
1.0 Grievances

If any WHN employee is exposed to any form of behaviour which constitutes discrimination, bullying or harassment, the following procedure must be adopted.

This procedure may also be used for handling of other workplace grievances such as complaints about working conditions or work colleagues.

- 1) Inform the offender that the behaviour is offensive and unacceptable.
- 2) Seek assistance in having the behaviour stopped by reporting the incident to your line manager or CEO.
- 3) The line manager or CEO will conduct a detailed investigation of the incident(s) to assist in the resolution of the grievance. Witness statements and evidence may be collected. For the investigation to be properly conducted confidentiality must be maintained, it must be impartial, the person reporting the incident must not be victimised or experience adverse repercussions and the complaint must be dealt with as quickly as possible.
- 4) Actions taken to resolve the grievance will depend on the circumstances and the results of the investigation. Generally the main aim will be to ensure the incident does not occur again. Possible solutions may include:
 - an apology.
 - an undertaking that the behaviour will cease.
 - formal counselling of the alleged harasser, using the disciplinary procedure
 - disciplinary action, including termination for serious misconduct.
 - training for groups of staff or the whole staff to raise awareness of EEO obligations.
 - covering costs associated with the harassment, such as medical or psychology expenses.
 - notifying the police.
 - if the complaint cannot be substantiated when it is investigated it must still be taken seriously, including attempting to find a resolution of the matter with the employees involved.
 - it may be appropriate to take action against a complainant who makes a serious allegation against a work colleague which is found to be false or frivolous after investigation. This could include termination of employment.
- 5) A record is kept of the complaint, its investigation and actions taken.
- 6) After action has been taken and the problem appears to have been resolved there is a need for occasional monitoring and follow-up to ensure that those involved are satisfied with the outcome, and the problem has not reoccurred or surfaced in a different form.
- 7) If the matter remains unresolved, the grievance provisions in the relevant awards or workplace agreements require that it be referred to an external party. This party may be specified in the award or agreement. Seek advice from your division or employer group.

Instructions for the Line Manager handling of grievances:

The following four steps will assist with handling grievances.

1) *Listen with an open mind*

- listen, no matter how trivial the grievance may seem to you.
- be patient and show a sincere interest in the employee's grievance.
- do not argue.

2) *Get all of the facts*

- encourage the person to repeat the substance of the grievance to ensure the facts are understood.
- discuss any solution the employee may have to solve the problem.
- question any discrepancies.
- discuss with others if necessary.
- do not jump to conclusions.
- consult senior management if necessary.

3) *Take action promptly*

- do not delay taking action.
- do not make any rash decisions.
- advise all relevant employees of the action.
- do not use your authority to force a decision unless there is no alternative.

4) *Follow up*

- check that those involved are satisfied with the outcome.
- consider whether preventative action can be taken to avoid a reoccurrence. This may include training, awareness raising or changes to systems and procedures.
- refer to an external party if the matter remains unresolved.

Confidentiality

An employee will be able to raise a matter, and receive initial advice, in confidence. It is not appropriate to disclose the identity of an employee raising a grievance without first obtaining the employee's consent.

WHN employees need to be aware that the WHN will not act on an anonymous grievance. One exception is where the facts of the matter are not in disputed e.g. when an employee objects to the behaviour of a colleague and the colleague admits the behaviour. Other exceptions are disclosures by an employee about corruption, mal-administration and serious waste. In such cases, information that identifies the employee making the disclosure will not be released unless:

- the employee consents in writing to the disclosure of that information;
- it is in the interests of natural justice to do so, or
- it is in the public interest to do so.

Employees will not be required to respond to allegations made in unsigned letters, anonymous e-mails.

Victimisation

The Line Manager will ensure that steps are taken to prevent any victimisation of employees resulting from the grievance process. This includes advising all parties that any victimisation arising from the grievance process will not be tolerated and that disciplinary action will result if victimisation is demonstrated to have occurred.

Vexatious complaints

When a grievance is investigated and found to be vexatious or malicious, disciplinary action may result. Any employee, who is the subject of a vexatious or malicious grievance, can seek advice on their options from their Line Manager.

