

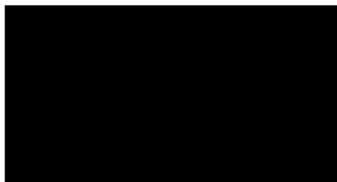


Ref: [REDACTED]

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29 June 2022

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Dear [REDACTED]

### **REQUEST FOR PROCESS DETAILS – COUNCIL STAFF**

I refer to your request dated 22 June 2022 for details of Council's processes for terminating staff.

Dismissal is one way in which someone's employment would be terminated (ends) but there are others such as resigning, medial incapacity, retiring, redundancy etc.

Working on the assumption that you wish to understand our process for dismissals in particular, I have attached our disciplinary procedures document.

If you are seeking information relating to terminations more broadly (all types of terminations), please let me know.

You have the right to seek an investigation and review by the Ombudsman of this response. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or Freephone 0800 802 602.

Yours sincerely

**Kate Redgrove**  
Official Information Advisor

Encl: Disciplinary Procedures Guidelines

Internal Document ID: [REDACTED]

# Disciplinary Procedures

Date: Jan 2019

Review Date: Dec 2025

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## 1 Purpose of these guidelines

These guidelines apply to all employees of Nelson City Council, and are intended to:

- Provide guidance around procedures when Nelson City Council is raising and addressing matters of unacceptable performance or unacceptable conduct
- Ensure employees are treated fairly and equitably
- Build the awareness of all our people in relation to the management of misconduct and unsatisfactory performance

It is not expected that every detail of these guidelines will be appropriate in every situation. When using these guidelines, people leaders are required to consult their People & Capability Business Partner at the earliest possible stage.

## 2. General principles

In the event of a breach of the [Code of Conduct](#), we consider the principles of [Just Culture](#) along with the principles of [Good Faith](#) and [Natural Justice](#).

The following general principles should also be considered:

**Promptness** – Follow these guidelines as soon as it is practical, after the behaviour or event is identified

**Impartiality** – Take action in an equitable and fair manner

**Consistency** – Wherever possible and appropriate, treat people the same way in respect of similar types of misconduct or non-performance

**Proportionality** – Take into account the nature of the incident, previous misconduct or non-performance, the circumstances and any extenuating factors

## 3. Types of Disciplinary Matters

Generally disciplinary matters can be grouped into two categories:

- Unacceptable conduct
- Unsatisfactory performance

Breaches of the required standards of conduct could result in allegations of misconduct or serious misconduct being raised against the employee and a disciplinary procedure being commenced. Consistently unsatisfactory performance can also result in disciplinary action.

### **3.1 Unacceptable Conduct**

Unacceptable conduct is divided into two categories; misconduct and serious misconduct. *The examples set out below are indicative; they are not intended to cover every possible situation but to provide examples of unacceptable conduct.*

#### **Definition of Misconduct**

Misconduct is unacceptable behaviour which, on its own, would not destroy the relationship of trust and confidence between you and Nelson City Council. It is unacceptable conduct that does not meet our expectations as set out in the Code of Conduct or in policies, procedures and guidelines, or in our values statements. Misconduct is likely to result in a formal warning, and further instances of misconduct in a final warning and ultimately dismissal.

#### **Definition of Serious Misconduct**

Serious misconduct is unacceptable behaviour that seriously breaches our expectations as set out in this Code of Conduct or in our policies, procedures and guidelines, or values statements. Serious misconduct is conduct which is destructive of or irreparably damaging to the essential relationship of trust and confidence between you and Nelson City Council, to the extent that the employer-employee relationship can no longer function effectively.

A finding of serious misconduct may result in summary dismissal (dismissal without notice).

#### **3.1.1 Examples of Misconduct**

The following are examples of the type of actions and behaviour that the council may consider misconduct or serious misconduct. The following list is not exhaustive, but provides examples of conduct that may constitute misconduct or serious misconduct.

