

Employee Misconduct Procedure

Purpose

The purpose of this procedure is to set out the requirements and processes to manage a breach of the Code of Conduct or other workplace policy or procedure.

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Scope

This procedure applies to all workers both in the workplace and in any work-related context (e.g. work social functions, conferences, business trips).

Procedure detail

Misconduct and serious misconduct definitions

Misconduct refers to the wilful or deliberate decisions, behaviours and actions of a worker that are unacceptable but are not a criminal offence.

Serious misconduct refers to the wilful or deliberate decisions, behaviours and actions of a worker that:

- could (if they were proved) be a criminal offence and/or lead to termination of employment
- endangered the life, health or safety of a person
- killed or injured a person
- could be considered consistent, persistent or ongoing misconduct

When decisions, behaviours and actions are subject to this procedure

The decisions, behaviours and actions of workers are subject to the Code of Conduct and this procedure both in the workplace (e.g. in the office, on site) and in any work-related context (e.g. work social functions, conferences, business trips).

Common examples of misconduct and serious misconduct

There are a wide range of decisions, behaviours and actions that can be considered misconduct or serious misconduct. A number of common examples have been listed and grouped below based on the categories in the Code of Conduct.

- Policies, procedures and legislation
 - stealing money or other goods from the workplace
 - fraudulently completing documentation
- Attendance and punctuality:
 - regularly not attending work at the correct time without notification or reason
 - unauthorised and deliberate absenteeism from work
- Dress, appearance and hygiene:
 - not wearing the required uniform or personal protective equipment (PPE)

- Personal behaviour:
 - being intoxicated or under the influence of illegal or non-prescribed drugs at work
 - smoking in signed 'No Smoking' areas
- Use of facilities, equipment, email, phones, internet and social media
 - intentionally damaging workplace property, equipment or facilities
 - using a workplace vehicle without permission or authority
 - downloading offensive material
- Safe and healthy work environment
 - causing serious risk to the safety of another person
 - causing injury to another person
- Licences, certifications and other requirements
 - misrepresenting personal qualifications, skills, experience or other requirements during the recruitment process
 - failing to report the loss of a relevant licence, certification or other requirement relevant to the job description
- Confidential information, privacy and records management
 - revealing confidential information to an industry competitor or other party
- Ownership of products and copyright
 - removing products, materials, copyright or intellectual property from the workplace after termination of employment
- Conflict of interest
 - undeclared ownership of shares in a direct competitor
- Insider trading
 - telling a friend to buy shares in the organisation because it had just won a big project
- Gifts, commissions, benefits, gratuities
 - receiving undeclared money or gifts from clients or suppliers
- Public conduct and media contact
 - behaving inappropriately while representing the organisation at a conference
- Bullying, harassment, discrimination, other unacceptable behaviour
 - making racial or other discriminatory remarks, jokes or insults
 - taking part in any physical assault, altercation or fight

Reporting suspected misconduct

Suspected worker misconduct is commonly reported by:

- a member of the public
- another worker
- the worker's manager or supervisor
- any other party who observes or suspects the misconduct

The suspected misconduct may be reported to the relevant party (i.e. direct manager or supervisor, ethics hotline etc.) via:

- a verbal conversation (e.g. face to face or by phone)
- a written report form (e.g. Incident Report Form or other appropriate form)
- an online report form
- an email

