standards in each department, at least annually. The technique to be adopted for such examinations will be the 'Safety Audit.

'The Audit requires review of standards laid down in the policy;

- departmental guidelines;
- relevant regulations;
- environmental factors;
- staff attitudes;
- staff instructions;
- methods of work;
- contingency plans;
- recording and provision of information about accidents and hazards and the assessment of risk

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Occupational Health & Safety

The information obtained by the Audit will be used to form the basis of the plan for the department for the following year. Audits must be completed by July of each year.

The responsibility for ensuring that audit activity is carried out as part of this policy rests with the Chief Executive and will be carried out by the Safety Officer. Although the Audit remains a management responsibility, managers are required as part of this policy to seek the involvement of the appropriate Health and Safety Representative in the conduct of the Audit.

It is the management's responsibility to ensure that any deficiencies highlighted in the Audit are dealt with as speedily as possible.

In addition to carrying out Safety Audits, it is the responsibility of the department manager to check, at least quarterly, all portable equipment, including electrical appliances, in their area, and to ensure that all problems are immediately dealt with.

Managers have a continual responsibility for the elimination of hazards in order to maintain a safe working environment and will also be expected to carry out regular risk assessments in line with the Health and Safety Executive Guidelines; that is follow the 5 steps:

1. Identify the hazards
2. Decide who might be harmed and how
3. Evaluate the Risks and decide on precautions
4. Record the findings and implement the precautions
5. Review the assessment and update when necessary

#### Safety Representatives

The Organisation will support Safety Representatives in carrying out their role and give all reasonable assistance. Safety Representatives will be encouraged to discuss specific health and safety issues with the relevant Head of Department. They may also formally report hazardous or unsafe circumstances to the Head of Department and will be formally notified of the remedial action taken or be given a reason why the action cannot be taken.

#### Health and Safety Training

Health and Safety training shall be incorporated within annual training programmes, as part of the development of a systematic training plan. Health and Safety training needs will, therefore, be identified and planned for in the same manner as other training needs.

Four areas of need shall be given special priority:

1. training for managers, to equip them with an understanding of the manager's responsibilities under this policy, and the role and purpose of safety representatives;
2. training for safety representatives to enable them to discharge their function;
3. training for all members of staff to acquaint them with the main provisions of the law and its practical implication, the main features of this policy and key safety rules;
4. induction and in-service training for staff at all levels to acquaint them fully with new requirements and hazards.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Occupational Health & Safety

##### First Aid

It is the policy of the organisation to make provision for First Aid and the training of 'First Aiders' in accordance with the First Aid Regulations.

The Safety Officer is responsible for ensuring the Regulations are implemented and for identifying training needs.

##### Fire

The Chief Executive is responsible for ensuring that the staff receive adequate fire training, and that nominated fire officers are designated in all Organisation premises. The Chief Executive delegates these responsibilities to the relevant managers.

In addition the Organisation will nominate a Fire Officer (this may be the Safety Officer or someone external to the Organisation).

The Fire Officer will be responsible for the following:

- report and advise on the standard of fire safety in the Organisation's premises and the standard of fire training of its staff;
- undertake overall responsibility for fire training;
- assist in the investigation of all fires in the Organisation's premises and to submit reports of such incidents.

##### Health, Safety and the Individual Employee

Every employee has a responsibility to take reasonable care for the Health and Safety of themselves and of other persons who may be affected by their acts and omissions and to co-operate with management to enable management to carry out their responsibilities under the organisation's health and safety policy. In short, employees have equal responsibility with the organisation for Health and Safety at Work.

The refusal of any employee to meet their obligations will be regarded as a matter to be dealt with under the Disciplinary Procedure. In normal circumstances counselling of the employee should be sufficient. With a continuing problem, or where an employee leaves themselves or other employees open to risk or injury, it may be necessary to implement the formal stages of the Disciplinary Procedure.

