



## FACT SHEET/FORM

# Suspension by employer for serious misconduct

An employer may suspend a training contract without agreement from an apprentice\* on the grounds that the apprentice has engaged in serious misconduct. Before taking this step, employers are strongly encouraged to call the Apprenticeship Office to discuss the options.

Where it is alleged that the apprentice has engaged in serious misconduct and the employer wishes to suspend the training contract, the employer is required to provide written notice to the apprentice stating:

- the suspension is due to the apprentice's engagement in serious misconduct;
- when the suspension takes effect (which must be after the apprentice has been given the notice); and
- details of the serious misconduct.

The attached *Notice of suspension by employer for serious misconduct* form has been developed for this purpose. The completed form can be emailed to the Apprenticeship Office at [apprenticeshipoffice.compliance@dtwd.wa.gov.au](mailto:apprenticeshipoffice.compliance@dtwd.wa.gov.au).

### During the suspension

The employer is required to continue to pay the apprentice during the suspension period.

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

### 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 *Fair Work Regulations 2009* provides some guidelines on what constitutes serious misconduct.

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.

An 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.



## The process

### DAY 1

Employer provides the apprentice with a notice to suspend the training contract on grounds of serious misconduct.

The *Notice of suspension by employer for serious misconduct* attached to this fact sheet can be used for this purpose.

Before 5 pm on the next working day (following day 1), the employer emails a copy of the suspension notice to Apprenticeship Office.

The *Notice of suspension by employer for serious misconduct* attached to this fact sheet can be used for this purpose.

### DAY 2 to DAY 7

The training contract is suspended.  
One of the following four processes must now be initiated.

#### Mutual suspension

The employer and the apprentice agree to the suspension, and notify Apprenticeship Office.

**The training contract is suspended for the agreed period.**

Refer to the *Notice by parties to suspend a training contract* fact sheet and form on the Apprenticeship Office website.

#### Termination with apprentice consent

The employer and the apprentice agree to terminate the training contract and notify Apprenticeship Office.

**The training contract is now terminated and will cease to have effect.**

Refer to the *Termination of a training contract with apprentice consent* fact sheet and form on the Apprenticeship Office website.

#### Cancellation of suspension

The employer elects to cancel the suspension for serious misconduct, and provides written notice to the apprentice stating the date on which the contract will cease to be suspended.

**The training contract is reactivated.**

Employer to email Apprenticeship Office to advise of the cancellation before 5 pm of the next working day.

#### Termination of training contract

The employer makes an application to Apprenticeship Office for approval to terminate the training contract. A decision is made to either refuse or approve the application.

**If approved, the training contract will be terminated. If refused, the training contract is reactivated.**

Refer to the *Termination of a training contract without apprentice consent* fact sheet on the Apprenticeship Office website.

### DAY 8

In the absence of the initiation of any of these four processes, the contract will be reactivated.

\*The term 'apprentice' includes apprentices, trainees, cadets and interns.