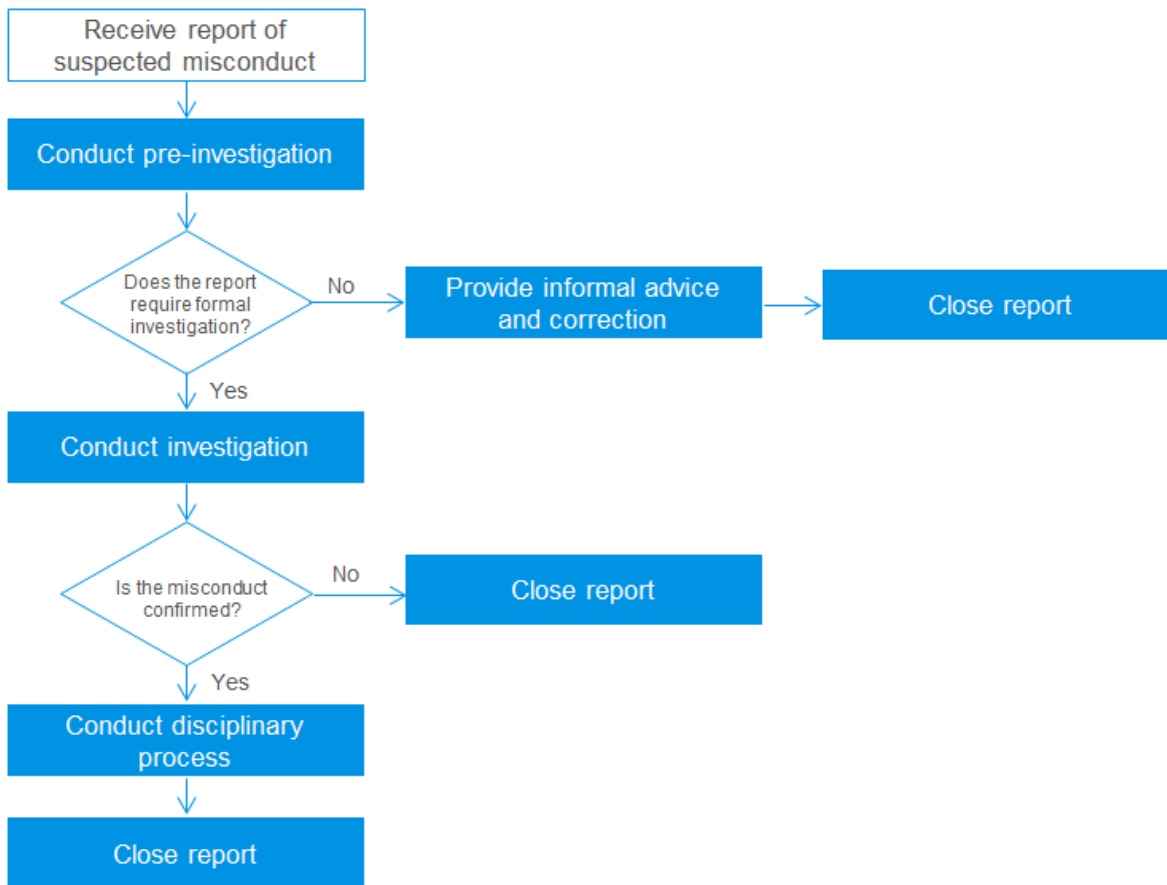
All reports must include (at a minimum) the:

- date, time and location of the incident
- specific nature of the alleged misconduct
- name(s) of the workers involved
- person reporting the alleged misconduct
- witnesses to the alleged misconduct

All reports and details that might identify particular parties will be treated with strict confidentiality (except as required to conduct an adequate investigation and if necessary, take appropriate action). Care should be taken to ensure the information is restricted to those that need to know about the investigation. There is assurance that there will be no retaliation against a worker who submits a report in good faith (with no malicious intent).

Handling misconduct process overview

The process steps used to handle a case of suspected or confirmed misconduct will depend on the seriousness and nature of the alleged decision, behaviour or actions. Further explanation of each step is provided below the diagram.



Step 1: Conduct pre-investigation

The pre-investigation involves an initial consideration of the report to decide how best to handle the suspected misconduct.

Not all cases of suspected misconduct need to be handled by conducting formal investigation and disciplinary processes. In cases of very minor or unintentional misconduct, often informal advice and correction is the most effective way to deal with the case.

Step 2: Conduct investigation

When informal measures are not appropriate or the informal approach has been unsuccessful, an investigation will be conducted by a suitably skilled party. The investigation must be approached with impartiality and the aim of 'fact finding' rather than 'proving the allegation'.

The depth of the investigation will depend on the seriousness and nature of the misconduct. The more serious the misconduct is, the more resources that will be required for the investigation.

The parties involved in the investigation will also depend on the seriousness and nature of the misconduct. For example, a minor misconduct may only involve the person alleging the misconduct, the person accused of the misconduct, any witnesses and an appropriate manager or supervisor. Alternatively, serious misconduct may involve all of these parties in addition to a senior investigation team, professional advisors or other appropriate parties.

The person accused of the misconduct must be given the opportunity to respond to the allegation during the investigation.

The details of the investigation will be documented in the Conduct Investigation Report. Refer to the Conduct Investigation Report for further explanation.

The investigation will form a view on the events that occurred and what action needs to be taken, including

- disciplinary process
- corrective actions (e.g. changes to policies or procedures)

Step 3: Conduct disciplinary process

The disciplinary process to respond to a finding in the Conduct Investigation Report will depend on and be proportionate to the seriousness and nature of the misconduct. For example, a one-off minor misconduct may only proceed to the discussion, while a repeated misconduct may proceed through each sub-step and a more serious misconduct may proceed immediately to dismissal.