##### People Working on Organisation Premises not Employed by the Organisation

Persons working in the organisation premises who are employed by other organisations are expected to follow Organisation Health and Safety Policies with regard to the safety of Organisation employees, their own personal safety (and that of other parties such as the general public if appropriate) and their method of work. This responsibility will be included in contracts or working arrangements.

## 6. Building a Safe & Inclusive Work Environment



### THE LEGAL HR ESSENTIALS

#### Occupational Health & Safety

Similarly seconded Organisation employees working in other host premises will be expected to follow the host employers Health and Safety Policy.

Additional information, resources and current legislation related to Health and Safety in the Workplace can be found at the Department of Commerce WorkSafe website:

<http://www.commerce.wa.gov.au/worksafe/tool-box>



#### **Best Practice: Maintaining Records, Statistics and Monitoring Procedures**

The organisation should endeavour to operate and maintain systems for recording, analysis and presentation of information about accidents, hazard situations and untoward occurrences which occur within the workplace.

Advice on systems should be provided by the Safety Officer, in conjunction, where appropriate with specialist advisory bodies for example local Environmental Health Departments, and the responsibility for the operation of these systems rests with managers and supervisors at all levels. Information obtained from the analysis of accident statistics must be acted upon and, where necessary, bids for additional expenditure made to the Chief Executive.

# Disciplinary Procedures



## 7. Disciplinary Procedures

### Contents

Topic	Page Number(s)
Suspension and Counselling	<a href="#">62</a>
Formal Investigations	<a href="#">63</a>
Warnings for Employee Misconduct	<a href="#">64</a>
Appeals	<a href="#">67</a>

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Suspension and Counselling

##### Suspension

An organisation's disciplinary procedure will be used only when necessary and as a last resort. Where possible, informal and/or formal counselling or other good management practice will be used to resolve matters prior to any disciplinary action being taken. The procedure is intended to be positive rather than punitive but takes cognisance of the fact that sanctions may have to be applied in some circumstances. Every individual has the right to representation and clarification as to any policies and procedures at any point during the disciplinary process.

##### When should an Organisation use it?

Suspension is not disciplinary action. The purpose of suspension is manifold and can be used when it is necessary to remove a member of staff from the workplace pending an investigation for example, to allow time for a 'cooling down period' for both parties, for their own or others protection, to prevent them influencing or being influenced by others or to prevent possible interference with evidence.

##### Authority to Suspend?

Only the Manager in charge of that individual, at that time or their superior, have the authority to suspend an individual.

##### Suspension Procedure:

An employee suspended from duty must receive written confirmation within three days of:

- The reason for the suspension
- The date and time from which the suspension will operate.
- The timescale of the ongoing investigation.
- The right of appeal to the immediate manager of the suspending manager should the suspension last more than 7 days

##### Counselling

##### When should an Organisation use it?

Counselling should be used as an attempt to correct a situation and prevent it from getting worse without having to use the disciplinary procedure.

##### Counselling Procedure:

- Where improvement is required, the employee must be given clear guidelines as to:
- What is expected in terms of improving shortcomings in conduct or performance
- The time scales for improvement
- When this will be reviewed
- The employee must also be told, where appropriate, that failure to improve may result in formal disciplinary action.
- A record of the counselling should be given to the employee and a copy retained in their personnel file. It is imperative that any counselling should be followed up and improvements recognised and recorded.
- Once the counselling objectives have been met, any record of the counselling must be removed from the employees file.

If during counselling it becomes clear that the matter is more serious, then the discussion should be adjourned, and pursued under the formal disciplinary procedure.

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Formal Investigations

##### When should an Organisation use it?

Formal investigations should be carried out by the most appropriate manager who is not directly involved with the incident being investigated. This manager may involve others (where appropriate) to assist with the investigation process.

