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# DISCIPLINE & DISMISSAL

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## Overview

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### This Document

This document covers the following topics relating to employee discipline and dismissal.

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## DISCIPLINE & DISMISSAL

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### Introduction

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**Purpose** The purpose of this policy is to ensure that all disciplinary actions, including dismissals, are justified and are carried out in a procedurally fair and legally correct manner.

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**Scope** This policy applies to all individuals employed by Auckland District Health Board.

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**Policy Statements** The following policy statements apply:

- Disciplinary action will be taken in accordance with the principles and processes laid down in this document
- Disciplinary action will be decided in the context of the overall good of both the organisation and the employee
- All disciplinary action will be documented and available to the employee
- Disciplinary decisions are to be arrived at in a fair, reasonable and culturally effective manner

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**Authority** The Delegated Authority Manual details the authorities currently in effect for matters relating to Discipline and Dismissal.

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**Records** Copies of disciplinary documentation (interviews, suspension/transfer confirmations, warnings, etc.) will be held in the employees Personal File.

At the employees request, records of disciplinary documentation will be forwarded to the employees representative.

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## DISCIPLINE & DISMISSAL

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### General Principles

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#### Introduction

When taking disciplinary action of any kind the following principles are to be observed:

- Promptness
  - Impartiality
  - Consistency
  - Non-Punitive
  - Fairness
  - Advance Warning
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#### Promptness

Disciplinary action must be taken as soon as practicable after the event which warrants the action.

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#### Impartiality

Disciplinary procedures must be applied in an equitable and fair manner to **all** employees.

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#### Consistency

Impartiality implies consistency; similar disciplinary action must be taken in respect of similar offences in similar circumstances.

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#### Non-Punitive

The aim of disciplinary action is to improve the situation and prevent recurrence of unsatisfactory actions or behaviours. It must not be for the purpose of exacting revenge or inflicting punishment for its own sake.

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#### Fairness

The degree of discipline must be related to:

- The nature of the offence
  - The employee's work record
  - The circumstances
  - Any extenuating factors
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#### Advance Warning

Every employee is entitled to know the level of performance expected.

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## DISCIPLINE & DISMISSAL

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### Grounds for Disciplinary Action

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#### Introduction

The need for disciplinary action may arise from any number of situations.

The following list summarises the primary grounds for disciplinary action:

- Incompetence or poor performance
  - Impaired performance through health related reasons
  - Misconduct
  - Serious Misconduct
  - Criminal charges and offences against the law
  - Abandonment of employment
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#### Incompetence or Poor Performance

When a person is engaged for a position, there is an implied warranty of competency for the position and of performance to an acceptable standard.

If the employee fails to reach and/or maintain this standard, even after counselling, coaching or training, then there are grounds for disciplinary action.

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#### Impaired Performance due to Health Reasons

An employee whose performance deteriorates for health related reasons (e.g. Illness, alcohol abuse, etc.) should be counselled to seek appropriate professional assistance.

Termination of employment, or transfer to other duties, may on occasion be necessary (e.g. If the employee's performance continues to be unsatisfactory).

Such action will not be taken until the employee has been given a reasonable opportunity to improve, with or without professional assistance.

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## DISCIPLINE & DISMISSAL

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### Grounds for Disciplinary Action, Continued

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#### Misconduct

Misconduct comprises unacceptable or irresponsible actions or omissions which, regarded in isolation, do not warrant severe disciplinary action.

Each incident must be assessed in context, and appropriate action taken on the basis of that assessment.

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#### Serious Misconduct

Serious misconduct may warrant dismissal without notice and is behaviour by any employee which:

- Undermines the trust and good faith inherent in the employment relationship, **and/or**,
  - Seriously threatens the well-being of the organisation, the staff, or clients
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#### Criminal Charges

If an employee is imprisoned, the employment agreement may be terminated, or the employee placed on leave without pay.

An employee on bail awaiting trial for a:

- Non-work related offence, may continue to be employed
- Work-related offence, may be suspended

The fact that an employee has been convicted of an offence committed outside employment should not be regarded as automatic reason for dismissal. The main consideration is whether the offence is one that makes the individual unsuitable for, or disqualified from, continued employment.

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#### Abandonment of Employment

Abandonment of employment is defined as absence without notification and without adequate explanation or cause for the period specified in the employee's employment agreement, or, in any other case for a period exceeding three (3) normal working days.

Abandonment of employment may constitute grounds for dismissal. (See also [Abandonment of Employment](#))

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### Disciplinary Process

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#### Introduction

The table below describes the disciplinary process for ADHB.

Stage	Description
1.	Incident occurs.
2.	Complaint/report made.
3.	Preliminary investigation completed: <ul style="list-style-type: none"> <li>• Check</li> <li>• Investigate</li> <li>• Confirm facts</li> </ul>
4.	Disciplinary interview(s) performed.
5.	Due consideration of all facts.
6.	Action plan implemented.

If Action Required Is	Action Implementation Is
<b>Formal</b>	<ul style="list-style-type: none"> <li>• Warning:               <ul style="list-style-type: none"> <li>– Verbal</li> <li>– First Written</li> <li>– Final Written</li> </ul> </li> <li>• Dismissal:               <ul style="list-style-type: none"> <li>– With notice</li> <li>– Without notice</li> <li>– Including downgrading</li> </ul> </li> </ul>
<b>Informal</b>	Alternative: <ul style="list-style-type: none"> <li>• Counselling</li> <li>• Corrective coaching</li> <li>• Redirection/retraining</li> <li>• Reorganise/redeploy</li> </ul>
<b>None</b>	Matter dropped

#### Note

Suspension on pay or transfer of duties could be appropriate at any point prior to Stage 6 of the above process.