Unsubstantiated complaints

WHN employees recognise that if a grievance is investigated to its full extent and cannot be substantiated, no further action will be taken. The employee may then exercise the option of referring their grievance to a more senior person or an external body.

Counter complaints

In circumstances where a grievance leads to counter allegations, the initial grievance will be considered and a resolution sought. The resolution process will not be confused with counter-accusations.

Responsibilities of the Line Manager

The Line Manager has the responsibility to take all reasonable steps to identify, prevent and resolve problems in the workplace. This involves:

- managing the grievance resolution process in a way that ensures procedural fairness.
- responding appropriately to equity-related grievances to eliminate and prevent discrimination and harassment in the workplace.
- referring grievances relating to alleged corruption, mal-administration or misconduct to the CEO.

Responsibilities of the Senior Management Team

WHN employees are required to ensure that grievances raised are motivated by genuine concern about perceived inappropriate or unfair behaviour or actions and that they will:

- participate in the grievance resolution process in good faith;
- cooperate fully in the investigative process;
- avoid making vexatious complaints or raising grievances with malicious intent
- avoid reporting a grievance to several different individuals at the same time.

Raising a Grievance

In the first instance the grievance should be raised with the employees Line Manager. If the grievance involves the Line Manager, then it should be raised with the Chief Executive Officer.

Grievances may be raised verbally in the first instance, although they may have to be formalised in writing later, depending upon the circumstances and outcome.

Grievances that require investigation must be raised in writing.

In the interest of natural justice, the employee raising the grievance will have to be identified unless the facts of the grievance are not disputed or the matter involves allegations of corruption, mal-administration and misconduct where legislation provides otherwise.

Outcomes of the Grievance Resolution Process

The advice of outcome will be in keeping with the seriousness of the incident/s that formed the basis of the grievance.

Possible outcomes include:

- the employee gains a better understanding of the situation so that their concerns are addressed.
- a mutually acceptable resolution is achieved through conciliation or mediation.
- the employee receives an apology, and/or the issue or behaviour that was the basis of the grievance is modified.
- no action is taken because the facts surrounding a grievance cannot be substantiated.
- in cases where the facts are substantiated and circumstances warrant, Network formal disciplinary processes may be invoked. This may result in formal warnings about inappropriate behaviour and in the most serious cases, the dismissal of the employee concerned.

Principles of Procedural Fairness

Procedural fairness must be observed in all aspects of the grievance handling process. In practice procedural fairness involves:

- Ensuring that there is proper investigation of the facts;
- Informing relevant parties of any allegations made against them, as appropriate;
- Ensuring that all parties are informed of the procedures under which the grievance is being handled and are given a copy of the relevant policy and guidelines;
- Ensuring that all parties are heard and those who have had complaints made against them are given an opportunity to respond.
- Ensuring that all relevant mitigating factors are given due and proper consideration before any conclusions are reached or any action is taken;
- Advising all parties that if the grievance is of such a serious nature that disciplinary action may result, then the facts revealed during an investigation into the grievance may be used in any subsequent disciplinary proceedings;
- Impartiality on the part of the investigator and/or decision, which means the investigator/decision maker, must exclude themselves if there is any bias or conflict of interest.

These procedures usually require that the person raising a grievance must be willing to be identified, unless the facts of the matter are not in dispute, or the matter involves allegations of corruption, mal-administration or misconduct. If in doubt about the requirements of procedural fairness, advice should be sought from the CEO.

On any occasion when the grievance is to be discussed, employees (both grievant and/or respondent) may choose to be accompanied by a colleague from within the Network.

If the allegations have been made in writing, a copy will be given to the parties against whom the allegations have been made (unless the allegations relate to corruption, mal-administration or misconduct where legislation provides otherwise).

2.0 Discipline

Employee must be given 'a fair go' and have an opportunity to improve within a reasonable time frame.

Policy

The Senior Management Team has the day to day responsibility for ensuring that employees meet the required standards for work performance and conduct. Generally the focus is on positive ways of motivating staff, including:

- communicating clearly what has to be done.
- setting joint goals or targets.
- coaching staff.
- resolving problems as they occur.
- informal feedback and counselling about poor performance.

