

# DISCIPLINE & TERMINATION POLICY

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## OVERVIEW

Pro Health Care and any subsidiary companies (“**Pro Health Care**”) are committed to providing a positive and fair workplace. First and foremost, where appropriate, our focus is on providing positive ways to motivate and empower of employees.

This policy contains guidance on performance and conduct management, and the discipline and termination consequences that may follow. It is strictly for general guidance purposes only and aims to provide employees and management with an understanding of the procedures that may be followed in certain circumstances.

In so far as this policy imposes any obligations on Pro Health Care (i.e. those additional to those set out under legislation), those obligations are not contractual and do not give rise to any contractual rights. To the extent that this policy describes benefits and entitlements for employees (i.e. those additional to those set out under legislation), they are discretionary in nature and are also not intended to be contractual. The terms and conditions of employment that are intended to be contractual are set out in an employee’s written employment contract.

Pro Health Care may unilaterally introduce, vary, remove or replace this policy at any time.

## WHAT CONSTITUTES POOR PERFORMANCE?

An employee’s performance will be considered poor or unsatisfactory if the employee is repeatedly not meeting the requirements of their role (as set out in the employee’s position description, contract of employment, key performance indicators, Pro Health Care policies, or as communicated to the employee otherwise). Poor performance may be observed by the employee’s manager or other relevant person and may or may not be the result of a formal performance evaluation.

## WHAT CONSTITUTES MISCONDUCT?

Misconduct includes, but is not limited to:

- Unauthorised absenteeism;
- Unacceptable behaviour towards managers/supervisors/employees/clients/customers of Pro Health Care;
- Inappropriate or dishonest behaviour in the workplace;
- Any instances of harassment and/or bullying;
- Non-compliance with Pro Health Care policies, procedures or practices;
- Failure to follow lawful and reasonable direction from Pro Health Care or an authorised representative of Pro Health Care.

Depending on the nature of the poor performance or misconduct, a number of disciplinary steps may be taken. The action taken will depend on the nature and severity of the employee’s conduct. The steps below are listed in order of seriousness of the poor performance and/or misconduct, however, they do not need to be followed in sequential order and how any matter is dealt with is always at the complete discretion of Pro Health Care.

## INFORMAL COUNSELLING

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Pro Health Care may informally counsel an employee in order to assist the employee to better understand workplace practices, the required level of conduct and/or performance or any other matter Pro Health Care feels it appropriate to raise with the employee for their development.

If the employee continues to engage in the conduct and/or poor performance which has been subject of informal counselling, the employee may be subject to any of the disciplinary procedures set out below up to and including termination of employment.

## PERFORMANCE IMPROVEMENT PLAN (PIP)

A performance improvement plan (or “PIP”) is generally used where issues have been identified in an employee’s performance that need to be improved with a formalised plan in place. A PIP focuses on being corrective, not punitive. A PIP will:

- Set clear goals or targets that need to be met, by clear set dates;
- Provide reasonable coaching and the tools required to achieve the set goals or targets;
- Advise of the consequences that may follow should the employee not show noticeable improvement.

Pro Health Care will review the employee’s performance during the period of the PIP, which may result in more than one formal meeting over the period of the PIP.

If the employee’s performance does not improve by the end of the PIP the employee may be required to attend a disciplinary meeting and may be issued a written warning.

If the employee’s performance does not improve after being issued one or more warnings, they may be required to attend a disciplinary meeting and (if no reasonable excuse can be given for the failure to improve) their employment may be terminated.

## FORMAL DISCIPLINARY PROCESS

If the employee’s performance or conduct does not improve following informal counselling, Pro Health Care may decide to commence a formal disciplinary process. This process may also be followed without prior informal counselling, where the seriousness of the performance or conduct issues mean it is appropriate to move straight to this stage.

The employee will usually be given written notification to attend a meeting in relation to the employee’s performance or conduct. Generally, the employee will be given at least 24 to 48 hours’ notice of the meeting. The letter will set out the performance or conduct issues to be discussed and warn the employee of the potential outcomes of the disciplinary process.