Sub-step 1: Discussion

This stage involves a discussion between the worker, their manager or supervisor, a support person and any other relevant party to understand the facts and determine the corrective actions required. This can be considered a verbal warning. It must be completed as soon as possible after the breach becomes known and is often completed as part of the investigation process.

Sub-step 2: First warning

This stage is used when the discussion (verbal warning) has not produced the required result (i.e. the particular misconduct continues), when subsequent to the verbal warning other misconduct has occurred or where a stronger disciplinary action than a verbal warning is required. As this is a formal written warning a copy of the warning will be retained in the worker's personnel file.

In more serious cases, this warning may be regarded as the first and final warning.

Sub-step 3: Final warning

This stage is used when the discussion or first warning have not produced the required result (i.e. the misconduct still continues) or where a stronger disciplinary action than a discussion or first warning is required. As this is a formal written warning a copy of the warning will be retained in the worker's personnel file.

Sub-step 4: Dismissal

This stage is the most severe of the disciplinary actions and should only be used for very serious misconduct or consistent or persistent misconduct that still continues after the discussion/issue of first and/or final warnings.

The organisation must comply with all state and federal legislation and the worker's contract of employment when conducting the disciplinary process and/or terminating employment.

Step 4: Close report

Once the investigation and any disciplinary processes have been completed, the report will be closed and any additional documentation updated (e.g. The Risk Register or Incident Register).

Responsibilities

PK Plumbing and Gasfitting has identified the following roles within our organisation with obligations to manage employee misconduct, as:

- the employer/ person conducting a business or undertaking (PCBU)
- managers/supervisors
- workers

A summary of the key responsibilities for each role are listed below.

Employer/PCBU Responsibilities

The Employer or PCBU can be a sole trader, the partners in a partnership, a company, an unincorporated association or a government department. In our organisation this responsibility is accepted by Philip Kenny

The Employer/PCBU must:

- ensure all workers are aware of the repercussions of breaching the Code of Conduct or other workplace policy or procedure
- ensure workers are provided with the:
 - knowledge of the types of misconduct
 - tools to report suspected misconduct
- ensure workers with investigation responsibilities are provided with the skills, knowledge and tools to conduct a fair and unbiased investigation

- ensure adequate resources (time and budget) are provided to implement misconduct investigation and disciplinary processes throughout the workplace
- ensure reports of misconduct have been investigated to a depth appropriate to the seriousness and nature of the misconduct
- ensure documentation and records of all reports of misconduct are completed and maintained
- monitor trends in reports of misconduct on an ongoing basis and analyse and audit reports of misconduct and investigation findings as part of regular audit processes
- review and audit the procedure on an ongoing basis to ensure it continues to reflect good practice in investigation and disciplinary processes and compliance with the relevant legislation

Manager/Supervisor Responsibilities

Managers and supervisors are workers who have an area of control within the workplace. In our organisation this responsibility is accepted by Philip Kenny

Managers and supervisors must:

- ensure all workers in their area of control understand their obligations under the Code of Conduct (i.e. induction program and job descriptions)
- review misconduct reports submitted by workers within their area of control
- escalate the notification of serious misconduct to senior management (or as needed)
- manage or participate in misconduct investigation and/or disciplinary processes (as appropriate and dependant on the category of the incident)
- maintain all records of misconduct investigation and/or disciplinary processes (as needed)
- encourage workers within their area of control to take a proactive approach to the reporting of misconduct

Worker Responsibilities

A worker is any person who carries out work for a PCBU, including work as an employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a 'host employer' and volunteers.

Workers must:

- report any suspected misconduct (i.e. breaches of the Code of Conduct or other policy or procedure) by themselves or others
- take part in any misconduct investigation and/or disciplinary processes as a person accused of misconduct, a person alleging misconduct or a witness

Supporting records

The following records are created, maintained and reviewed as part of the requirements of this procedure:

- Conduct Investigation Report

Supporting policies and procedures

This procedure operates within the Code of Conduct policy.

This procedure should be read and followed in conjunction with the:

Implementation and evaluation

PK Plumbing and Gasfitting will ensure this Procedure is reviewed and evaluated for its effectiveness in delivering objectives on an annual basis or earlier in the event of major changes to the legislation or our organisation structure and operations.

Policy authorised by: Philip Kenny (Director)

Signature:  _____

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