##### Formal Investigation Procedure:

- 1. Gather the facts:** All the relevant facts should be gathered promptly as soon as is practicable after the incident. Statements should be taken from witnesses at the earliest opportunity. Any physical evidence should be preserved and/or photographed if reasonable to do so.
- 2. Prepare a Report:** A report should be prepared which outlines the facts of the case. This should be submitted to the appropriate senior manager / Director who will decide whether further action is required. Where appropriate, this report may be made available to the individual and their representative.
- 3. Organise an Investigatory Hearing:** In most circumstances where misconduct or serious misconduct is suspected, it will be appropriate to set up an investigatory hearing. This would be chaired by the appropriate Senior Manager / Director, who would be accompanied by another manager. The investigating manager would be asked to present his/her findings in the presence of the employee who has been investigated. Witnesses should be called at this stage, and the employee (or their representative) allowed to question these witnesses. The employee has a right of representation at this hearing.
- 4. Post-Investigatory Hearing:** Following the full presentation of the facts, and the opportunity afforded to the employee to state his side of the case, the hearing should be adjourned, and everyone would leave the room except the senior manager / Director hearing the case, and the other manager.

They would discuss the case and decide which of the following option was appropriate:

- Take no further action against the employee
- Recommend counselling for the employee
- Proceed to a disciplinary hearing

- 5. (If applicable) Disciplinary Hearing:** All parties should be brought back, and informed as to which option has been chosen. Should the decision be taken to proceed to a disciplinary hearing, then this may follow on immediately from the investigatory hearing if the following criteria have been met:
  - The employee has been informed by letter that the investigation may turn into a disciplinary hearing, and that he has the right of representation
  - They has been told in advance what the nature of the complaint is, and had time to consult with a representative
  - All the facts have been produced at the investigatory hearing, and the Manager/Director is in a position to decide on disciplinary action.
  - The Director/Manager should inform the employee that the hearing would now become a formal disciplinary hearing, and invite them to say anything further in relation to the case.
- 6. Adjourn Proceedings:** It may be appropriate at this point to adjourn proceedings, whilst necessary arrangements are made for a representative to attend the hearing at the request of the employee.

Should anyone who is subject to disciplinary action resign during the course of it, the action will cease unless there are extenuating circumstances which require its continuance. The subject of the discipline may also request that the disciplinary action continue.

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Warnings for Employee Misconduct

Below are several forms of misconduct which warrant a warning of varying significance (e.g. Verbal Warning or a First Written Warning). This list is not exhaustive and that on all occasions a full and proper investigation must take place prior to the issuing of a verbal warning or an issuing of a Final Warning, Demotion or Dismissal.

##### Examples of Minor Misconduct

- Absence from work, including going absent during work, without valid reason, notification or authorisation.
- Smoking within unauthorised areas.
- Failure to work in accordance with prescribed procedures.
- Incompetence.
- Unreasonable standards of dress or personal hygiene.
- Failure to observe Organisation regulations and procedures.

##### Examples of Gross Misconduct

- Theft, including unauthorised possession of Organisation property.
- Breaches of confidentiality, prejudicial to the interest of the Organisation,
- Being unfit for duty because of the misuse/consumption of drugs or alcohol.
- Refusal to carry out a management instruction which is within the individuals capabilities and which would be seen to be in the interests of the Organisation.
- Breach of confidentiality / security procedures.
- Physical assault, breach of the peace or verbal abuse.

- False declaration of qualifications or professional registration.
- Failure to observe Organisation rules, regulations or procedures.

##### Warnings:

There are five forms of warnings which exist with respect to minor employee misconduct or misconduct of a gross nature. It is worth noting that the following proceed in order varying levels of employee misconduct:

##### 1. Verbal Warning

A Verbal Warning is appropriate when it is necessary for the manager in charge to take action against an employee for any minor failing or minor misconduct.

##### 2. First Written Warning

A First Written Warning is appropriate when:

- A verbal warning has not been heeded and the misconduct is either repeated or performance has not improved as previously agreed.
- An offence is of a more serious nature for which a written warning is more appropriate.
- The recurrence or accumulation of an offence/offences, if left, will lead to more severe disciplinary action.

