

Official Misconduct Policy



Queensland Institute of Business Technology Pty Ltd
ABN 38 076 195 027

Document

Document Name	Official Misconduct Policy
Brief Description	This Policy applies with regards to employee misconduct and/or work performance that has reached a level of seriousness beyond the scope of normal performance management. This Policy provides a process and guidance to Navitas managers for dealing with cases of persistent and unresolved unsatisfactory performance, misconduct or serious misconduct (including situations where summary dismissal is appropriate). This policy applies to all employees within the Navitas group in Australia.
Responsibility	College Director and Principal
Initial Issue Date	25/02/2008
Authorising Body	Management Committee

Version Control

Date	Version No.	Summary of Changes	Reviewer Name and Department/Office
05/03/2019	1	Policy changes prior to December 2019 are found on H drive.	College Director and Principal

Related Documents

Name	Location
Navitas Drug & Alcohol Policy	Policy HUB

Contents

1	Purpose and Scope	3
1.1	Introduction	3
1.2	Purpose	3
1.3	Scope	3
2	Policy Statement	3
2.1	Policy	3
2.1.1	Unresolved Unsatisfactory Performance	4
2.1.2	Misconduct	4
2.1.3	Serious Misconduct	4
2.1.4	Disciplinary Outcomes	5
2.1.5	Responsibilities	5
2.2	Procedure	5
2.2.1	Investigation	5
2.2.2	Disciplinary Meetings	6
2.2.3	Disciplinary Process	6
2.2.4	Written Warning	7
2.2.5	Final Warning	7
2.2.6	Dismissal & Summary Dismissal	7
2.2.7	Employee Records	8
2.3	Review	8
3	Relevant Legislation	8

1 Purpose and Scope

Navitas is committed to effective disciplinary procedures with regards to employee misconduct and/or work performance which apply when the situation has reached a level of seriousness beyond the scope of normal performance management.

1.1 Introduction

This Official Misconduct Policy sets out the approach of Navitas Proprietary Limited and its affiliated group companies (such as Griffith College) relating to the management of employee misconduct and/or work performance that reached a level of seriousness beyond the scope of normal performance management.

1.2 Purpose

The purpose of this Policy is to provide a process and guidance to Navitas managers for dealing with cases of persistent and unresolved unsatisfactory performance, misconduct or serious misconduct (including situations where summary dismissal is appropriate). This policy is not intended to be used where a staff member has lodged a grievance relating to their employment, the workplace or against another employee/s. Such matters should be dealt with through the Navitas Grievance Management Policy. Where an outcome from a grievance process results in a recommendation for disciplinary action, such action will be dealt with under this policy.

1.3 Scope

This Policy covers conduct both in the workplace and at work-related functions such as work lunches, dinners, conferences, Christmas functions and client/customer functions. This policy applies to all employees within the Navitas group in Australia who do not have a disciplinary or similar clause within their employment terms and conditions. In the case where such a clause or similar clause does exist within an Enterprise Agreement or employment contract, then this policy does not apply

2 Policy Statement

2.1 Policy

Navitas will initiate disciplinary procedures in cases of unresolved and persistent poor performance, misconduct and serious misconduct.

The principles underlying Navitas' disciplinary procedures are those of equity, fairness and respect for the individual. All disciplinary matters will be dealt with seriously.

Navitas is committed to a transparent and speedy resolution of all disciplinary matters, following the principles of natural justice. Wherever possible such matters will be resolved with the maximum level of confidentiality practicable in the circumstances.

Where a group of employees are involved in an incident or a pattern of work conduct, the manager should examine each employee's behaviour individually. The manager must not make a blanket decision based on the conduct of the worst offender.

On all occasions the employee will be given the opportunity to have a support person present at a formal performance discussion. The support person must not respond on the employee's behalf or otherwise intervene in the meeting or interview. Except where this contributes to transparency and fairness.

While Navitas will seek to resolve any issues of misconduct or work performance in accordance with its policies and procedures, employees have the right to seek the intervention of external bodies such as Fair Work Australia, and to consult or seek representation from their union, at any stage in this process.

If conduct involves a potential breach of any Australian law, Navitas may notify the police or other relevant government authority.

2.1.1 Unresolved Unsatisfactory Performance

Where the performance of an employee is unsatisfactory, managers would be expected to follow normal performance management procedures, including counselling, professional development and the development and monitoring of an action plan for improvement.

Where normal performance management processes have not been successful in improving an employee's persistent poor work performance, disciplinary action, up to and including termination of employment, can be a possible outcome.