Refer to Suspension on [Pay](#) and [Transfer of Duties](#).

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## DISCIPLINE & DISMISSAL

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### Disciplinary Interviews & Investigation

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#### Introduction

When disciplinary action is being considered, a careful investigation must be made.

The investigation must include:

- Collection and recording of witness accounts (if available)
- Verification of records and facts (if possible)
- Advice from a suitably qualified professional when it is relevant to the matter being investigated

No disciplinary action, including verbal or written warnings, is to be decided upon, or taken, before the relevant facts have been evaluated.

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#### Employee Rights

The employee to be interviewed is to be given:

- Prior warning of the nature and subject of the allegations being investigated and the type of disciplinary action that could result
  - The opportunity to be accompanied at the interview by a representative of their choice
  - The opportunity to explain, or deny, the allegation
  - Prompt written advice of the result of the investigation
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#### Independent Corroboration

The manager conducting a disciplinary interview must be accompanied by another person so that details of the interview and outcome can be corroborated later.

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#### Records

Written records outlining a summary of the disciplinary interview(s), including the outcome, must be made and kept in the employees Personal File

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## DISCIPLINE & DISMISSAL

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### Suspension & Transfer

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#### Introduction

Suspension or transfer of duties are not, in themselves, disciplinary actions. They are intermediary steps which may be taken while attempting to ascertain if disciplinary action is needed.

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#### Pay

During a period of disciplinary related suspension or transfer, the employee will normally be on full, unaltered pay.

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#### Transfer of Duties

In some instances an employee may be transferred to other duties:

- While an allegation of misconduct or incompetence is being investigated
  - Where the employees presence would hinder the investigation
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#### Suspension

Suspension is used when an employee is required **not** to carry out normal duties:

- Due to an allegation of serious misconduct or incompetence being investigated
  - Where the employees presence would hinder the investigation
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#### Written Confirmation

Suspension or transfer must be promptly confirmed in writing to the employee.

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#### Confirmation Content

The written confirmation must contain, as a minimum:

- Dates and duration of suspension/transfer
  - Reason for suspension
  - Employee reporting requirements
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#### Employee Reporting Requirements

In the event of suspension the employee must:

- Advise where they can be contacted
  - Remain available for interview at reasonable notice
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## DISCIPLINE & DISMISSAL

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### Forms of Disciplinary Action

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#### Introduction

The forms of disciplinary action which may be taken are:

- Verbal warning
  - Written warning
  - Dismissal
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#### Advice to Employee

Any disciplinary action must be formally advised to the employee in writing.

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#### Recording Disciplinary Action

At each stage of the disciplinary process, a record must be kept.

This record is to be placed on the employees Personal File and include:

- Copies of warnings and/or correspondence (e.g. Disciplinary letters, etc.)
  - Meeting details (who was present; the matter discussed; any input received from third parties; etc.)
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#### Previous Records

Warnings will normally expire and be removed from the employees Personal File following a 12 month period of satisfactory conduct or performance

The expiry period may be varied according to circumstances.

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## DISCIPLINE & DISMISSAL

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### Verbal Warning

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#### Introduction

Verbal warnings are usually the first level of disciplinary action.

A verbal warning should **not** normally be the first indication to an employee of shortcomings in performance or behaviour.

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#### Objective

The objective of a verbal warning is to correct the behaviour or performance of an employee and avert more serious disciplinary action in the future.

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#### Content

Verbal warnings must clearly state the grounds for concern and the likely consequences of non-improvement.

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#### Right to Respond

An employee who is in receipt of a verbal warning, may if they wish, respond in writing and/or in person, and have a copy or record, of the response placed in their Personal File.

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## DISCIPLINE & DISMISSAL

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### Written Warning

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#### Introduction

Written warnings are usually the second level of disciplinary action.

Depending upon the “degree of misconduct” it may be appropriate to issue written warnings in two stages (i.e. A **first** written warning and then a **final** written warning).

In other more serious circumstances, a single final warning will suffice.

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#### Content

Written warnings must contain, as a minimum, details of:

- The interview (i.e. Date and names of those present)
  - The unsatisfactory conduct or behaviour
  - Reference to any previous relevant verbal/written warnings
  - Any explanations offered
  - Any agreement made to rectify the problem
  - The type of warning given and its duration
  - Consequences of failure to improve (a final warning must state that dismissal will result from behaviour which causes a further level of disciplinary action to be taken)
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#### Recording Disciplinary Action

A copy of the written warning must be given to the employee, and a further copy signed by the employee acknowledging receipt is to be placed in the Personal File.

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#### Right to Respond

An employee who is in receipt of a written warning, may if they wish, respond in writing and/or in person, and have a copy or record of the response placed in their Personal File.

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## DISCIPLINE & DISMISSAL

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### Dismissal

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#### Introduction

An individual's employment may be terminated by:

- **Notice of termination** – giving notice in accordance with the employee's employment agreement
  - **Summary Dismissal** – immediate cessation, without notice
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#### Rule

No employee will be dismissed without previous warnings, except in cases of serious misconduct, or abandonment of employment.

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#### Abandonment of Employment

Dismissal resulting from abandonment of employment may only be made after reasonable attempts to contact the employee have failed.

The employee must be advised in writing (to their last known address) that they are deemed to have “abandoned their employment”.

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#### Downgrading

After consideration of the circumstances, an employee may be offered other duties, at a lower grading, as an alternative to dismissal.

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#### Process

The process is equivalent to a dismissal followed by re-employment, and must be carried out in the same manner as a dismissal to ensure it is both justified and procedurally fair.

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#### Authority

Authority to downgrade is the same as that specified in the Delegated Authority Manual for dismissal.

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