

Suspension

An employer may consider suspending an employee while an investigation and/or disciplinary process is being undertaken. However, it is very important to note, a suspension is a course of action to be taken in regard to serious matters, and it is an option be used as a **last resort**.

The employer must have a **good reason** and follow a **fair process** which includes **consultation** with the employee before they can suspend. If the employer does not have either, then they may be subject to a personal grievance claim for unjustified disadvantage.

Potential incidents which may prompt the employer to consider suspension with pay:

- Act/s of physical aggression - a physical altercation in the workplace or wilful damage of company property
- Sexual harassment complaint
- Formal bullying complaint
- Theft and dishonesty - Unauthorised possession of company property such as taking money out of the till for personal gain

A suspension is a last resort measure. Therefore, the employer should consider other options to suspending with pay. If permitted by the employment agreement or if agreement is reached at the time the employer may:

- Direct the employee who is subject to a formal disciplinary process to work from home, instead of remaining in the workplace
- If this is a matter involving other staff members, consider scheduling shifts or location of work to avoid the affected employees working together

Suspension checklist

Prior to the meeting	Completed (✓)
<ol style="list-style-type: none"> 1. Check the employee's employment agreement gives you the right to suspend. 2. Consider whether suspension is appropriate in the situation. 3. Invite the employee to a meeting to propose the suspension. <ul style="list-style-type: none"> • Refer to template letter A at the Appendix. • You may have to skip this step and proceed straight to the meeting, if this is an urgent situation e.g. physical altercation in the workplace and you need the employee off the premises immediately. 	
During the meeting	
<ol style="list-style-type: none"> 1. Take notes of the meeting. 2. Thank them for attending the meeting. 3. If they do not bring a support person and/or representative to the meeting, confirm with them and record in the meeting notes they are okay to proceed without one present. 4. Inform them the purpose of the meeting is to discuss the possibility of suspension on pay. 5. State the reason(s) for the suspension. 6. If the employee does not have a support person and/or representative with them, ask them if they would like to take a moment to speak to someone before providing their feedback. Provide them with a private space and access to a phone. The employee can choose to proceed without seeking advice – note this in the meeting notes. 7. Ask for their feedback. <ul style="list-style-type: none"> • Listen to their feedback with an open mind and note down anything further you may need to consider. 	
Adjourn meeting	
<ol style="list-style-type: none"> 8. Take some time to decide whether you still consider suspension to be an appropriate measure to take. 9. This adjournment may not be for a long duration if the employee made little or no comments. 	
Reconvene meeting and deliver the decision	
<ol style="list-style-type: none"> 1. Decision to suspend is made: <ol style="list-style-type: none"> a) Inform the employee of the decision. b) Give them the reason(s) for suspension. 	

<ul style="list-style-type: none"> c) Explain their suspension will be with pay. d) Inform them they will receive written confirmation of their suspension by email. e) Instruct them not to discuss this matter with any other person except with their support person and/or representative. Likewise, if they do not comply with this instruction, it may be dealt with as a potential disciplinary matter for serious misconduct. <p>2. Decision not to suspend is made:</p> <ul style="list-style-type: none"> a) Inform the employee of the decision. b) Advise them you are still progressing with the disciplinary process and will be in touch regarding next steps. 	
After the meeting	
<ul style="list-style-type: none"> 1. Send an email to confirm the decision to suspend: <ul style="list-style-type: none"> • Refer to the template letter B contained at the Appendix. 2. Start the formal process: <ul style="list-style-type: none"> • choose applicable – investigation and/or disciplinary. • Refer to our Step by Step disciplinary guide for further information. 	

Appendix

Letter A

[letterhead]

[address]

[Date]

Private and confidential

[Employee's full name]

By email: [email address]

Dear [employee's first name]

Proposal to suspend

We would like to meet with you to discuss the possibility of your suspension from the workplace while we investigate serious allegations made against you in relation to an on-site incident.

More specifically, the [allegation/s concern/s] the following:

- [list allegation/s with detail]

Due to the potential health and safety implications of behaviour such as this and concerns your presence in the workplace may compromise our investigation, we are proposing to suspend you on full pay while we thoroughly investigate [this matter/these matters].

This proposal is made pursuant to clause [number] of your employment, which states:

[insert relevant clause of the employee's agreement]

[If you use the Restaurant Association employment agreement template]

Clause 20.1 of your Individual Employment Agreement states:

- 20.1** The Employer may suspend you from the workplace or from all or any usual duties and responsibilities for health and safety reasons or to enable the Employer to investigate any employment matter. The suspension may be paid or unpaid at the Employer's discretion.

At the meeting you will be given every opportunity to respond to the possibility of your suspension from the workplace.

If you would like to provide your feedback to the proposed suspension in writing by email, please send it to [email address] by [00:00am/pm] on [day][date][month] [2019/20].

If you require further time to submit your feedback, please contact me as soon as possible.

If you would like to meet in person, you are invited to meet with me at [00:00am/pm] on [day][date][month] [2019/20] to be held at [location – please ensure it is a private place].

