



Disciplinary Procedures

Walks through what to do when disciplinary procedures are required

- When the disciplinary processes should be used
- A guide to the disciplinary process

1.1 Disciplinary Procedures

Why this is important

Poor performance or misconduct on farms affects morale and productivity for all staff. Effectively dealing with poor performance and misconduct demonstrates your leadership skills and commitment as a fair and equitable employer. Failing to deal with performance and misconduct usually results in the best employees leaving.

Case law clearly demonstrates that sound judgement must be used at all times. In practical terms this means that decisions made would be the same decision that any other reasonable person would make.

The risk of a personal grievance is always high when dealing with disciplinary issues. This fact sheet provides a guide as to how to minimise your risk. However, this fact sheet should not be used as a substitute for appropriate legal advice.

This fact sheet will cover:

- When the disciplinary processes should be used
- A guide to the disciplinary process

When are disciplinary processes required?

Disciplinary procedures are usually started due to either:

- Continued poor performance
- Misconduct.

Poor performance

Poor performance should initially be addressed on an ongoing basis through the performance management and coaching processes set out in Fact Sheet 3.3: Performance Management.

However, if performance continues to be poor, disciplinary procedures may need to be started.

Misconduct

Misconduct occurs where someone behaves in an unacceptable way in the workplace. Examples of misconduct include:

- Unauthorised use, possession or movement of farm (or another employee's) property
- Not complying with safety procedures
- Dishonesty
- Harassment of another employee
- Cruelty to stock.

Acts of serious misconduct are not defined as the circumstances surrounding the incident all contribute to interpreting the event. Serious misconduct occurs where the employee's behaviour is such that you feel threatened, unsafe or the act results in a deeply impaired trust of the person. This may result in instant dismissal.

Minor misconduct can be dealt with informally but repeated minor misconduct offences or serious misconduct will usually lead to disciplinary procedures being started. Employers must take active steps to prevent an employee's misconduct; an employer must warn the employee if they are about to act in a way that is considered misconduct, especially if that act may lead to dismissal.

Prevention is better than cure. Misconduct can be minimised through having a code of conduct and regular discussion at team meetings about what is considered to be acceptable behaviour. These team meetings must be documented, dated and signed by all staff who have attended.

A guide to disciplinary procedures

The most important rule when dealing with disciplinary procedures is to make sure that you are fair and reasonable when disciplining or dismissing staff. Whenever judgement goes against the employer in an employment dispute the most common reason for this occurring is that the employer did not follow, or was unable to demonstrate they had followed, a fair and reasonable process.

Disciplinary action must follow a "fair" process. What is considered to be a "fair" process varies depending on the circumstances. Because of this uncertainty it is strongly recommended that you obtain legal advice before you start disciplinary proceedings.

If, for some reason, legal advice is not available the following process provides a guide to handling the situation. Remember that because the circumstances vary in each situation, what is "fair" changes in each situation and therefore this process will not be right for every situation. Please make sure you seek legal advice as soon as possible.

Step-by-step process for dealing with disciplinary issues

Before you start

Always start the process with an open mind and remain as objective as possible. It is critical that you have not pre-determined the outcome of process – this would not be fair.

It is important to deal with issues as soon as you become aware of them, but avoid getting drawn into heat of the moment decisions and actions.

Step 1	<p>Conduct an initial investigation</p> <ul style="list-style-type: none"> • Is there a specific action to be dealt with? • What evidence is available? • How has part of the employment environment or the way in which the person has been managed contributed to the issue? • Is there an alternative to disciplinary action that would give a better result?
Step 2	<p>Arrange an investigative meeting with the employee</p> <ul style="list-style-type: none"> • Inform the employee of the purpose for the meeting • Let the employee know that the meeting may result in disciplinary action • Let them know they have the right to bring a legal representative or support person along to the meeting • It is also advisable for you to have an independent support person • Ensure the employee has enough information about the issue that they can consider their response. You should let them know about your evidence • Record that a meeting has been arranged.

<p>Step 3</p>	<p>Allow the employee to respond</p> <ul style="list-style-type: none"> • Listen carefully to their point of view • Ask questions for clarification but do not argue • If it becomes clear that further investigation is needed then adjourn the meeting until this has been completed • If no further information comes to light you should still adjourn the meeting to consider the employee's explanation.
<p>Step 4</p>	<p>Consider your response</p> <ul style="list-style-type: none"> • Complete any additional investigation required • Reflect on the meeting, and consider your response • Take time to consider if your planned course of action is fair and reasonable.
<p>Step 5</p>	<p>Arrange a meeting to discuss your response</p> <ul style="list-style-type: none"> • Once again make sure the employee has the opportunity to bring a legal representative or support person along to the meeting • It is also wise for the employer to have a support person present as they will view the situation from an independent perspective. • Outline your decision and your reasons for it • If concerns are not founded then you must ensure this is removed from the employees file and you cannot raise this issue again in further disciplinary proceedings • Give the employee time to respond and if new evidence arises adjourn the meeting to investigate further • Decide with the employee the corrective measures they need to take • Notify employee of disciplinary action if appropriate.
<p>Step 6</p>	<p>Record outcomes</p> <ul style="list-style-type: none"> • Minutes should be taken throughout the process • Have the employee and the witnesses sign the minutes as a record of the meeting • Provide the employee with a letter formalising the outcomes of the meeting • Follow any requirement outlined in the employment agreement that requires removing a warning from the employees file or setting expiry dates for warnings to be removed. If expiry dates are not outlined in employment agreements then verbally agree when you will remove them (standard is usually 9-12 months).

