Employee Misconduct: To Suspend or Not to Suspend

When an event happens in the workplace involving potential serious misconduct, the employer may elect to suspend the employee. However, unless a proper process is followed the suspension can back-fire on the employer.

Starting point:

The general rule for all employers is that an employer generally has no legal right to suspend an employee in the absences of a statutory or contractual right to do so. Therefore, it is crucial that the business' employment agreements contain a robust suspension clause that gives an employer the option to suspend the employee.

Investigation and determination of suspension:

If an employee is under investigation for serious misconduct it may be appropriate to suspend the employee. This may be because of the seriousness of the alleged misconduct or because of health and safety threats or because the alleged offending goes to the heart of the employment relationship (i.e. involves mistrust/dishonest).

It is important to keep in mind that the decision to suspend and the process involved in suspending the employee must be carried out in good faith and, to a degree, in consultation with the employee. If an employer gets this wrong then there is a risk that the suspension is deemed to be unjustified. In these circumstances an employee could have grounds to raise a personal grievance. The best advice is always to check in with your lawyer before taking any action to suspend an employee.

In addition, here are some further tips:

1. Ensure there is a robust suspension clause in the employee's signed employment agreement.

2. Confirm that the decision to suspend is proportionate to the alleged offending.

3. Follow a fair process. This involves putting the fact that the employer is considering suspending the employee to the employee and allowing the employee an opportunity to provide feedback on that proposal.

4. A rule of thumb is that suspension should be on full pay, unless in extraordinary circumstances.

Where to go from here?

Our employment team regularly review suspension clauses, we advise employers who are considering suspending employees and we also advise on the employer's best course of action to take to limit any exposure to the business. We also advise and support employees who are facing being suspended.

If you require any assistance in preparing suspension clauses or conducting suspension and disciplinary action, please contact The Engine.

This resource was provided by: