

Disciplinary Processes in the Workplace

Why do employers continually get the basics of the discipline processes wrong...with all the expensive, time-consuming, consequences, asks Rainey Collins Lawyers partner, Alan Knowsley?

Alan says there are many cases where the employee's behavior would have justified dismissal but the employer got the process so wrong the employee ends up being awarded substantial compensation...

Many members have excellent loyal employees and no need for disciplinary action, meaning if a case arises they could be unprepared to do and say the right things.

An example is a case where the employee was observed smoking marijuana at work. To make matters worse it was a building site, and he was on the third level of scaffolding in an earthquake damaged building in Christchurch—Hardly the safest work environment and a situation that could quickly have resulted in an acceptable dismissal. However the employer failed to tell the employee of the allegation or its source, and failed to give him any opportunity to comment, refute, or explain the behaviour. This resulted in an award of \$13,760 compensation to the employee.

"Why do employers get the process so wrong?" he says.

It is not difficult to tell the employee of the allegations, and give them a fair opportunity to respond, but in a large number of cases no fair process at all is followed.

"Do employers believe that the case is so obvious that no investigation is necessary?" he questions. This is never an excuse for not having a proper process, and usually is far from a correct assumption. This was demonstrated in a case where the employee was fired for contacting her employer's bank and seeking information on access to the company financials. This employee was dismissed on the spot.

She was reinstated after a hearing 12 months later. The employee had been told by the company accountant to call the bank, but had never been asked for any explanation by her employer, and had no opportunity to respond before being marched out the door.

"Employers need to stop and take a breath after learning of an allegation," he says. "They need to investigate the allegation, and inform the employee of the allegation, give them a fair opportunity to respond, and remind them that they can seek the assistance of a support person.

If an allegation is then found to be proved the employer can move on to deciding on an appropriate penalty. They need to give the employee an opportunity to give input into the penalty before a decision is made.

Alan is experienced in handling disciplinary processes in the workplace and invites any member needing help with getting the process right give him a call for an initial chat about what to do.

Alan Knowsley is a Partner with Rainey Collins Lawyers'.

For more information on this topic or any other employment matter, Alan can be contacted at:-
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For a range of other articles on various topics which may be helpful WRMBA members are invited to view Rainey Collins website www.raineycollins.co.nz.

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Alan Knowsley