Planning corrective action

Disciplinary processes focus on correcting the performance or the behaviour (misconduct) of the employee. The employee must be given a fair opportunity to improve their performance with support from the employer to achieve this. Corrective action may be taken in conjunction or independently of a warning.

The steps to follow when taking corrective action are:

- Agree with the employee what corrective action they need to take to meet performance requirements. This must provide specific performance levels and goals
- Agree a time frame for the correction to take place. This must be reasonable.

- Agree how you will support the employee to improve their performance. Examples of support include redesigning a system, providing training or helping to ease conflict with another employee
- Document the expected performance levels and goals, the support to be provided and the time-frame for correction
- Provide a copy to the employee
- Carry out regular follow-ups to check on progress
- Carry out an objective review of performance at the end of the agreed time frame.

If performance or behaviour have not improved to the level required then repeat the disciplinary process from Step 1.

Taking disciplinary action

Disciplinary action may be either:

- Issuing a warning
- Dismissal.

Is your action justified?

Issuing a warning or dismissing someone is a serious step and opens employment practices up to scrutiny. You must be sure your action is warranted and appropriate to the circumstances. The employment court will consider questions such as those below to decide if action was justified.

- What options did a fair and reasonable employer have?
- Did the employee's behaviour breach their employment agreement?
- How has the employer contributed to the situation?
- Was the employee given specific reasons for the employer's dissatisfaction?
- Did the employer demand a reasonably specific and measurable improvement from the employee over a reasonable period?
- Be aware that you will need to provide several opportunities for improvement in order to be deemed a 'fair and reasonable' employer
- Was the review of the employee's work fair?
- At the end of the period given for improvement, were the results considered dispassionately?
- Did the employer take into account the employee's previous good record (if they had one)?
- Were the warnings for poor work performance both explicit and fair?

Issuing a warning

If issuing a warning, you must provide a letter to the employee clearly stating:

- The letter constitutes a warning
- The reason for the warning
- The improvement required
- The timeframe for the improvement
- How improvement will be measured

- The support the employer will offer
- Notification of the potential consequences of failing to meet the required standard, especially if the next step would be dismissal.

Warning systems

There are no set rules about the number of warnings required; once again it depends on the seriousness of the incident and the surrounding circumstances. The over-riding principle is that all action should be fair and reasonable. You should check what your employment agreement with the employee contains with respect to warnings as this may set out a process.

It is possible to issue final warnings for offences that are serious but not grounds for summary dismissal. If the same offence is repeated or there is a second incident of an equivalent nature, this may lead to dismissal. This process must be outlined in the employment agreement. For less serious issues at least two warnings are likely to be appropriate.

Dismissal

Should the result of the disciplinary process be dismissal of the employee you should write the employee a letter outlining:

- The fact they have been dismissed
- The reason for dismissal
- The period of notice and effective date of termination.

You must provide the employee notice. If a notice period is not specified in the employment agreement it must be fair, probably two weeks minimum. When an employee is dismissed it is appropriate to ask the employee to stop work immediately and pay them in lieu of notice.

The employee may have accommodation provided and appropriate notice of eviction must also be provided where the accommodation is required for a new employee.

Instant dismissal

In certain circumstances, such as for serious misconduct it may be deemed fair to instantly dismiss the employee. However, "instant" does not mean instant. It is still necessary for you to follow a fair process and carry out a full investigation. The employee should be suspended from work, on full pay, until the investigation is complete.

If instant dismissal is being contemplated it is essential to seek legal advice from the outset.

Record-keeping

The employee has the right to challenge the way they are treated through taking a personal grievance against their employer, up to 90 days after becoming aware of the issue you wish to raise a grievance for. It is critical that you maintain records of disciplinary procedures to defend your actions. Records should include:

- Diary notes of all activity related to the disciplinary process
- Detailed minutes of meetings and interviews with other parties
- Any evidence available to support your claims.

Maintain respect

It can be a stressful time for both the manager and employee, when dealing with performance or misconduct problems. Please remember that discipline is about behaviour not the person. Everyone deserves to be treated with respect, even in these difficult circumstances.

What do I do next?

This is a situation where prevention is better than cure. Should you need to put an employee through a disciplinary process, seek out legal advice and conclude the situation, but then move to prevention. Things to consider include:

- Review your performance management and coaching practices to ensure staff are aware of your performance expectations
- Provide coaching and training to help them meet expectations
- Draw up a code of conduct for your farm. Involve your employees and get their input into establishing reasonable behaviour on farm
- Communicate regularly with staff and confront issues as they arise
- Consider mediation as an option.

Useful references:

Employment New Zealand, 0800 20 90 20, www.employment.govt.nz

ERA is part of the Ministry of Business, Innovation and Employment and has information for employees and employers regarding their rights and entitlements in the workplace

Federated Farmers of New Zealand, (members only) 0800 327 646

Federated Farmers provides a range of employment related services to members including legal and practical employment advice and agreements

Termination of Employment - A Best Practice Guide (2008), CCH New Zealand Limited (www.cch.co.nz). This book published by CCH is updated regularly to reflect changes in the law. It provides an excellent guide to this sensitive issue. Its companion, the New Zealand Employment Law Guide (updated annually) also provides an excellent reference text and examples of case interpretations.

Ministry of Business, Innovation and Employment, <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation/>

MBIE provides mediation services to help people resolve their employment relations problems quickly and effectively.