- a) Wasting time or materials
- b) Poor timekeeping, for example:
  - o More than occasional late arrival to work
  - o Absenteeism
  - o Failing to provide timely notification of lateness or absence
  - o Failure to accurately record leave
  - o Failure to attend training without good reason
  - o Failure to complete normal hours of work, without good cause or approval
- c) Refusal or failure to complete duties or to follow a lawful and reasonable instruction
- d) Lack of application to an assigned task
- e) Behaviour which is not aligned to our organisational values, for example:
  - o Low level rudeness
  - o Unprofessional behaviour
  - o Discourteous or disrespectful behaviour
- f) Unauthorised possession, wilful damage or removal of property belonging to the council, a member of the public or another employee
- g) Dishonesty, misrepresentation or falsification of any documents or records
- h) Actual or threatened physical or verbal abuse against another person

- i) Harassment or bullying of a work colleague, customer, or member of the public, including sexual or racial harassment, unwelcome behaviour or discrimination
- j) Insubordinate or undermining behaviour
- k) Bringing Nelson City Council into disrepute or acting in a way that has the potential to bring council into disrepute
- l) Unauthorised removal, copying, destruction, amendment or corruption or disclosure of any records of the council
- m) Being in possession of any illegal/controlled drug on work premises, or being at work and affected by alcohol or illegal/controlled drugs
- n) Deliberate acts affecting quality, safety or health, including not reporting a workplace health and safety accident/incident or failure to follow formal safe operating procedures
- o) Engaging in behaviour or accepting responsibilities or contracting on behalf of Nelson City Council which creates or has the potential to create a conflict of interest, unless disclosed to and agreed to by the council
- p) Failure to account for cash (e.g. unrecorded cash funds); failure to follow the correct policy for handling of money; submitting false claims for expenses
- q) Conviction of a criminal offence which Nelson City Council considers to be serious or relevant to the employee's employment
- r) Carelessness or incompetence in the performance of duties as an employee
- s) Making malicious or unfounded allegations about other employees, customers or others in the workplace
- t) Making unauthorised statements to the media or public about work related matters
- u) Failure to adhere to your delegated authority
- v) Introducing unauthorised hardware or software to the Council's computer systems
- w) Inappropriate use of email – for example images or text that are considered offensive or inappropriate
- x) Any behaviour listed as misconduct which the employer considers to be of sufficient seriousness to constitute serious misconduct

### **3.2 Unsatisfactory Performance**

Unsatisfactory performance includes on-going or repeated failure to perform tasks to required standards, a poor or unprofessional attitude towards work or colleagues; or a failure to consistently adhere to the values of Nelson City Council.

If your work performance is not satisfactory, your manager will let you know in a timely way through feedback (as outlined in the [performance management handbook](#)). Your manager will meet with you to discuss the following:

- an exploration of any reasons for the current unsatisfactory performance
- ensure you are aware of the standards required
- consideration of any reasonable assistance that can be provided to enable you to reach the required standards

Your manager will continue to monitor your performance and provide feedback. If the performance issues are not resolved to our satisfaction within a reasonable timeframe, your manager will determine an appropriate approach.

The appropriate approach may vary depending on the nature and significance of the performance issues, and will be determined by your manager in consultation with your People & Capability Business Partner.

Approaches may include:

- Ongoing monitoring and feedback (to assess the cause/s of the non-performance)
- Provide additional training (where skills and knowledge are identified as an issue)
- The implementation of a Performance Improvement Plan (PIP), including training or support where appropriate
- The commencement of a disciplinary process
- Other action(s) to support you to reach the required performance level

Any approach to be taken will be discussed with you, however as long as the course of action is one that a reasonable employer could take and advice has been sought from the People & Capability team, it does not require your agreement.

#### **4. Disciplinary Process**

Formal disciplinary action is not taken lightly, and we acknowledge that this can be a stressful time for all parties. Additional wellbeing support for all parties can be accessed through Workplace Support.

Nelson City Council and its employees have a joint and mutual obligation to engage in any disciplinary process in good faith.

As an employer, Nelson City Council will ensure that:

- disciplinary processes are conducted in a fair, respectful and honest manner (this includes carefully listening to people's responses to allegations, not jumping to conclusions, exploring new information that comes out of investigation meetings and not pre determining outcomes);
- legislative and other legal requirements are complied with.

Where allegations of misconduct or serious misconduct arise or where there are allegations of consistent unsatisfactory work performance the procedures below will apply.

