

Advice from Alan

Handling employment issues

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It is vital that employment problems or issues are handled in a fair and reasonable way. Each party to an employment agreement is expected to act reasonably and constructively towards the other

party. This means that any processes followed by an employer must be what a reasonable employer in the circumstances could do. The employee must also act reasonably.

Both the employer and the employee must follow all legal requirements and contractual promises, including following all policies. The law sets minimum standards, but the parties can agree on extra obligations.

If an employer is investigating allegations relating to performance or discipline, the allegations should be made known to the employee concerned with any supporting documents the employer has. The employee must be given an opportunity to respond to the allegations, usually in a face-to-face meeting, but it could be electronically or in writing if meeting in person is not an option.

The employee must be told that they can

have a support person assist them with any responses to the issues and attend any meetings with them. The support person could be a family member, friend, colleague, lawyer, union rep, or advocate. They are entitled to fully take part in the process and speak for the employee.

The employee must also be advised what the possible outcomes could be if the allegations are found to be correct. If it is a disciplinary matter the possible outcome might be a warning, or for serious misconduct it could be up to a dismissal. For a performance issue it could be a warning, a performance improvement plan, or even dismissal if they do not meet the required standards of performance.

An employer might also consider whether an employee needs to be suspended pending the investigation. This should only be for serious disciplinary matters or where there are health and safety concerns if the employee remained in the workplace. Alternatives to suspension must be considered, for example, working from home or a different work area etc. A power to suspend is usually necessary in the employment agreement.

Any decisions need to be supported by the facts. The ability to respond to allegations and potential outcomes is important. Do what is fair and reasonable in the circumstances.