[Please note – unless an immediate "at the time of incident" suspension must happen, allow a minimum 48 hours to meet with the employee to allow them a reasonable opportunity to seek advice and/or engage a representative and/or support person to attend the meeting]

Please inform us of the option you prefer by [00:00am/pm] [day][date][month] [2019/20].

Please be aware, subject to your explanation and other findings arising from [our meeting/or your feedback in writing], may result in your suspension from the workplace while the [choose applicable: investigation and/or disciplinary process] is concluded.

[If employee opts to meet] You are invited to bring a support person and/or legal representative to the meeting. I will be attending the meeting with [full name], [job title].

Please note, we are currently in the process of gathering information about the [allegation/s].

We will provide you with this information as soon as possible to allow you an opportunity to respond to the [allegation/s itself/themselves]. No disciplinary action will be taken until we have fully investigated and considered [this/these matter/s]

If you do not attend the meeting or provide any comments to us by email, we will have no other option but to make a decision based on the information we have on hand at this preliminary stage of our investigation.

Please feel free to contact me if you have any questions.

Yours sincerely

[Full name]

[Job title]

[Company name]

Appendix

Letter B

[letterhead]

[address]

[Date]

Private and confidential

[Employee's full name]

By email: [email address]

Dear [employee's first name]

Confirmation of suspension

At our meeting held at [00:00am/pm] on [day][date][month][2019/20] at [location], we discussed the possibility of suspension due to the serious nature of the [allegation/s] made against you, as per our letter to you dated [date][month] [2019/20, **attached**.

The [allegation/s] made against you concern the following:

- [allegation/s]

[If you had time to issue the invitation letter and you did meet insert]

You were invited to bring a support person and/or representative to the meeting.

[If support person and/or rep attended meeting insert]

You attended the meeting with your [support person and/or rep], [full name].

[If no support person and/or representative attended insert]

You did not attend the meeting with a support person and/or representative. We reminded you of your right to have a support person and/or representative in attendance. You confirmed you were happy to proceed without a support person and/or representative present.

[If employee not happy to proceed without a support person or representative – adjourn the meeting to allow the employee to arrange]

At the meeting you were given an opportunity to respond to the possibility of suspension from the workplace. [You accepted our proposal to suspend you **or** You did not accept our proposal to suspend because – insert reasons].

[If no meeting]

You provided the following feedback to us by email:

[Insert employee feedback]. We expressed [insert response to feedback].

After considering your feedback, we believe the matter is serious enough to proceed with our proposed suspension. Therefore, you are suspended from your position of employment with pay while we conduct our [choose applicable: investigation and/or disciplinary process] is concluded.]

This letter confirms your suspension in accordance with clause [number] of your employment agreement, effective immediately. The suspension will continue until the [choose applicable: the investigation and/or disciplinary process] is concluded.

The employment agreement to which you are a party identifies we may, as your employer, where necessary and for the protection of our operation and business interests, suspend you while we conduct [choose applicable: an investigation and/or disciplinary process].

[insert relevant clause of employment agreement]

[If you use our employment agreement template]

Clause 20.1 of your Individual Employment Agreement states:

- 20.1** The Employer may suspend you from the workplace or from all or any usual duties and responsibilities for health and safety reasons or to enable the Employer to investigate any employment matter. The suspension may be paid or unpaid at the Employer's discretion.

Therefore, we have exercised our right pursuant to [clause number/20.1] of your agreement and have suspended you with pay. Until we complete our [investigation and/or disciplinary process], you are not required to work. You will continue to receive your normal remuneration. Please note, the decision to suspend you is purely for the purpose of carrying out an [investigation and/or disciplinary process] of the [allegation/s] raised in regard to [summarise allegation/s]. Therefore, no hard and fast conclusions have been drawn in regard to the [allegation/s]. No decisions about the outcome of the [investigation and/or the disciplinary process] will be made until you have been given the opportunity to fully respond to the [allegation/s].

Please be reminded, this is a confidential matter between you and [Company name]. The existence and details of the alleged incidents, and your suspension should not be discussed with anyone other than your support person and/or representative. If you do not comply with this request, the employer may take disciplinary action against you for serious misconduct.

I will be in touch with you in the coming days to update you on the [choose applicable: investigation/disciplinary process] and any further steps required. If you require any more information at this stage, please do not hesitate to contact me.

[Optional] - I am aware this may be a stressful time for you, so we would like to offer you assistance wherever possible. I would like to offer you the benefit of access to counselling services, provided by the Employee Assistance Programme Services. These counselling sessions are confidential. I am willing to pay for the first three counselling sessions, at a rate of \$170.00 plus GST per session.

If you wish to accept our offer for assistance, please let me know as soon as possible so I can organise this for you. **or refer to the Mental Health Emergencies – Helplines, contained in Your Essential Guides for the Holiday Period]**

If you require any further information or have any questions at this stage, please do not hesitate to contact me.

Yours sincerely

[Name]

[Job title]

[Company name]