

FORMULATING DISCIPLINARY ALLEGATIONS

A fair disciplinary investigation must demonstrate a “good reason” for initiating such action.

Before any actions are taken in relation to a disciplinary matter, the Employer must investigate the incident to be able to establish the existence of a good reason. When all the relevant information has been obtained, the Employer will need to formulate the alleged misconduct under investigation.

The formulation is not simply a formality. These allegations can have a major impact on the outcome of the process. The allegations as formulated will determine what the disciplinary investigation is about and what the issues are in dispute. The allegations must contain sufficient particulars to enable the employee to understand the nature and seriousness of the allegations, to be able to identify the incident and to form the basis of his answer to these allegations.

Two of the requirements of a fair disciplinary investigation are that of provision of information to the Employee concerned and opportunity to comment and respond to the allegations.

In terms of the provision of information, an Employee under disciplinary investigation must be informed and invited in writing to a disciplinary meeting. The formulated alleged misconduct must be referred to in this letter. The following points should be covered:

1. What happened.

This will summarise the Employee’s behaviour. The level of the detail will depend on the facts of the situation. This may require financial, logbook, time sheets analysis.

2. What rule was transgressed.

Reference must be made to any policy that regulates behaviour. If there is no policy, the Employer may refer to a standard of behaviour or performance that is reasonable and fair.

3. When did it happen.

This information will focus on the time the alleged misconduct took place and will enable the Employee to focus his/her preparation/response on that time period.

4. Where did it happen.

The reference to the place of the alleged misconduct is required to place the alleged allegations in perspective. Disciplinary investigations involving fraud involving computer technology may be difficult to define the place of the alleged misconduct.

5. Who was involved.

If the investigation manager is going to rely on witness statements during the investigations reference must be made to that and copies made available to the Employee..

6. Documents.

It may be required that the Employer will rely on a number of documents. If so, an index of documentation may need to be attached to the disciplinary letter.

It is not required to write or formulate these allegations in complicated legal technical terms and to have all the facts regarding time and place completely correct.

In relation to an opportunity to respond to the allegations, the Employee must be allowed a reasonable time to prepare a response. This may also include meeting with his/her representative or support person. An Employee will only be able to prepare with detailed correct and complete information. Any short coming may result in the disciplinary investigation being found to be unfair. It may also be that the investigation will be postponed for the employee to receive additional information. An Employer may wish to abandon the disciplinary investigation altogether.

Copies of all witness statements, reports, policies, that the employer has received during the information must be made available to the Employee well in advance of the disciplinary meeting.

A disciplinary sanction can only be based on the misconduct allegations put to the Employee, commonly referred to as the frame of reference. If the scope or focus changes during the investigation process it would be advisable to adjourn the investigation and reformulate the allegations or supply the Employee with the additional information.

For more information the disciplinary process, please refer to our Discipline and Dismissal eBook. Employer Support Package members can download this from the Dashboard Library their Toolbox account on www.EmployersToolbox.co.nz. The eBook is available for purchase by non members at [Discipline and Dismissal](#).

Acknowledgement to Employment Assist