Pro Health Care will offer the employee an opportunity to have a support person present during the meeting. The support person is not entitled to play an active role in the meeting and is not entitled to speak on behalf of the employee, but may provide support, guidance and advice to the employee (in private if they so wish).

Generally, the following process will be followed in the disciplinary meeting:

- Pro Health Care will explain to the employee why the employee’s performance is not meeting the expected standards (by reference to the employee’s job description, contract of employment, key performance indicators, etc.) or elaborate on any allegations of misconduct;
- The employee will be provided with an opportunity to respond to all such issues;

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- Pro Health Care will explain the potential outcomes of the meeting and the employee will be given an opportunity to respond to this (for example, if termination is being considered, the employee should be given an opportunity to say while they feel this is inappropriate).

Possible outcomes of the meeting include (but are not limited to): no action being taken, the need for further investigation, a verbal warning, a performance improvement plan, a written warning, termination of employment (with notice / payment in lieu of notice) and termination of employment without notice (only in cases of serious misconduct). These are discussed further below.

## NO ACTION TAKEN

In certain circumstances Pro Health Care will decide that no action will be taken against the employee (because, for example, the allegations of misconduct are found to be unsubstantiated). In this situation Pro Health Care will generally confirm the outcome of the disciplinary meeting (and that no action is to be taken) in writing.

## FURTHER INVESTIGATION

In some circumstances Pro Health Care will need to undertake further investigation following the disciplinary meeting in order to decide on the appropriate action to take. This may occur when, for example, there are conflicting versions of events and Pro Health Care is not in a position to make a finding on the issues/allegations.

## VERBAL WARNINGS

A verbal warning will generally be appropriate where the employee’s performance or conduct has not improved following informal counselling, or in relation to an incident that is not serious enough to warrant a written warning. A verbal warning will involve warning the employee that if their performance or conduct does not improve, they may be subject to more serious disciplinary action.

A written record of the verbal warning should be kept.

## WRITTEN WARNINGS

In the event that Pro Health Care has serious concerns about an employee’s performance or conduct, a written warning may be issued to the employee. This may (but will not necessarily) occur following continued or repeated behaviour raised in earlier informal counselling or in a verbal warning. There may be instances where a written warning may be issued in the first instance, based on the seriousness of the poor performance or conduct.

A written warning will generally inform the employee:

- Of the employees' performance or conduct issues that have been found to be an issue;
- Why Pro Health Care did not find the employee’s response to such issues in the disciplinary meeting to be acceptable;
- Of a reasonable timeframe within which the employee must remedy their poor performance and/or conduct;
- That if the employee continues to under-perform or engage in misconduct, other disciplinary action may be taken, up to and including termination of employment.

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## TERMINATION OF EMPLOYMENT (WITH NOTICE OR PAYMENT IN LIEU OF NOTICE)

Poor performance or misconduct may lead to the termination of an employee’s employment (either with notice or payment in lieu of notice).

The number of warnings provided to an employee prior to termination of their employment may vary depending on the circumstances. For example, it may in some circumstances be appropriate for Pro Health Care to provide the employee with a number of warnings in relation to the same poor performance or conduct where such poor performance or conduct is of a relatively minor nature, before terminating the employee’s employment. Similarly, Pro Health Care may provide an employee with a number of warnings where an employee engages in misconduct or poor performance which is separate to that which was the subject of an earlier warning, or which was not reasonably proximate in time to an earlier warning.

In extreme cases of poor performance or misconduct it may be appropriate to terminate employment without any previous warnings having been given.

At the disciplinary meeting, the employee will be given an opportunity to explain why they consider termination of employment is not appropriate prior to Pro Health Care taking a final decision.

