



Fact sheet

Suspension by employer for serious misconduct

Employers can suspend a training contract without the apprentice's* consent on the grounds that the apprentice has allegedly engaged in serious misconduct.

Process

Where it is alleged that the apprentice has engaged in serious misconduct and the employer wishes to suspend the apprentice, the employer must provide written notice to the apprentice that states:

- the training contract has been suspended on the grounds that the apprentice has engaged in serious misconduct;
- when the suspension takes effect (which must be after the apprentice has received the notice); and
- details of the alleged serious misconduct.

The employer must provide the Apprenticeship Office with a copy of the written notice before 5.00 pm on the next working day.

A 'Notice of suspension by employer for serious misconduct' form has been developed for this purpose and is available from the Apprenticeship Office.

The employer must continue to pay the apprentice during the suspension period.

The apprentice must not attend the workplace during the period of suspension, but may attend training with their registered training organisation.

If all parties agree that serious misconduct has occurred, and agree to a termination, refer to the 'Termination of a training contract by mutual agreement' fact sheet.

Training contract to be reinstated or terminated

An employer may at any time reinstate an apprentice. In doing so, the employer must notify the Apprenticeship Office before 5.00 pm on the next working day after they reinstate the apprentice.

If the employer does not reinstate the apprentice, they must apply to terminate the training contract within seven days after the date of suspension. Refer to the 'Termination of a training contract by non-mutual agreement' fact sheet for information about this process.

Serious misconduct

For conduct to be deemed serious, there needs to be wilful or deliberate behaviour by the person that is inconsistent with the objectives of the training contract. The following examples of serious misconduct are adapted from Regulation 1.07 of the *Fair Work Regulations 2009*.

Serious misconduct may include, but is not limited to, the following:

- wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the training contract;
- conduct that causes serious and imminent risk to:
 - health or safety of a person; or
 - the reputation, viability or profitability of the employer's business;
- the apprentice, in the course of their employment, engaging in:
 - theft;
 - fraud; or
 - assault;
- the apprentice refusing to carry out a lawful and reasonable instruction that is consistent with the training contract; or
- the apprentice being intoxicated at work.

The apprentice is considered to be intoxicated if the apprentice's faculties are, by reason of their being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the direction of, a person lawfully authorised to administer the drug), so impaired that the apprentice is unfit to be entrusted with their duties or with any duty that the employees may be called upon to perform.

Penalties

A penalty may apply if :

- an employer fails to give notice to the Apprenticeship Office about commencement or cessation of a suspension, or fails to give notice within the prescribed timeframe;
- an employer fails to pay an apprentice during the suspension period; or
- the apprentice attends the employer's workplace during suspension.

The term 'apprentice' covers apprentices, trainees, cadets and interns.

Disclaimer: The Department of Training and Workforce Development registers and administers training contracts and regulates the apprenticeship system in Western Australia consistent with Part 7 of the Vocational Education and Training Act 1996 and Part 4 of the Vocational Education and Training (General) Regulations 2009.

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