2.1.2 Misconduct

Misconduct can be broadly described as wilful behaviour by an employee that constitutes (but is not limited to):

- a) A breach of company policy and/or procedure, including the standards outlined in the company's Code of Conduct for employees;
- b) A breach of an obligation prescribed under an employee's contract of employment or relevant industrial instrument (such as an Award or Enterprise Agreement);
- c) Criminal activity that impacts on the employee's role and responsibilities in the organisation (such as theft or fraud);
- d) Dishonesty on the ground that it reveals the employee is unfit for a position of trust and confidence;
- e) Behaviour that a reasonable person would not condone within the workplace;
- f) Disobedience/willfully refusing to observe a lawful and reasonable instruction of a manager and/or directive of the Company;
- g) Language that a reasonable person would deem to be obscene and/or abusive;
- h) Intimidating behaviour, bullying and/or vilifying behaviour;
- i) Failure to observe Occupational Health & Safety legislation and/or policies and procedures;
- j) Negligence/incompetence or other dereliction of duties;
- k) Being under the influence of illicit drugs or alcohol during work hours (see Navitas Drug & Alcohol Policy)
- l) Breach of duty regarding non-disclosure of confidential information;
- m) Acting outside authority/responsibility assigned to the position;
- n) Deliberately damaging company property or that of other employees;
- o) Unprofessional conduct; or
- p) Acts of discrimination, harassment, sexual harassment or racial/ethnic abusive behaviour;
- q) Misbehaviour of a kind that constitutes a serious impediment to the carrying out of an employee's duties or to other employees carrying out their duties.

2.1.3 Serious Misconduct

Any of the matters listed under the definitions of "Misconduct" above may be viewed as serious misconduct, dependent on the circumstances. Each case must be evaluated as to the degree of seriousness, in accordance with the substantive and procedural fairness requirements.

Serious misconduct may also include (but is not limited to):

- a) Conduct that causes imminent and serious risk to the health and/or safety of a person;
- b) Conduct that causes imminent and serious risk to the reputation, viability or profitability of the Company;
- c) Fighting on Navitas premises or threatening or engaging in any other form of physical violence.

2.1.4 Disciplinary Outcomes

Where it has been established that a staff member has engaged in misconduct or serious misconduct, the following forms of action may be deemed appropriate:

- a) Counsel and/or censure the employee for unsatisfactory behaviour and/or arrange for appropriate professional development;
- b) Written warning;
- c) Final written warning
- d) Transfer to another position/location;
- e) Demotion/Loss of salary;
- f) Termination of employment;
- g) Summary dismissal in cases of "gross misconduct".

2.1.5 Responsibilities

The employee's manager is responsible for:

- a) Ensuring that the employee has been given every reasonable opportunity to improve performance or conduct before beginning disciplinary action, where relevant.
- b) Treating the employee fairly;
- c) Clearly articulating the areas of concern and stating the improvements required.
- d) Ensuring that all cases of dismissal follow procedural fairness, including a full and detailed investigation, providing the employee with every opportunity to present their explanation and ensuring that decisions made are based on all relevant facts;
- e) Ensuring that all company property is accounted for at the time of dismissal;
- f) Ensuring that Group Human Resources are provided with all information relating to the termination of the employee so that the correct entitlements can be paid as soon as possible after the termination has taken place.
- g) Ensuring all documentation recorded throughout the disciplinary process is placed on the employee's personnel file (via Human Resources where relevant).

Group Human Resources will provide support, guidance and professional expertise to the employee's manager, particularly on matters pertaining to a warning, final warning, potential dismissal and/or serious misconduct.

2.2 Procedure

The disciplinary action taken will vary from case to case. Consideration of the circumstances of the case as a whole should be taken into account when deciding which disciplinary action should be taken. Nothing in this policy prevents Navitas from issuing a final warning at any stage of the process. Similarly, if the circumstances warrant, nothing in this policy prevents Navitas from dismissing an employee at any stage of the procedure set out in this policy, for example in circumstances involving wilful or serious misconduct by an employee.

2.2.1 Investigation

Depending on the circumstances, it may be necessary for the Manager/College Director/Principal/General Manager (with assistance from HR where required) to conduct an investigation into incidents and/or allegations. This may involve collecting relevant data, interviewing the relevant employee, relevant witnesses such as the employee's co-workers or supervisors, or potentially students with whom the employee has had contact. The manager/College Director/Principal/General Manager (with assistance from HR where required) will endeavour to investigate all allegations of unsatisfactory performance and misconduct including unprofessional misconduct and serious misconduct by an employee fairly and promptly.

An employee may be suspended from duty on ordinary pay pending completion of an investigation. For serious matters, the suspension may be without pay, but this would need to be approved by the relevant Executive General Manager/CEO. In such circumstances, the employee should be informed in writing of the conditions of the suspension at the time of the suspension. The time period for which the employee is suspended should not be for an unreasonable duration.

2.2.2 Disciplinary Meetings

The employee needs to be given advance notice of any disciplinary meeting and what will be discussed at the meeting. They should also be given a reasonable opportunity to have a support person present at the meeting.

The discussion must provide the employee with:

- a) Reason(s) for the discussion (i.e. the behaviour(s) that are of concern) including any evidence upon which those concerns are based;
- b) An opportunity to respond to the concerns or allegations;

A Manager may want to have a colleague or Group Human Resources representative present at a formal performance discussion to ensure that the details of the discussion can be corroborated.

2.2.3 Disciplinary Process

Where there is persistent unresolved unsatisfactory performance or an allegation of misconduct or serious misconduct against an employee, the Manager or other delegated officer will make reasonable enquiries to establish the facts of the matter and talk to the employee who is the subject of the allegation. Where appropriate, the Manager will attempt to resolve the matter.

