

EMPLOYMENT LAW FOCUS

Suspension During Disciplinary Can Be Tricky

An employee's employment agreement may contain a suspension clause and any suspension may be on pay. However, suspension still needs to be justified and getting it wrong can be costly.

My column in the Waikato Times recently finished with a caution around the risks of suspending employees during disciplinary proceedings. It is worth unpacking that caution in an article of its own.

When allegations are put to an employee and disciplinary proceedings started, it is almost a given you will have one unhappy worker on your hands for some weeks, if not months. Employers often wonder whether suspension would be the

easiest way to remove temporarily this potential hotbed of disgruntlement and dissatisfaction.

However, suspension can be a bit of a bear trap, even where the employment agreement expressly allows for it and the suspension is on full pay.

The problem is that a suspension must be justified, both substantively and procedurally, and the threshold for that justification is very high.

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In a nutshell, suspension may be justified only in cases where the risk of industrial sabotage is high (not merely a possibility), the risk of intimidation and safety of other employees/witnesses is likely or where allegations relate to an employee's negligence or inability to perform safety-sensitive work and there are no other duties available for the employee to perform.

A further conundrum is that an employee still needs to be consulted about suspension before any final decision to suspend and this requires that the person be given full information on the proposal, time to consider and respond and should, ideally, allow them to have a support person there when the proposal is discussed. This can all take time.

Failure to follow this procedure may render the suspension unjustified. However, allowing sufficient time to follow the procedure weakens the employer's argument that the employee needs to be suspended due to some imminent danger with them remaining in the work place. Suspension really is a case where legal advice is needed as the facts and peculiarities of each case are almost limitless and the risks of "getting it wrong" are high.

For further information on suspension and disciplinary investigations please contact:
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