

Disciplinary Action

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Disciplinary action (section 6.2.11)

Policy

a) Action by delegate

The Delegate will:

- consider the Disciplinary Inquiry Report together with any written or verbal* representations made either by the employee or through his or her representative. That representation may only be on the question of the recommended penalty and procedural issues. The merits of the case will not be revisited. The role of the Delegate is to listen and take notes of issues raised by the employee, not to engage in a debate or discussion of the contents of the Inquiry Report. At the conclusion of the representation, the employee is to be informed that his or her comments have been noted and will be taken into consideration before the Delegate makes a final decision. (*If the employee makes verbal contact, a file note of the conversation should be made by the Delegate for consideration and subsequent placement on the employee's personnel file);

- be satisfied that the employee has had reasonable opportunity to respond either verbally or in writing to the allegations against him or her; and

- take whichever of the following actions is considered to be appropriate based on the evidence provided:

1. Accept the Inquiry Officer's recommendation(s); or

2. If the recommendation(s) is considered inappropriate (ie either too harsh or too lenient), implement a more appropriate course of action ie:

- a) conduct or arrange a Warning Counselling; or

- b) transfer the employee to a position of the same or lower classification; or

- c) where the breach of *Our Ethics* and/or the employee's contractual obligations is sufficiently serious to be only marginally short of dismissal and transfer action would either advantage the employee or result in too harsh a penalty, reduce the employee's salary by up to two increments for a period of up to 12 months (or equivalent penalty); or

- d) dismiss the employee; or

3. Reject the recommendation(s) on the basis that no disciplinary action is required.

The employee should be advised as soon as possible, in writing, of the decision of the Delegate and the reasons for the decision. Where the decision is that the employee be dismissed, transferred to another position of the same or a lower level or have imposed a salary reduction of up to two (2) increments for a period of up to 12 months (or equivalent penalty), the advice should also include the review provisions (refer s.6.2.12 a) - 'Review Provisions' below).

(Refer Appendix 9 for sample Notification of Disciplinary Decision.)

b) Dismissal or transfer

i) Restrictions

No employee is to be dismissed or transferred for the following reasons:

1. For a first breach of *Our Ethics* and/or the employee's contractual obligations, unless the employee's work conduct is established as constituting serious and wilful misconduct or 'grossly negligent conduct'*; or

2. If the employee is inefficient or incompetent, or unable to discharge, or incapable of

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discharging the duties of his or her position for reasons that are not deliberate on the part of the employee. (Refer Clause 3 of the Australia Post Principal Determination.)

* 'Grossly negligent conduct' would apply in isolated circumstances. Such conduct would involve a reckless act or omission which causes or could cause significant damage or harm and which would adversely affect the employment relationship.

Decisions involving dismissal or transfer which are based on gross negligence and/or a serious breach of the employee's contractual obligations should not be made without a prior referral to the Employee Relations, People & Community, Headquarters.

3. Where a decision has been made to transfer an employee to another position of a lower classification (demotion) the period of demotion may be limited to one year. However, in some cases, it will be necessary to extend the period of demotion until a position at a classification prior to the demotion becomes available for the employee to transfer into. Employees seeking transfers on this basis will not be given priority ahead of other employees who are already on the transfer list and/or who currently receive priority consideration when filling vacant positions.

During the period of demotion the employee will be paid the minimum salary of the classification 1 below their former position, even if they are transferred to a position of a lower classification. For example an employee who previously occupied a PDC2 position who is "demoted" to a SPDO3 position following a disciplinary inquiry, will be paid at the PDC1 salary level during the period of demotion.

Where an employee is subject to a demotion or two increment salary reduction, the payment of penalties such as overtime will be calculated at the reduced salary rate.

ii) Period of Notice

- An employee who is to be dismissed must, in accordance with the provisions in the Fair Work Act 2009, be given the minimum period of notice specified in the table below, unless the employee is guilty of serious and wilful misconduct or 'grossly negligent conduct', in which case no period of notice would be required (ie the employee would be summarily dismissed).

Note: Where the Delegate has any doubt about whether or not the circumstances warrant summary dismissal, he or she should consult their HR area.

Employee's Period of Continuous Service with Australia Post * Period of Notice

Not more than 1 year - 1 week

More than 1 year but not more than 3 years - 2 weeks

More than 3 years but not more than 5 years - 3 weeks

More than 5 years - 4 weeks

[* The end of the period of continuous service with Australia Post is as at the end of the day the employee is given written notice of the date of termination.]

- The period of notice determined using the table above is to be increased by one (1) week if the employee:

a) is over 45 years of age; and

b) has also completed at least two (2) years of continuous service with Australia Post as at the end of the day the employee is given written notice of the day of termination.

- Alternatively, the employee must, unless summarily dismissed, be paid salary in lieu of notice which amount must be at least the amount that would have been payable to the employee had his or her employment continued until the end of the minimum period of notice. That total must, in accordance with the provisions in the Fair Work Act 2009, be worked out on the basis of:

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1. the employee's ordinary hours of work;
2. the amounts ordinarily payable to the employee in respect of those hours, including eg allowances, loadings and penalties; and
3. any other amounts payable under the employee's contract of employment.

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