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Warnings for Employee Misconduct

##### 3. Final Written Warning

A Final Written Warning is appropriate when:

- An employee's offence is of a serious nature falling just short of one justifying dismissal.
- An employee persists in the misconduct which previously warranted a lesser warning.

##### 4. Downgrading or Transfer to another Post

**This action is appropriate when:**

- Previous attempts, via the disciplinary procedure, to rectify a problem have failed and this is a final attempt to solve a problem without having to dismiss an employee.
- An employee is considered by the Manager of the department to be incompetent or otherwise unfit to fulfil the duties for which he is employed but where dismissal is not thought to be appropriate.

##### 5. Dismissal

Dismissal is appropriate when:

- An employee's behaviour is considered to be Gross Misconduct.
- An employee's misconduct has persisted, exhausting all other lines of disciplinary procedure.

##### **Drafting a Letter of Warning:**

All Warnings must contain the following information:

- The letter must be issued within 7 days of the date of the disciplinary hearing.
- The nature of the offence and where appropriate, that if further misconduct occurs, more severe disciplinary action will be taken.
- The period of time given to the employee for improvement.
- The employee's right to appeal to the manager directly above that of the one issuing the warning.
- In the case of a final written warning, reference must be made to the fact that any further misconduct will lead to dismissal, and that the employee has the right of appeal, and to who they can make that appeal.

##### **Administration of the Letter of Warning:**

- A copy of the warning and any supporting documentation must be attached to the individual's personnel file.
- The employee must also receive a copy of the warning which in the case of any written warning will be sent to their home address by recorded delivery if not handed to them in person.

##### **Drafting a Letter of Dismissal:**

The letter confirming dismissal will contain the following information:

- The reason for dismissal and any administrative matter arising from the termination of their employment.
- The employee's right of appeal and to whom they should make that appeal

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Warnings for Employee Misconduct and Appeals

##### Limitation Periods for the expiry of Warnings:

Warnings issued to employees shall be deemed to have expired after the following periods of time.

- **Verbal Warnings:** 6 months
- **First Written Warnings:** 12 months
- **Final Written Warnings:** 18 months (or as agreed and recorded at the hearing)

These time scales remain provided that during that period, no further warnings have been issued in respect of the employee's conduct.

##### Appeals

Every employee has the right to appeal against the outcome of a disciplinary hearing.

The basis of an appeal should normally relate to one of the following areas:

- That the Organisation's' Procedure had not been followed correctly.
- That the resulting disciplinary action was inappropriate.
- That the need for disciplinary action was not warranted.
- That new information regarding disciplinary action has arisen

##### Drafting a Letter of Appeal:

- An appeal should be put in writing to the responsible person within the organisation.

- The letter should contain the grounds for appeal and should be lodged within 10 days of receipt of the warning / dismissal letter.
- An appeal must be arranged within 20 working days of receipt of the appeal letter.

##### Appeals against Verbal and First Warnings:

In the case of verbal and first warnings, the appeal will be heard by the manager next in line to the one who issued the warning.

##### Appeals against Downgrading, Final Warnings and Dismissal:

- The hearing and determining of appeals against final warnings and dismissal will be heard by the appropriate Director or Chief Executive. They may also involve another senior manager / Director not previously involved with the case.
- When dealing with an appeal against a Final Warning or Dismissal written statements of case may be submitted no later than 2 days prior to the date of Appeal Hearing. No additional written evidence will be admitted by the Appeal Committee on the date of the Hearing.
- Witnesses may be required by either party at an appeal hearing, dependent upon the circumstances and nature of the case. However, there is no specific obligation on either party to produce a witness. Either party must give 5 days prior notice that they intend to call specific persons involved or associated with the case under consideration.
- It is the responsibility of the management representative and for the appellant to each arrange for the availability and attendance of any witness they wish to call.

## 7. Disciplinary Procedures



### THE LEGAL HR ESSENTIALS

#### Appeals



#### **Best Practice: Seek Advice throughout the Disciplinary Process**

Prior to the commencement of disciplinary action, particularly with regard to termination of employment, it is recommended that you seek professional advice to avoid any potential claims of unfair dismissal.

