

Practical guide... warnings in the workplace

What is a workplace warning?

A warning is a verbal (more informal) or written (more formal) communication to an employee regarding their performance or conduct at work.

It is a mechanism to advise an identified area where the employee performance or conduct does not meet required standards with the aim of improving that performance or conduct.

Issues that are the subject of a warning are usually of a less serious nature – ie: they do not warrant summary dismissal.

Verbal warnings generally precede written warnings with the employee's performance or conduct monitored for a set period of time.

Content of a written warning

At the conclusion of a warning meeting, the employee should be advised a written warning letter will follow within a day or so after the meeting. It is suggested a written warning should:

- ▶ record who was present;
- ▶ record the employee was invited to have support person (where they do not avail themselves of this opportunity);
- ▶ outline the conduct or performance that is the subject of the warning;
- ▶ where appropriate, refer to a relevant policy, employment agreement and/or previous warnings given;
- ▶ record the employee's responses to the matters in issue;
- ▶ records the matters which need to happen to address the performance or conduct in question;
- ▶ be clear the employee must improve; explain termination could be a consequence if there is a failure to improve;
- ▶ where relevant, provide support for the employee to improve (this can involve further training);
- ▶ provide a timetable for periodic review of the employee's performance;
- ▶ provide a clear paper trail should things not improve and termination result; and
- ▶ preferably, be countersigned by the employee to evidence receipt of the warning.

How many warnings should employers give prior to a termination?

There is no legal requirement to give any set number of warnings prior to termination.

However, the *Small Business Fair Dismissal Code* made pursuant to the Act, requires one written or verbal warning to be given by "Small Businesses" (employers with less than 15 employees) excepting where the matter justifies summary termination.

You must comply with your performance management policy and / or procedure if you have them otherwise you will be in breach of your own policy. If you don't have a performance management policy or procedure, you generally issue between one and three written warnings prior to any termination. Two written warnings should place you in a strong position to act decisively if the conduct continues or the performance does not improve.

It is also wise to consider the seriousness of the conduct or performance issues when deciding how many warnings should precede any termination. Two warnings for minor performance or conduct issues might still mean any resulting termination is unfair; whereas repeat conduct following one warning concerning a serious conduct or performance issue can be sufficient to result in a fair termination.

How long does a warning remain current?

Although there is no hard and fast rule, it would be unusual for a warning to remain current after six months had passed with no warnings in between. This is especially relevant when relying on prior warnings to effect a termination.



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However, historical warnings from years past may be examined and considered relevant in court proceedings concerning termination. It depends on the nature of the previous warnings and context surrounding the termination.

One simple mechanism to give warnings a longer life is to incorporate a monitoring mechanism and period into the warnings – eg: 'we will monitor your conduct/performance for a period of six months after the date of this warning letter' – so an expectation is created that the warning has at least six months currency.

What to take away?

Warnings are important workplace tools to help ensure employees understand your expectations and are evidence of a fair performance management process that support decisions made to terminate.

They may play a crucial role in defending unfair dismissal claims where process is increasingly important in employment law.

It is for this reason the opportunity to have a support person is offered to employees; meetings are clearly documented; and clear and unambiguous written warnings are issued where the consequences of non-compliance are clearly detailed.

Failure to implement or appropriately manage or document warnings can come at a high price.

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