



DISCIPLINE POLICY

PURPOSE:

To provide an effective disciplinary process for cases of serious employee misconduct or unresolved diminished work performance while observing the principles of natural justice and duty of care.

This policy applies to all employees of Breakaway Toowoomba Inc.

SCOPE:

- Definitions used in the policy and procedure
- Misconduct
- Penalties
- Grounds for dismissal
- Storage of related documentation
- Grievance resolution and appeal rights

POLICY:

This document is based on the values of Breakaway Toowoomba Inc. and complies with Queensland and Federal Industrial and Legislative requirements.

The Executive Officer and Supervisors are responsible to the Management Committee for ensuring that all disciplinary actions comply with this policy.

Definitions:

Allegation - A stated belief or claim that is unsubstantiated and requires proof.

Delegate - A person authorised by the Management Committee to determine the outcome of the disciplinary process.

Disciplinary Action - Action taken as a result of a substantiated allegation or assessment.

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Natural Justice - Natural justice implies that a fair decision is reached through an objective unbiased process and/or decision maker. To ensure this, two rules must be used:

- **The hearing rule:** the decision maker must give the accused the opportunity to present their case and consider this before making any decision;
- **The rule against bias:** the decision maker shall have no personal interest in the matter under review, no bias towards the outcome and shall act in good faith.

The disciplinary process may follow, e.g.:

- Unresolved diminished work performance or;
- As an outcome of a complaint or grievance investigation or;
- A serious incident requiring immediate action; e.g. a criminal act.

Reasonable Adjustment - A process where consideration is given to physical or organisational constraints that may have affected performance, behaviour or competency of people with disabilities. Remedies may include some modification or adjustments within the workplace to meet these needs.

PROCEDURE:

1 Misconduct

- 1.1 An incident is alleged or observed and reported to the immediate Supervisor as per the complaints and grievance process. Very serious incidents may require immediate action e.g. referral to the Police. The Executive Officer will quickly assess the duty of care implications if the accused is allowed to remain working at that location e.g. risk to consumers or other employees. Suspension or relocation may be appropriate.
- 1.2 The immediate Supervisor is to notify the position holder that as a result of an allegation/s or observed behaviour/s that the disciplinary procedure is being initiated. The Executive Officer should be informed and may offer advise where required.
- 1.3 If an investigation has not already been conducted, the incident is to be investigated by two (2) independent assessors, observing the principles of natural justice in accordance with the *Complaints and Grievance* policy; (e.g. inform the accused of available support or representation).
- 1.4 Where allegations or observations are substantiated by a thorough investigation it is the responsibility of the immediate Supervisor to inform the accused promptly orally and confirm in writing the investigation's findings and the nature of possible penalties.
- 1.5 The accused will be given an opportunity to show cause (within three working days or by mutual agreement) why this action should not be implemented. In the case of union

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members, it is advisable to inform the relevant union representative of the circumstances facing their member.

- 1.6 Upon receipt of the accused person's response either orally or in writing, or in the absence of a reply after three working days, the decision maker/s will weigh up all of the circumstances. This will include the seriousness of the incident/s, any extenuating circumstances and any reasonable adjustment factors. The appropriate penalty/remedy will then be decided.
- 1.7 The accused will then be advised orally and/or in writing of the outcome of the decision process. Where an outcome involves a recommendation for dismissal, this shall be referred to the Management Committee for approval.

2 Possible Penalties/Remedies

2.1 Dependent upon the seriousness of the incident, penalties/remedies for disciplinary situations could be to:

- a) Dismiss allegation/s without penalty;
- b) Give an oral reprimand;
- c) Give an oral reprimand with notation on file;
- d) Issue a final warning letter with copy to personal file and with ongoing assessments;
- e) Issue a reprimand or final warning letter as above with referral to remedial program;
- f) Demote or transfer on a temporary basis;
- g) Demote or transfer on a permanent basis;
- h) Issue a financial penalty e.g. for wilful damage or negligence;
- i) Garnishing wages to reimburse full or partial loss e.g. reimbursement of damage to property;

More serious incidents

- j) Referral to external agency e.g. Police;
- k) Referral to Legal representatives;
- l) Dismiss with notice and severance payment;
- m) Dismiss with notice payment only;
- n) Summarily dismiss without notice.

Caution: Cases involving illness or injuries that have significantly affected performance must not be processed using the discipline process. Significant penalties apply under Industrial legislation..

Where the penalty/remedy involves summary dismissal, the relevant Award and Workplace Relations Act & Regulations 1997 and subsequent amendments should be consulted. Significant penalties may apply for unlawful dismissal. Refer below.

3 Legitimate Grounds for Dismissal

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Grounds for dismissal for serious misconduct under the Workplace Relations Act & Regulations 1997 are:

- 3.1 Theft, assault and fraud or;
- 3.2 Other misconduct such as: intoxication at work and being under the influence of drugs
- 3.3 Serious risk to a person's health and safety,
- 3.4 Damage to the reputation, viability or profitability of the employer's business,
- 3.5 Wilful or deliberate behaviour that is inconsistent with the continuation of the employment contract and
- 3.6 Refusing to carry out a lawful and reasonable instruction that is consistent with the employment contract.

4 Storage and Destruction of Documents

- 4.1 * Original documents are to be kept by the immediate Supervisor in a secure and locked storage area. The position holder should also retain a copy of the documentation. These documents may be placed on personal files.
- 4.2 Documents are to be kept for a minimum of three years after which they are to be destroyed. If the position holder resigns the documents are to be destroyed. If a position holder is dismissed, the documents must be retained for three years.

5 Disagreement, Grievance Resolution and Appeal Rights

- 5.1 If a position holder disagrees with any aspect of the way the process was conducted, they may lodge a grievance in accordance with the grievance policy.
- 5.2 Where a position holder is summarily dismissed and disagrees with any aspect of the way the process was conducted, a grievance may be lodged as above or subsequently an unfair dismissal claim may be lodged with the Industrial Relations Tribunal.

Approved (Executive Officer) David Bell Date 17.12.09

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Approved (Chairperson) Paul Deane Date 17-12-09