Further information can be obtained from the following resources;

<http://www.fairwork.gov.au/about-us/policies-and-guides/templates> (provides free, editable templates, policies, practices and on-line development tools)

<http://www.commerce.wa.gov.au/labour-relations> (provides free advice to business regarding statutory requirements together with best practice solutions for employers)

# Handling Employee Complaints & Concerns



## 8. Handling Employee Complaints and Concerns

### Contents

Topic	Page Number(s)
Handling Complaints in Response to Harassment and Bullying	<a href="#">70</a>
Managing the Whistle Blowing Process	<a href="#">74</a>

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Handling Complaints in Response to Harassment and Bullying

Any employee who wishes to make a complaint of harassment or bullying is encouraged to first discuss matters informally with their line manager or with Human Resources, provided that they feel able to do so and seek a formal resolution should the issues not be resolved at this stage, or the employee feels unable to raise the issue informally,

When a complaint of Harassment or Bullying is brought to the attention of a manager at any level, whether informally or formally:

- Prompt action must be taken to investigate the matter.
- Corrective action must be taken where appropriate and this may require an investigation under the Organisation's Disciplinary Policy and Procedure.

If it is considered that one of the parties concerned in a harassment or bullying case should be moved from their current workplace, then as a matter of principle the Organisation will normally remove the alleged perpetrator rather than the complainant. However, the final decision on who should be moved should reflect the particular circumstances of the case and advice from Human Resources to the relevant manager.

It should be noted and explained to those concerned that the moving of either party is not an implication of guilt or culpability and no detriment to either party will be construed as a consequence.

#### Handling the Investigation with Confidentiality:

All matters relating to the investigation of complaints of harassment or bullying will be treated in strict confidence. Any breach of confidentiality in this regard may render those responsible liable to disciplinary actions. However, it will be necessary that any alleged perpetrator is made aware of the allegations against them and the name(s) of those making the allegations together with the name(s) of any witnesses.

No employee will be victimised or suffer detriment for making a complaint of harassment or bullying and no manager shall threaten either explicitly or implicitly that an employee's complaint will be used as the basis for decisions affecting that employee. Such conduct will be treated as a very serious disciplinary offence. Similarly, managers are required to act on any complaint of harassment or bullying. Failure to do so will be regarded as misconduct which if proven, will result in disciplinary action.

#### Procedure

##### Informal Resolution

Very often people are not aware that their behaviour is unwelcome or misunderstood and an informal discussion can lead to greater understanding and agreement that the behaviour will cease.

Complainants are therefore encouraged to try, if they feel able to do so, to resolve the problem informally by making it clear to the alleged harasser that his/her actions are unwanted and should not be repeated. This may be done verbally or in writing in which case the complainant should keep a copy of the documentation and, where possible, the times and dates of incidents should be recorded.

If the complainant feels unable to approach the alleged harasser, a work colleague, or other representative could be asked to speak to the alleged harasser on the complainant's behalf.

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Handling Complaints in Response to Harassment and Bullying

A note should be made of the action taken and the matter notified to Human Resources.

- An individual who is made aware that their behaviour is unacceptable should:-
- Listen carefully to the complaints and the particular concerns raised;
- Respect the other person's point of view: everyone has a right to work in an environment free from harassment/intimidation;
- Understand and acknowledge that it is the other person's reaction/perception to another's behaviour that is important;
- Agree the aspects of behaviour that will change;
- Review their general conduct/behaviour at work and with workplace colleagues.

#### Formal Resolution

If the alleged harassment continues, the complainant feels unable or unwilling to deal with the matter informally, or the allegation is so serious as to prevent use of the informal procedure, a complaint should then be raised formally with the employer.

Normally, the employer's representative will be the employee's line manager. However, if the employee feels unable to do this they should submit the complaint in writing to a more senior manager within their Department or Directorate.