If this approach is not sufficient, or when a serious breach of policy occurs, the disciplinary process will be followed. The purpose of the disciplinary process is to:

- avoid repetition of mistakes or unacceptable behaviour – it is corrective, not punitive.
- ensure fairness in the treatment of all employees.
- provide a clear, written statement about the expectations of the practice in relation to conduct and behaviour at work.
- encourage an improvement in work performance and behaviour.
- provide support or training to assist in improvement.
- advise of the consequences of failure to comply with expectations, including written warnings and termination of employment.

For the process to be effective the following points need to be considered:

- listen carefully.
- gather the facts.
- remain objective.
- don't avoid the problem.
- document all discussions and evidence.

- be fair and reasonable, balancing the safety and privacy of patients and staff with the rights of the employee.

Procedure

Counselling or disciplining problem employees is a difficult component of any manager's role. This process is usually stressful and unpleasant for those involved, and can lead to anger and resentment. This can be minimised by:

- treating the employee with respect and dignity, focussing on specific behaviours and not the person.
- preserving the employee's self-esteem by acknowledging their good points such as useful skills or pleasant personality but recognising that the current job may not be a good match for their talents, interests and abilities. Try to avoid making the employee feel 'not good enough' – they simply may not be a good fit with this position. Success in any job is reliant on the right combination of the attributes of the employee, the position and the practice.
- understanding that most employees desire the satisfaction of performing their job well and will not be happy in a position which does not suit their skill-level or abilities. Helping them through the disciplinary process in a respectful and affirming way will provide a greater understanding of their strengths and limitations and assist them to find a more satisfying position in the future.
- providing all reasonable assistance to help employees improve their performance. See 'Giving and receiving Feedback' which also includes guidelines on dealing with poor performance.

Avoiding the issue will not make the problem go away. Failure to deal with employee problems can send 'messages' to the problem employee and other employees that poor performance or behaviour is condoned.

Counselling and Disciplinary Action

The disciplinary process involves four steps:

- 1) counselling (optional)
- 2) first written warning
- 3) second written warning
- 4) termination

These steps may not always be followed in full. For example, in some cases counselling will be sufficient to resolve the problem. Although a minimum of two written warnings are usually provided prior to termination, severe misconduct may warrant immediate dismissal.

At each step, the following procedure occurs:

- problem arises or incident occurs.
- investigation of facts, including collecting witness statements. In some circumstances the employee may be stood down (asked not to remain at the workplace) with pay while the investigation takes place.

- the allegations and supporting evidence are presented to the employee. The employee is entitled to have a representative present, such as another staff member or union representative. It is advisable for the manager to have a witness present in all interviews related to disciplinary procedure. Preferably this should be a staff member with mediation skills or who is trusted by both parties.
- the employee is given an opportunity to respond, including requesting any reasonable assistance which would prevent a reoccurrence.
- a decision is made – this could range from deciding to take no action, to agreeing upon clear guidelines about expected future behaviour or even termination of employment.
- the process is documented and the employee is given a copy with the original being placed in the Staff Records File.

Step 1: Counselling

Counselling is usually the first formal step in the disciplinary process. It can be used to discuss poor performance, grievances raised by other employees or to deal with a breach of policy. Details of the problem, available evidence, the employee's response and decisions taken are documented on an Employee Counselling/Written Warning Form. A sample Employee Counselling/Written Warning Form can be found at the end of this section. For more serious incidents or breaches of policy a written warning may be issued at the same time as counselling.

The Grievance Procedure in 2.10 Equal Opportunity, Bullying and Harassment may also be used to resolve grievances, especially those involving more than one employee.

Agree upon a timeframe for improvement and the next review date. Allow sufficient time for the employee to improve - usually 2 weeks to one month.

If the behaviour continues it will be necessary to move on to a written warning.

Step 2: First Written Warning should outline

- the problem with the employee's performance.
- the evidence arising from investigation including statements from any witnesses (A sample Witness Statement Form is included at the end of this section).
- the employee's response for the problem.
- the agreed plan for improvement.
- any assistance, support or training to be provided by the practice to facilitate improved performance. This includes reasonable requests for reduced hours or changes to duties.
- the timeframe for improvement and the next review date. Allow sufficient time for the employee to improve - usually 2 weeks to one month.
- the consequences of failure to improve (usually one more warning and then termination).

- the process should be documented on the Employee Counselling / Written Warning Record – tick the box to indicate that this is a first written warning (A sample form is provided at the end of this section).

The content and outcome of the interview must be documented with a copy each for the employee and employer. Ensure any resources or assistance agreed upon in the interview are promptly provided.

Step 3: The Second and Final Written Warning

The second and final written warning is issued when there has been no improvement or change following the first warning. The interview should follow the same format as the first warning, including reference to the first warning and the previous plan for improvement. The employee must be made aware of the likelihood of termination, and this should be documented, with a copy each for the employee and the employer.

If the improvement in employee performance, attitude or behaviour is still not made then a Notice of Termination of Employment (as per the Award or employment agreement- ensure the correct wording is provided to avoid confusion) is given to the employee.

Step 4: Termination

Termination as a result of the disciplinary process. If the unsatisfactory behaviour continues after two written warnings, termination may be necessary. The employee will be well aware of the likelihood of this consequence.

3.0 Termination

Summary Dismissal: Employees may be summarily dismissed without any warnings for serious breaches of policies, misconduct or illegal activity. Employees must be informed of behaviours which would justify summary dismissal as part of their terms and conditions of employment. In this manual this information has been included in the staff handbook.

Some examples include:

- negligence or carelessness which could affect patient safety.
- actual or threatened assault, serious abuse or harassment.
- fraud or theft, including falsification of records and unauthorised possession of property belonging to the practice or another employee.
- breaches of the practice's privacy policy.
- unauthorised use or possession of alcohol or drugs at work.
- attending work in a condition which is a risk to the health or safety of patients, colleagues or the employee concerned.
- serious and willful disobedience (seek advice first).

In many cases an employee will be stood down on full pay while an investigation is undertaken prior to summary dismissal, to ensure the dismissal is warranted.

Redundancy: This occurs when a particular job is no longer required at the practice or less people are needed to perform the amount of work available.

Abandonment of employment: Abandonment of employment occurs when an employee fails to attend his/her place of employment for three days or more without having prior authorisation for the absence and has not contacted the employer to explain the reason for the absence.

During the 3 day WHN should attempt to contact the employee by telephone and if this is unsuccessful a letter should be sent by registered mail to the employee's last known address stating that the employee's unauthorised absence is unacceptable, seeking an explanation for the absence and advising that if the employee fails to return by a set time and date it will be determined that he/she has abandoned his/her employment.

If there is no response after 3-4 days send a second notice, and if there is still no response after a further 3-4 days a third letter should be sent advising that as a result of his/her failure to return to his/her place of employment the practice has determined that he/she has abandoned his/her employment. At this stage the employment is terminated and all entitlements should be paid.

Employee initiated termination, such as resignation: All employees are required to notify WHN in writing of their intention to resign from their employment, giving at least the amount of notice required under the relevant award or workplace agreement. Employees who fail to give the required notice may forfeit some of their entitlements.

Note: Despite changes to the law on unfair dismissal, the legislation relating to unlawful termination remains in place. This means employees cannot be terminated because of:

- temporary absence from work because of illness or injury,
- trade union membership/non-membership or participation in trade union activities,
- the filing of a complaint, or the participation in proceedings, against an employer,
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin,
- refusing to negotiate, sign, extend, vary or terminate an AWA,
- absence from work during maternity leave or other parental leave, and
- temporary absence from work because of the carrying out of a voluntary emergency management activity.

Procedure for termination:

Notice period: The practice can require an employee to work out their notice or it can be paid in advance, so they leave immediately.

Termination pay: Amounts payable on termination include accrued pay in lieu of notice (if applicable), redundancy pay, annual leave, outstanding wages and long service leave entitlements.

Administrative matters: A number of administrative matters should be attended to at the time of termination:

- the arrangements for termination, including reason for the termination and notice. arrangements should be documented – a sample Termination form is included at the end of this section.
- all keys and other practice property should be returned.
- the components of the employee's termination pay should be explained.
- it is advisable to obtain the employee's permission for the practice to provide written or verbal references on the employee's performance.
- the employee should be reminded about their continuing obligations under the practice's privacy policy.
- centrelink may need to be notified if the person wishes to register for unemployment. benefits or there have been payroll garnishee arrangements in place, such as child support payments.