## TERMINATION OF EMPLOYMENT WITHOUT NOTICE (“SUMMARY DISMISSAL”) IN CASES OF SERIOUS MISCONDUCT

Serious misconduct is wilful and/or deliberate behaviour by an employee that is inconsistent with the continuation of employment, including but not limited to:

- A material breach of the employee's employment contract;
- Serious failure in the performance of duties or improper or inappropriate use of the employee’s position;
- Wilful violation of any law or rule of a regulatory body;
- Deliberately diverting customers or business away from Pro Health Care;
- Accepting bribes or secret commissions;
- Any conduct that in the reasonable opinion of Pro Health Care constitutes a serious or potentially serious conflict of interest, including working for a competitor during the term of the employee’s employment;
- Refusal to comply with a lawful and reasonable direction given by management or any other person duly allowed by Pro Health Care;
- Dishonest behaviour and/or acting in a way that is inconsistent with the best interests of Pro Health Care;
- Deliberately providing false or misleading information to Pro Health Care or any of Pro Health Care’s customers or suppliers;
- Being convicted of a criminal offence which, in the reasonable opinion of Pro Health Care, may have the effect of bringing Pro Health Care into serious disrepute or affecting the ability of the employee to meet obligations under the employee’s employment contract;

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- Theft or misappropriation of Pro Health Care property;
- Being under the influence of alcohol and/or illegal drugs whilst at work or on Pro Health Care property;
- Acting in a way which in the reasonable opinion of Pro Health Care may injure or be likely to injure the business or reputation of Pro Health Care;
- Acts of bullying, harassment or discrimination;
- Threatening, violent, or offensive behaviour;
- Conduct that causes imminent, and serious risk to the health, or safety, of a person or the reputation, viability or profitability of Pro Health Care.

At the disciplinary meeting, the employee will be given an opportunity to explain why they consider termination of employment without notice is not appropriate prior to Pro Health Care making a final decision.

## RECORD KEEPING

Records of verbal warnings and any written warnings will be placed in an employee’s personnel file.

## RESIGNATION

When an employee resigns, they must provide this in writing.

Depending on the employee they may or may not be required to give notice to Pro Health Care. If an employee is required to give notice, the notice period:

- Starts the day after the employee gives notice that they want to end the employment; and
- Ends on the last day of employment.

If an employee does not give the period of notice required then Pro Health Care may be entitled to deduct from wages due to the employee. Please refer to the relevant Award, industrial instrument or employment contract.

## REDUNDANCY

Redundancy happens when an employer either:

- Doesn't need an employee’s job to be done by anyone (for example, a particular position is no longer required, or less people are needed to perform the quantity of work available); or
- Becomes insolvent or bankrupt.

Redundancy can happen when the business:

- Introduces new technology (for example, the job can be done by a machine);
- Slows down due to lower sales or production;
- Closes down;
- Relocates interstate or overseas;

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- Restructures or reorganises because a merger or takeover happens.

Pro Health Care will follow any consultation requirements under the relevant Award or industrial instrument.

## ABANDONMENT OF EMPLOYMENT

An employee may be taken to have abandoned their employment if any of the below occur:

1. The employee simply 'walks off the job';
2. The employee is absent from work for a continuous period exceeding three working days without the consent of the employer and without notification to the employer;
3. If within a period of 14 days from their last attendance at work or the date of their last absence in respect of which notification has been given or consent has been granted an employee has not established to the satisfaction of their employer that they were absent for reasonable cause.

Pro Health Care will make reasonable attempts to contact the employee to ensure their welfare prior to any decision regarding their employment being made. Attempts will be either via phone, e-mail or registered mail and records of any attempt will be kept.

If Pro Health Care have concluded that the employee no longer intends to be bound by the employment agreement, an Abandonment of Employment Letter will be sent via registered post to the employees last known address. If the employee has any personal belongings at the practice, these will also be returned to them via post (or courier if required).

## TERMINATION CONSIDERATIONS

It is important to consider the following as part of the termination process:

- Notice period (or payment in lieu of);
- Termination payments and entitlements;
- Administrative matters, such as the issuing of a letter, collection of company property (keys, laptops etc.) and explaining to the employee their continuing obligations under confidentiality and intellectual property agreements;
- Notify relevant departments through the completion of our Employee Off-Boarding Form (<https://app.smartsheet.com/b/form/e30a1d698e134525a79d5082e8e0f2ad>).

## RELATED POLICIES AND PROCEDURES

Employees are encouraged to read this policy in conjunction with other relevant Pro Health Care policies, including:

- Bullying & Harassment;
- Code of Conduct;
- Grievance Handling Policy;
- Equal Opportunity & Discrimination Policy.

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