In exceptional circumstances, allegations may be raised directly with the relevant Director, who will with other appropriate senior managers, arrange for the matter to be progressed in accordance with this policy and procedure.

- When dealing with a complaint of harassment under the Formal Resolution Procedure, the relevant manager should:
- Take full details of the incidents in writing from the complainant and their representative (if appropriate);
- Take full details from any witnesses/other complainants who come forward and may have witnessed the alleged behaviour
- Inform the alleged harasser of the complaints against him/her, advise the alleged harasser to seek representation and invite him/her to a meeting in order that they can comment on the allegations against them.
- Keep all parties informed of expected timescales.
- Inform all parties in writing of the outcome and any action that may be required.

If the allegations and the working situation warrant it, the alleged harasser may be suspended during the investigation (in accordance with established disciplinary procedure) or transferred temporarily pending the outcome of the inquiry to another Department.

Should there be a case to answer against the alleged harasser, the manager who has dealt with the complaint will communicate this to an impartial manager who will conduct a separate disciplinary investigation. The normal disciplinary procedure for misconduct/gross misconduct should then be followed.

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Handling Complaints in Response to Harassment and Bullying

However, the following points should be taken into account:-

The complainant will normally be required to attend the disciplinary hearing as a witness, unless there are exceptional circumstances which prevent them from doing so.

If the complainant is required to attend, they are entitled to be accompanied by representative or work colleague and have any questions directed through that person.

If the complaint is upheld at the disciplinary stage, there are a number of possible outcomes for the harasser, depending on the evidence presented and the circumstances. These could include, but are not limited to:

- Dismissal
- A formal warning
- A recommendation of redeployment of the harasser, either on a temporary or a permanent basis. This will not be on any less favourable terms and conditions of employment.
- Implementation of other sanctions as detailed in the Organisation's Disciplinary Policy.
- Making arrangements for both parties to work as separately as possible within the same workplace.

In addition to the above, the harasser may be required to attend any training courses as deemed necessary by the Organisation.

It should also be noted that the complainant may wish to move Department/section depending upon the nature of the complaint and the people involved. Appropriate consideration should be given to this request and the outcome with reasons provided to the complainant. With any allegation, the need for a thorough and objective investigation is paramount. Consequently, if through the course of the investigation evidence demonstrates that the allegation has been made frivolously, maliciously, or for personal gain, then the individual making the complaint will be subject to Disciplinary proceedings as outlined in the Organisation's Disciplinary Policy.

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## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Handling Complaints in Response to Harassment and Bullying

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#### Appeals

Appeals against decisions taken under the Bullying and Harassment at Work Policy and Procedure shall be dealt with as follows:-

- Appeals against a disciplinary sanction will be dealt with in accordance with the appeals process in the Disciplinary Process Policy.

#### Records Management

Where the complaint is informal and resolved at this stage, no record will be kept on personal files.

Following formal investigation, where the complaint is not substantiated, no records will be retained.

Where a complaint is substantiated or partially substantiated but does not proceed to disciplinary, a letter confirming the outcome will be retained on the personal file and supporting documentation retained in a separate file for a period of 12 months.

Where the matter proceeds to a disciplinary hearing then the storage of records should be in accordance with the disciplinary procedure.

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Managing the Whistleblowing Process

The organisation must be committed to the highest standards of openness, probity and accountability. An important aspect of accountability and transparency is a mechanism to enable staff and other members of the organisation to voice concerns in a responsible and effective manner.

It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. Nevertheless, where an individual discovers information which they believe shows serious malpractice or wrongdoing within the organisation then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in relatively minor instances the line manager would be the appropriate person to be told).

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question financial or business decisions taken by the organisation nor should it be used to reconsider any matters which have already been addressed under harassment, complaint, disciplinary or other procedures.

Once the "whistleblowing" procedures are in place, it is reasonable to expect staff to use them rather than air their complaints outside the organisation.

#### Scope of Policy

This policy is designed to enable employees of the organisation to raise concerns internally and at a high level and to disclose information which the individual believes shows malpractice or impropriety. This policy is intended to cover concerns which are in the public interest and may at least initially be investigated separately but might then lead to the invocation of other procedures (e.g. disciplinary).

These concerns could include

- Financial malpractice or impropriety or fraud
- Failure to comply with a legal obligation or Statutes
- Dangers to Health & Safety or the environment
- Criminal activity
- Improper conduct or unethical behaviour
- Attempts to conceal any of these

#### Protection

This policy is designed to offer protection to those employees of the organisation who disclose such concerns provided the disclosure is made:

- in good faith
- in the reasonable belief of the individual making the disclosure that it tends to show malpractice or impropriety and if they make the disclosure to an appropriate person (see below). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure. In an extreme case malicious or wild allegations could give rise to legal action on the part of the persons complained about.

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Managing the Whistleblowing Process

##### Confidentiality

The organisation will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

##### Anonymous Allegations

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the organisation.

In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

##### Untrue Allegations

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information.

If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

##### Procedure for Making a Disclosure

On receipt of a complaint of malpractice, the member of staff who receives and takes note of the complaint, must pass this information as soon as is reasonably possible, to the appropriate designated investigating officer as follows:

Complaints of malpractice will be investigated by the appropriate Director unless the complaint is against the Director or is in any way related to the actions of the Director. In such cases, the complaint should be passed to the Chief Executive for referral.

In the case of a complaint, which is any way connected with but not against the Director, the Chief Executive will nominate a Senior Manager to act as the alternative investigating officer.

Complaints against the Chief Executive should be passed to the Chairman who will nominate an appropriate investigating officer.

The complainant has the right to bypass the line management structure and take their complaint direct to the Chairman. The Chairman has the right to refer the complaint back to management if he/she feels that the management without any conflict of interest can more appropriately investigate the complaint.

## 8. Handling Employee Complaints & Concerns



### THE LEGAL HR ESSENTIALS

#### Managing the Whistleblowing Process

Should none of the above routes be suitable or acceptable to the complainant, then the complainant may approach one of the following individuals who have been designated to handle such matters and act as independent points of contact under this procedure.

They can advise the complainant on the implications of the legislation and the possible internal and external avenues of complaint open to them:

<Fill in relevant names as applicable>

If there is evidence of criminal activity then the investigating officer should inform the police. The organisation will ensure that any internal investigation does not hinder a formal police investigation.

#### Timescales

Due to the varied nature of these sorts of complaints, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

The investigating officer, should as soon as practically possible, send a written acknowledgement of the concern to the complainant and thereafter report back to them in writing the outcome of the investigation and on the action that is proposed. If the investigation is a prolonged one, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded.

All responses to the complainant should be in writing and sent to their home address.

#### Investigating Procedure

The investigating officer should follow these steps:

- Full details and clarifications of the complaint should be obtained.
- The investigating officer should inform the member of staff against whom the complaint is made as soon as is practically possible. The member of staff will be informed of their right to be accompanied by a trade union or other representative at any future interview or hearing held under the provision of these procedures.
- The investigating officer should consider the involvement of the Organisation auditors and the Police at this stage and should consult with the Chairman / Chief Executive
- The allegations should be fully investigated by the investigating officer with the assistance where appropriate, of other individuals / bodies.
- A judgement concerning the complaint and validity of the complaint will be made by the investigating officer. This judgement will be detailed in a written report containing the findings of the investigations and reasons for the judgement. The report will be passed to the Chief Executive or Chairman as appropriate.
- The Chief Executive / Chairman will decide what action to take. If the complaint is shown to be justified, then they will invoke the disciplinary or other appropriate Organisation procedures.
- The complainant should be kept informed of the progress of the investigations and, if appropriate, of the final outcome.
- If appropriate, a copy of the outcomes will be passed to the Organisation Auditors to enable a review of the procedures.
- If the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Chief Executive / Chairman, or one of the designated persons described above.