

QUEENSLAND
ANGLICAN
SCHOOLS

**ADMINISTRATIVE GUIDELINES
FOR THE REVIEW OF
UNSATISFACTORY EMPLOYEE
PERFORMANCE**



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Administrative Guidelines

Administrative Guidelines are a system of principles and procedures designed to assist Anglican Schools in implementing effective administrative measures and complying with legal obligations. This system of procedures guides Schools in complying with the various obligations placed upon them. These Guidelines deal with the practical aspects of legal compliance and effective administrative systems. Administrative Guidelines will be developed by the Schools in consultation with the Anglican Schools Office and relevant stakeholders (for example Church leaders, agency representatives, Government representatives, unions, etc.). The Guidelines are subject to final endorsement by each School's Governing Body, and in the case of Diocesan owned Schools, a designated higher authority, where required by Canon Law (for example the Diocesan Property and Finance Board, Archbishop-in-Council).

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QUEENSLAND ANGLICAN SCHOOLS ADMINISTRATIVE GUIDELINES FOR REVIEW OF: UNSATISFACTORY EMPLOYEE PERFORMANCE

1. PREAMBLE

On occasions, some employees will fail to observe the rules relating to their conduct whilst at work, or fail to perform to the level expected of them. Both of these types of instances will occur for a variety of reasons.

Where an employee breaches a work rule or where an employee fails to perform in accordance with the standards required, it is important to deal with the issue as soon as possible.

The following procedure is recommended as a guideline for dealing with those performance and misconduct issues that do not amount to serious misconduct. For example, where an employee is clearly guilty of serious misconduct such as fighting on the job by assaulting another employee, or is clearly guilty of stealing and matters of a like nature, the employer is usually entitled to summarily dismiss the employee without notice and without going through any disciplinary procedure. However even in these situations the employee should be given natural justice, that is, given a chance to respond to the allegations before a decision to terminate is made.

If the situation arises where an employee has to terminate from the school, it is humane and advantageous to the community if a skilful, compassionate process is carried out. The entire staff, not just management will agonise over unethical, unjust practice.

We can lessen the chance of distasteful and costly separation by developing good employment relations. Part of this cycle involves addressing non-performance, or unsatisfactory employee performance. As each case has the ability to end up in the Industrial Commission with every element under scrutiny, re appropriateness, etc., it is vital to follow due process. The review and disciplinary processes below would usually take place after departmental review/in-house evaluation or informal counselling session and where appropriate, the provision of professional development to address any perceived unsatisfactory performance.

However, at any stage of this process, the School may decide to bypass one or more of the warnings where the behaviour is regarded as so serious to warrant such a measure but does not justify summary dismissal. Each case is different and accordingly these guidelines must be flexible to respond appropriately to the circumstances of every case.

2. STATUTORY FRAMEWORK

A formal review for unsatisfactory work performance serves two purposes:

- Provides a further process for genuinely helping the employee improve their conduct, capacity or performance to a satisfactory level
- Ensures that legal requirements relating to due process and documentation, in accordance with *Section 83 of the Industrial Relations Act 1999 - Queensland*, are complied with.

A failure to comply with the obligations of the *Queensland Industrial Relations Act* may lead to a finding that the termination was harsh, unjust or unreasonable. The consequences of such a finding include:

- Re-instatement; and/or
- Payment of substantial compensation.



The Industrial Relations Act [Section 77] [Matters to be considered in deciding an application] states that:

In deciding whether a dismissal was harsh, unjust or unreasonable, the Commission must consider ---

- a] *whether the employee was notified of the reason for dismissal; and*
- b] *whether the dismissal related to:*
 - i] *the operational requirements of the employer's undertaking, establishment or service; or*
 - ii] *the employee's conduct, capacity or performance; and*
- c] *if the dismissal relates to the employee's conduct, capacity or performance:*
 - i] *whether the employee had been warned about the conduct, capacity or performance; or*
 - ii] *whether the employee was given an opportunity to respond to the allegation about the conduct, capacity or performance.*

3. FORMULATE THE ALLEGATIONS

Before taking action at any of the following stages, the School must establish that a problem exists and the details of the problem by discussing it with the persons involved, including establishing the facts, any relevant policies or rules and inquiry as to what informal counselling or discussions have already taken place in relation to the issue or similar issues.

4. INTERVIEW

If, after the allegations have been formulated, the employer is satisfied that there may be substance to the allegation of unsatisfactory performance or misconduct and wishes to investigate it further, an interview should be arranged with the employee concerned as soon as practicable. The employee should be notified in writing of the interview. The notification should include:

- The time, date and place of the interview;
- The general nature of the matters to be discussed;
- The employee's right to have a person of their choice [may be a union representative] present.

Copies of the documentation relevant to the allegation should be made available to the employee at the interview.

An informal, friendly approach [although professional] emphasising the need to address problems in a formal way in the mutual interests of the employee and the employer should be adopted. Note:

- a] It is preferable to have a management witness present [this is in addition to one of the employee's choice].
- b] Identify the reason for the meeting.
- c] Identify the work rule or conduct of performance standard involved and the way it was being breached or not observed.
- d] Ask the employee for response/explanation/defence/comments/perceptions.
- e] If possible, agree on what should be done to meet the required standard and the review period in which the employee should demonstrate achievement of standard, etc.



- f] Advise that failure to address the problem may result in a further disciplinary action.
- g] Keep accurate documentation of content of discussion and time and date and provide a copy to the employee.