If it is considered that the allegations warrant no further action or should be dismissed, the Manager will advise the employee accordingly and the matter will be closed. At this stage, the Manager may feel it appropriate to issue a verbal warning.

If it is considered that the allegations warrant being taken further more formally, then the Manager will need to determine whether:

- a) The issue needs to be investigated more formally; or
- b) That the Manager proceeds to directly notify the employee in writing and in sufficient detail, including any evidence which is available, to enable the employee to understand the precise nature of the allegations and ask the employee to properly consider and respond to them and submit a written response within ten (10) working days.

Where an investigation has been undertaken, depending on the outcome, the Manager may decide to follow action as set out at 3.8, or proceed to 3.9.b.

Depending on the employee's response to the allegations, the Manager may take one of the actions listed below and advise the employee accordingly:

- a) dismiss the matter and take no further action; or
- b) counsel and/or censure the employee for unsatisfactory behaviour or performance; and/or
- c) refer the person on to a further Action Plan and/or arrange for appropriate professional development; or
- d) provide a written warning.

2.2.4 Written Warning

The written warning should:

- a) Describe the unsatisfactory performance and/or conduct;
- b) Detail the corrective action required;
- c) Detail the Company standards and expectations relating to the performance issue;
- d) Detail the action(s)/improvement(s) required;
- e) Clearly specify the potential consequences of not achieving the required improvement or if the reason(s) for the warning continues or is repeated;
- f) Detail and include a list of attached documentation; and
- g) Include the date of review and the agreed follow up date.

The "Discipline Report Form" has been developed to assist managers in the preparation of a written warning. However, a written warning does not necessarily need to be completed using this form. A manager may elect to cover each of the elements described in the previous paragraph in a letter or file note format.

A copy of the warning must be given to the employee and a copy signed by both the manager and employee needs to be placed on the employee's personnel file as a permanent record. If the employee refuses to sign the warning, the manager should note this on the written warning and arrange for the document to be placed on the employee's personnel file.

Federal employment legislation does not prescribe the number of warnings an employee must receive in order to lawfully terminate employment. Manager will need to take into consideration all evidence obtained or supplied when determining a case for dismissal.

It is important to note that the details of any discussion and the written warning may be subject to scrutiny by the Australian Industrial Relations Commission if the matter develops into an unfair dismissal claim.

2.2.5 Final Warning

If there is a failure to improve conduct or performance after one or more written warning/s have been issued, or if the issue is sufficiently serious to warrant only one written warning (a first and final warning), a final written warning may be given to the staff member. Final warnings are issued when the Company wants to convey that further poor performance/misconduct will not be tolerated and that a repeat may lead to termination of the employment relationship.

Whilst there is no specific requirement to have a number of written warnings preceding a final warning, the principles of substantive and procedural fairness apply. Subject to these principles, it would be expected that an employee being managed for a performance issue, would have received sufficient prior warning to reasonably address the issue in question prior to receiving a final warning.

An employee who, after receiving a final warning, repeats the inappropriate behaviour may not automatically be dismissed. The manager must take into account any mitigating factors resulting from the employee's response to the issue(s).

Final warnings should only be issued after consultation with Group Human Resources. A member of Human Resources may attend performance discussions where a final warning is likely to be issued and/or when termination of employment is a possible outcome.

2.2.6 Dismissal & Summary Dismissal

Dismissal is a broad term covering the termination of an employee's contract of employment by Navitas. The reasons for dismissal of an employee can be numerous.

Summary dismissal is termination of employment that, due to the nature of the issue, is immediate and without notice. An employee may only be dismissed summarily in cases of "gross misconduct" as defined in the [Fair Work Act 2009](#).

The occurrence of conduct that falls within the definition of "serious misconduct" does not in itself guarantee the right to summarily dismiss an employee. Any factors (both internal and external to Navitas) that may mitigate the decision to dismiss the employee must be taken into consideration.

If the decision is made to terminate the employee's contract of employment with Navitas, the manager will need to provide documentation to Group Human Resources so that the following can be prepared and the employee provided with:

- a) Written notice of the day of the termination of his/her employment or payment in lieu of notice, except where the termination is due to gross misconduct;
- b) Payment of all accrued entitlements;
- c) Payment of any outstanding entitlements;
- d) A Separation Certificate (upon the employee's request); and
- e) A Statement of Service (upon the employee's request).

2.2.7 Employee Records

Written warnings and information pertaining to the warning must not be removed from an employee's personal file. If a manager is satisfied with the employee's performance following a performance discussion he/she may place a supplementary file note to that effect in the employee's personnel file.

2.3 Review

This Policy is reviewed bi-annually by Group Human Resources to ensure alignment to appropriate strategic direction and its continued relevance to Navitas' current and planned operations.

3 Relevant Legislation

Griffith College is required to comply with a range of legislation and regulation both at a state and a federal level. Policies and procedures developed within Griffith College are done so in accordance with the legislative framework within which the College operates. Griffith College has a responsibility to satisfy state and federal legislation and regulation including, but not limited to:

- [Fair Work Act 2009](#).