

Revised Code of Good Practice: Dismissal

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INTRODUCTION

On 4 September 2025, the Minister of Employment and Labour gave effect to the revised Code of Good Practice: Dismissal ("**the new code**") in Government Gazette No 53294. The Code repeals Schedule 8 Code of Good Practice: Dismissal and the Code of Good Practice that is based on operational requirements ("**the old code**") and consolidates same into one single code.

The main aim of the new code is to provide guidance to employers, employees and trade unions for dismissals that result from operational requirements, misconduct, and incapacity.

This article aims to summarize the updates contained in the new code.

Small Businesses

The new code acknowledges that certain obligations may be impractical for small businesses. Many small businesses lack a dedicated human resources department to handle overly formal dismissal procedures and the code recognises that small businesses cannot be expected to conduct lengthy investigations while managing day-to-day operations.

Misconduct

While the old code emphasised the importance of progressive discipline and warnings prior to dismissal, the new code recognises that each case should be judged on the merits and that a single act of misconduct could justify dismissal if serious enough or if a continued employment relationship is intolerable. The new code still, however, promotes progressive discipline.

When determining whether the sanction for the misconduct is fair, the new code has added 2 new factors that a decision maker should consider in addition to the traditional considerations. The factors to consider is now as follows:

1. the importance of the rule or standard in the workplace (new).

2. the actual or potential harm or damage caused by the employee's contravention of the rule or standard (new).
3. whether the rule was a valid and reasonable rule or standard.
4. whether the employee was aware, or could reasonably be expected to have been aware, of the rule or standard.
5. whether the rule or standard has been consistently applied by the employer.
6. whether dismissal is an appropriate sanction for the contravention of the rule or standard.

While consistency is a key factor in considering whether a dismissal is fair in the old code and the new code, the new code explicitly states that inconsistency does not necessarily render a dismissal unfair if the misconduct renders the continuation of the employment relationship intolerable.

When determining whether a continued employment relationship is intolerable, the new code introduces the following factors to consider: -

1. the nature and requirements of the job.
2. the nature and seriousness of misconduct and the effect thereof on the business.
3. whether progressive discipline might prevent a recurrence of the misconduct.
4. whether the employee acknowledges wrongdoing and willingness to comply with the employer's rules and standards.
5. mitigating circumstances such as the length of service, disciplinary record and the effect of dismissal on the employee.

Under the old code and the new code dismissal for misconduct must take place in accordance with a fair procedure. However, the new code provides that before any decision takes place, a genuine dialogue must take place with an opportunity to reflect, and the employee should be provided with a reasonable opportunity to respond to the allegation.

Probation

The new code makes dismissal before probation less stringent for employers and expands the purpose of probation to consider overall suitability which includes not only performance, but also incompatibility and misconduct. At the same time the new code explicitly prohibits probation or incapacity procedures from becoming backdoors to deny employees permanent status.

Incapacity

Under the new code, employers are not always required to give the employee a warning before dismissal particularly in cases where:

1. the employee is a manager or senior employee who has the necessary experience and knowledge to gauge on whether their performance is up standard.
2. the employee has high degree of professional skill and where departure from expected standards will result in severe consequences.

The new code also now recognises new forms of incapacity such as imprisonment and incompatibility.

Industrial Action

The new code confirms that participation in a strike is generally not a ground for dismissal. Dismissal is only justified if the employee has engaged in serious misconduct during a strike. The factors to be considered in determining whether a dismissal is substantively fair remain the same, however, the new code provides that the employer should consider the following factors when determining the seriousness of the contravention:

1. the conduct of the parties to the dispute related to the strike.
2. the legitimacy of the strikers' demands.
3. the duration and timing of the strike.
4. the harm caused by the strike.

The new code sets out the procedure the employer should take when contemplating dismissing an employee who is engaging in a strike:

1. the employer should consult with a trade union at the earliest opportunity to engage with the striking employees.
2. the employer should consider representations by the official and discuss the course of action that it intends to take with the trade union.
3. the employer should aim to engage with representatives of the striking employees if there is no trade union involved.
4. the employer should give the employees an ultimatum that is not ambiguous, which indicates what is required of the employees and gives an appropriate sanction should the employees fail to comply.
5. the employees should then be allowed enough time to respond to the ultimatum.
6. employers should not dismiss employees who comply with the ultimatum and return to work.
7. employers may dismiss employees who persist with the strike and rejects the ultimatum.
8. where there is collective misconduct, the employer may satisfy the requirements of procedural fairness by calling for collective representations.
9. if the employer cannot reasonably be expected to follow this process, the employer may dispense with these steps.

Operational Requirements

The new code sets out the legitimate reasons for dismissal based on operational requirements, together with the procedure that must be followed. The new code also contains an annexure which outlines the required contents of the retrenchment notice.

CONCLUSION

The new code carves out exceptions for smaller employers, expands probationary assessment to a broader inquiry into suitability and incompatibility, and, importantly, treats certain situations, including imprisonment and fundamental incompatibility, as potential forms of incapacity that must be handled as such. At the same time, the new code tightens safeguards against misuse by preventing probation or incapacity rules from becoming backdoors to deny employees permanent status.

Overall, the new code aims to provide clearer, and more practical, guidance for employers.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.



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