5. INVESTIGATION

A proper investigation of the circumstances may need to be carried out if the employee denies the allegations or certain parts of the allegations at the interview. It is insufficient merely to rely on the fact that allegations have been made. An investigation may include the following:

- Assessing any relevant documentation, including a personnel file and any previous warnings or counselling sessions.
- Interviewing persons who may have [or should have] knowledge of the employee's performance or the incident concerned.
- Assessing further information relating to the employee's performance.
- Compiling written accurate report of investigation [not just diary notes].

Depending upon the outcome of the investigation, it may be necessary to conduct a further interview with the employee to give him/her an opportunity to respond to the facts and documentation which were uncovered through the course of the investigation.

6. OUTCOME OF INTERVIEW

The employer should consider all matters raised at the initial interview, the outcome of any investigation or further interview and whether the employee has any previous warnings or counselling sessions before determining whether to take disciplinary action. If the employer considers that no action is warranted, the employee should be advised in writing.

Should disciplinary action be deemed necessary, there is no specific legal obligation to give an employee an oral warning and two written warnings before dismissal. However following this process will help you demonstrate that the dismissal was not harsh, unjust or unreasonable, if a former employee lodges an unfair dismissal claim against you.

In some serious cases or in cases of repeated poor performance or misconduct it may be appropriate to move straight to the final written warning stage. The important point is that the employee knows the seriousness of the situation and knows that repeating that behaviour will lead to termination.

If a written warning is considered to be appropriate, the employee will be advised in person with written confirmation, including:

- That the employer has considered all matters raised at the interview, including the employee's response;
- That the employer believes that the employee's performance is deficient or that misconduct was committed;
- Details of the deficiencies or misconduct;
- That the employee was given the opportunity to be represented at the meeting;
- That the employee was given an opportunity to respond to the matters raised at the meeting;



- In the case of performance issues
 - a) The standards which need to be met and the agreed time within which that must be achieved;
 - b) A review date in respect of the employee's performance against those standards;
 - c) That if the standards are not achieved, further disciplinary action including termination may be taken.
- In the case of misconduct
 - a) The standard of behaviour which is expected;
 - b) That if inappropriate behaviour occurs in the future, further disciplinary action including termination may be taken.
- The name of a nominated contact within the organisation with whom the employee can discuss any matters which are unclear or from whom any assistance may be gained; and
- Details of counselling and/or professional development available to the employee, if appropriate.

7. REVIEW

In cases where a review is to be undertaken, the review should occur whether or not the employee's performance has changed/improved. If the employee's performance has improved, the employee should be informed of this in writing. However, the need to continue to improve to reach and maintain the agreed standards should be reinforced and confirmed in writing.

If the employee's performance has not sufficiently improved, the interview, investigation and warning process should be repeated. Continued deficiency in performance may necessitate a further written warning or even dismissal with notice.

For example, if the second review finds the employee's performance is still unacceptable, the employer may choose to:

- Continue with disciplinary action/counselling in accordance with the process outlined above;
- Find an alternative arrangement in the organisation if in all the circumstances, dismissal is the only other option; or
- Dismiss the employee if in all the circumstances termination would not be harsh, unjust or unreasonable and where [1] and [2] are not justifiable alternatives. The employer should notify the employee in the following manner of their dismissal:
 - The employee should be informed by the employer of the reason for their dismissal.
 - The employer should provide the employee with written notice of termination.
 - The employee should be provided with notice or pay in lieu of notice in accordance with Section 84 of the Industrial Relations Act 1999.

The employer should ensure the process of formal review of unsatisfactory performance has been followed and that each stage has been fully documented.

8. SUMMARY DISMISSAL

Summary Dismissal is a serious and decisive action and is therefore only warranted in a situation where the employee's conduct or capacity is of such a kind that it would be



unreasonable to require the employer to continue the employment during the period of notice. Therefore, this is a decision of last resort. In cases of serious misconduct, an employee may be dismissed, provided:

- ❑ The incident or behaviour has been thoroughly investigated;
- ❑ The employee has been allowed to respond to the allegations in an interview;
- ❑ The employer considers all information received prior to making a decision; and
- ❑ The employer conveys the decision both verbally and in writing.

During the investigation process, the employer may choose to suspend on full pay the employee if it is deemed to be appropriate. Serious misconduct may include:

- a] The commission of a crime in the course of employment;
- b] Drunkenness, or drug abuse, or any conduct at the workplace which endangers the safety of clients, co-workers and the public;
- c] Physical abuse;
- d] Sexual abuse.

The employer has a responsibility to contact the Board of Teacher Registration if the employee is a teacher.

9. CLOSING POINTS

It does happen that there are deficiencies in staff performance and that there are concerns over the appropriateness of the conduct of staff. It also happens that there are errors made in the selection of staff or that staff become, over a period of time, disaffected, indolent or antagonistic in their attitudes. It also happens that quite irreconcilable differences based on personalities, professional viewpoints and practices occur between Principals and staff members. It also occurs that Principals are not immune from incompetency, unprofessional actions and rash judgements. These are all facts of life in an Education system. It is essential, therefore, that where there are grievances and disputes, justice is done to all parties, Keogh [1989:1-6]

A school is a complex organisation and communication is the linchpin to employment relations. In such a complex environment, if the dignity of the human person is to be maintained in the relationship between employer and employee, it is ideal for school management to foster fairness, justice and consistency. This is active everyday justice, where each party accepts mutual responsibilities.



