

Formal warning letter

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Introductory note

Terminating employment due to poor performance carries a high risk of litigation. Every employer should take steps to manage poor performance in the workplace by developing a Human Resources Policy which includes procedures for terminating employees.

Given the high risk that an employee terminated due to poor performance is very important that the entire process is properly documented and can be used by the employer as evidence should litigation arise.

What constitutes poor performance

In Australia, underperformance (or as it is commonly known, poor performance) is a form of unsatisfactory work performance, not a form of disruptive or negative behaviour.

Underperformance is not to be confused with disruptive or negative behaviour such as theft or assault and battery.

Relevance of unfair dismissal

When considering whether to terminate the employment of an employee, the provisions of the laws relating to unfair dismissal and award conditions must not be fall foul of these laws.

For example, where an employee has the right to be consulted under the Fair Work Act 2009 (Cth), the employee can allege, and succeed in, a claim for unfair dismissal on the basis of inadequate provision of warnings, insufficient consultation, or that there was no valid reason for dismissal.

When using this precedent

It is a myth that an employer must give an employee a formal warning letter for poor performance. Each circumstance is different and the steps an employer should take depend on the nature of underperformance and the employee's position. An employer should address it.

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In the case of an employee who has committed serious misconduct, written warnings are required before dismissal. See the separate precedent notice for serious misconduct.

It is important that a formal warning letter sets out the reasons for the underperformance and the steps to be taken to improve performance.

See also the separate precedent final warning letter.

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