

## Misconduct and Serious Misconduct

### Misconduct and serious misconduct

Misconduct is when an employee does something wrong either by doing something, not doing something, or through their behaviour. This may justify some disciplinary action being taken by Ko Taku Reo.

Ko Taku Reo's response to misconduct must be fair and reasonable in all the circumstances. For example, some lesser misconduct may lead to a warning, more serious misconduct may lead to a dismissal.

When deciding how to respond to misconduct, Ko Taku Reo must ensure they conduct a fair investigation and disciplinary or dismissal process as per policies in our school docs.

Ref. Ko Taku Reo School Docs - Code of Conduct, investigating a Formal Complaint or Serious Allegation, Ending Employment, and Relevant Union Collective Agreements (noted below).

### Misconduct vs serious misconduct

Misconduct can be at two different levels: misconduct and serious misconduct. Serious misconduct is labelled 'serious' because it can have the effect of destroying or undermining the relationship of trust and confidence between an employee and Ko Taku Reo. Without this trust and confidence an employment relationship can't continue.

Where Ko Taku Reo has conducted a fair investigation and disciplinary process and then decides that serious misconduct has taken place, they may choose to dismiss the employee.

An instance of misconduct which is not serious doesn't, on its own, undermine or destroy the relationship of trust and confidence between an employee and Ko Taku Reo. An instance of misconduct would not justify a dismissal unless it is repeated.

### Identifying serious misconduct

The key question to ask is if the misconduct undermines or destroys the trust and confidence Ko Taku Reo has placed in the employee. This is more likely if the misconduct could impact the employee's ability to perform the job, for example:

- if an employee is a teacher and is guilty of physical intimidation, this might cast doubt on the employee's ability to provide a safe learning environment.
- if an employee is in a position of trust (e.g., has access to the cash register) and they have stolen money.

Serious misconduct usually involves the employee acting deliberately, however there may be circumstances in which an employee acts so carelessly that it amounts to serious misconduct.

The table below shows examples of behaviour that may be considered either serious misconduct or misconduct. Whether behaviour is serious misconduct will depend on the facts of each case including the employee's explanation of the incident. This must be explored during a fair investigation and disciplinary process for both misconduct and serious misconduct.

<b>Misconduct</b>	<b>Serious misconduct</b>
<ul style="list-style-type: none"> <li>• Using inappropriate language</li> <li>• Internet misuse</li> <li>• Minor instances of failing to follow an employer’s reasonable and lawful instruction.</li> <li>• Minor breaches of the employment agreement e.g., inappropriate clothing</li> <li>• Lateness</li> </ul>	<ul style="list-style-type: none"> <li>• Violent behaviour</li> <li>• Bullying</li> <li>• Harassment</li> <li>• Theft or fraud</li> <li>• Behaviour that endangers the health and safety of the employee or others</li> <li>• Use of illegal drugs at work</li> <li>• Dishonesty</li> </ul>

### **Employment agreements and serious misconduct**

The NZEI PTCA – Part 7 deals with Discipline, Suspension, Instant Dismissal and Competency issue. It does not highlight misconduct or serious misconduct examples.

The NZEI SSiSCA – Part 8 deals with Complaints, Discipline & Dismissal (incl. instant dismissal for serious misconduct) It does not highlight misconduct or serious misconduct examples.

The PSA SRSCA – Sec. 8 General Provisions covers Discipline and Dismissal, Notice or Termination. It does not highlight misconduct or serious misconduct examples.

Ko Taku Reo may still dismiss an employee for serious misconduct even if their employment agreement or workplace policies don’t list their behaviour as serious misconduct. The question to ask is whether the misconduct has undermined or destroyed the trust and confidence an employer has placed in the employee.

### **Repeated misconduct**

A fair investigation and disciplinary process will be carried out for each instance of misconduct, whether it’s for the same behaviour or something different. Subject to our school policies.

It is common for warnings to be issued for misconduct. If the misconduct is serious enough, a final warning may be issued stating that the employee will be dismissed if the same behaviour happens again. There is no set number of warnings that need to be issued before an employee can be dismissed. If it is serious enough, a final warning can be given for the first instance of misconduct. However, as always, the employer’s response to misconduct must be fair and reasonable. For example, it would be unreasonable for an employer to give an employee a final warning for one-off misconduct.

### **Summary dismissal**

Summary dismissal is when an employee is dismissed without notice. This means they are not:

- able to work out their notice period.
- paid out for their notice period.

An employee may be summarily dismissed if, after a fair investigation and disciplinary process, they are found guilty of serious misconduct. This is conduct that deeply impairs or is destructive of the relationship of trust and confidence. It is not necessary to have a specific clause in the employment agreement for a summary dismissal to be an option in the event of serious misconduct.

### Misconduct outside work

Misconduct outside work could lead to disciplinary action or dismissal if:

- the conduct damaged the relationship of trust and confidence between the employee and Ko Taku Reo or
- the conduct brought Ko Taku Reo into disrepute, or
- the conduct is not appropriate for the employee to be doing their job properly.

### Malicious complaints

If an employer investigates any **form** of misconduct where a complaint has been made by another employee, and they determine that the behaviour complained about didn't happen, they could investigate whether the complaint was brought maliciously. This would generally only happen if the investigation decided that the person who made the complaint had been knowingly lying. It would not be a malicious complaint just because an investigation decides that what happened wasn't misconduct.

Ref. <https://www.employment.govt.nz/resolving-problems/types-of-problems/misconduct-and-serious-misconduct/>

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