##### **4.1 Process Guidelines**

###### Before engaging in a disciplinary process

Depending on the nature of the event or issue, a preliminary conversation may be held between you and your manager to clarify their understanding about what may have happened.

Once your Manager has assessed the situation and spoken with their People & Capability Business Partner, if they identify that, on the face of it, it appears the code of conduct may have been breached, or there has been a failure to reach expected performance standards following a Performance Improvement Plan, you will be invited to attend a formal investigation meeting.

#### 4.1.1 Formal Investigation Meeting

The process will generally follow these steps;

Prior to a formal investigation meeting you will receive written notice of the meeting, which will include:

- a description of the allegation(s)
- outline your right to have a representative (e.g. lawyer/union) and/or support person (e.g. family member/friend) present at the meeting
- outline who will attend the meeting (typically attendees include you, a relevant manager, a member of the People and Capability team, and your representative or support person)
- outline the possible disciplinary outcome(s) if the allegations are substantiated\*
- include all relevant information that the decision maker(s) currently has and may use in making a decision.

During the meeting you will be given an opportunity to explain or refute the allegation(s) or provide further information or comment.

The decision maker(s) will give due consideration to:

- any explanation, information or comment from you
- any mitigating circumstances
- any other relevant factors. This may include any relevant previous warnings given to you. The decision maker(s) will note the date and nature of any previous warnings and determine what, if any, weight to give to that prior matter

The decision maker(s) may make any further enquiries they consider necessary and any relevant new information will be put to the employee for their comment.

The decision maker(s) will make a finding on whether the allegation(s) has/have been substantiated. Possible outcomes from the investigation meeting include:

- No further action; a letter to confirm this will be placed on your employee file and will outline whether the allegations are unjustified, unsubstantiated, or substantiated but not of sufficient concern to warrant further action;
- or
- If the allegation is substantiated as a result of the investigation and the conduct is of sufficient concern to warrant further action, you will be invited to a formal disciplinary meeting.

#### 4.1.2 Formal Disciplinary Meeting:

Prior to a formal disciplinary meeting you will receive written notice of the meeting, which will include:

- written confirmation of the finding(s) from the investigation meeting
- your right to have a representative and/or support person present at the meeting
- the possible disciplinary outcome(s)\*

\* The authority to dismiss lies with the Chief Executive who may delegate their authority to a Group or Business Unit Manager, unless the conduct of concern relates to the Chief Executive, in which case the authority to dismiss lies with the Council.

#### 4.1.3 Disciplinary Outcomes

Disciplinary outcomes may include:

- A written warning
- A final written warning
- Dismissal on notice (this is where the termination notice period required under the relevant employment agreement is given by the employer)
- Summary dismissal (dismissal without notice)
- Demotion or other changes to terms and conditions of employment
- Any other steps that the employer sees fit, including no action

You will be given an opportunity to comment on the proposed disciplinary outcome before a final decision is made.

Any disciplinary outcome will be formally communicated to you. Where a warning is issued, it will advise of the consequence of continued or further instances of unacceptable performance or unacceptable conduct.

#### 4.1.4 Suspension

In certain circumstances, you may be suspended from your duties while we investigate allegations against you. You will be given an opportunity to comment on the issue of suspension before a decision regarding suspension is made.

Suspension will usually be on pay pending the outcome of the investigation. If the investigation becomes protracted as a result of undue delay caused by you or due to circumstances beyond our control, payment during the period of suspension may cease.

### **5 Support**

We recognise that working through a disciplinary process can be a stressful time for all those involved. While confidentiality about these matters is required to be maintained (as outlined in current employment law), we encourage people to access the appropriate support (e.g. Manager, union delegate or organiser, legal adviser, family/whanau/friends, spiritual adviser or Workplace Support).

### **6 Resolving employment relationship problems**

If you wish to dispute the outcome of any investigation or disciplinary process, you should raise that with us as soon as possible so that it can be resolved. If the matter is not resolved either party can seek assistance from Mediation Services of the Ministry of Business Innovation and Employment. If the issues are not resolved at mediation, they may be referred to the Employment Relations Authority.

If the issue gives rise to a personal grievance, you must present that grievance within **90** days of the event giving rise to the grievance.

Further information on your employment rights is available from [Employment New Zealand](#)