

PERSPECTIVE INSIGHTS

Articles

COMMON MISTAKES EMPLOYERS MAKE WHEN MANAGING MISCONDUCT

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“Delay can be as damaging as inaction. When employers fail to act promptly, the Industrial Court may view the misconduct as condoned, weakening the employer’s case.”

Managing employee misconduct is one of the most sensitive and high-risk responsibilities for employers. In Malaysia, mishandling misconduct cases frequently leads to unfair dismissal claims, reinstatement orders or costly compensation awards at the Industrial Court. Despite the best intentions, many employers fall into avoidable traps not because the misconduct did not occur but because due process was not properly observed.

One of the most common mistakes made by employers is proceeding with disciplinary action without gathering sufficient evidence or conducting a proper inquiry into the alleged misconduct. Employers often act

hastily based on assumptions, incomplete information or unverified complaints particularly where operational pressures or reputational concerns are involved. The Employment Act 1955 requires employers to conduct due inquiry before proceeding with a disciplinary action. This means making reasonable efforts to investigate the matter, interview relevant parties, assess documentary or digital evidence and establish a factual basis for the allegation. Failure to do so exposes the employer to claims that the decision was arbitrary, pre-determined or unsupported by evidence, even if the employee has conducted the alleged misconduct.

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Employers commonly undermine their own cases by issuing adequate or rushed show cause letters to the accused employee. A show cause letter is not a mere formality. It is an essential component of procedural fairness. Employees must be informed clearly and specifically of the allegations against them including dates, actions and the policies or rules allegedly breached. Vague accusations, insufficient details, or unreasonably short response timelines may be construed as denying the employee a genuine opportunity to respond. When this occurs, the Industrial Court may find that the employee was not afforded natural justice and procedural fairness.

Another common mistake employers make when managing misconduct is failing to act promptly after becoming aware of the alleged wrongdoing. In practice, employers may delay investigations or proceed with a disciplinary action due to operational demands, internal indecision, or a reluctance to confront the issue. However, undue delay can seriously undermine the employer's case. The Industrial Court may view prolonged inaction as condonation where the employer had condoned the alleged misconduct. Undue delay in managing the misconduct can also be deemed to prejudice the employee as memories fade, evidence becomes less reliable and key witnesses may no longer be available. This may expose the employer to the risk that the principles of natural justice were not adhered to.

Furthermore, some companies place too much emphasis on proving that misconduct occurred without stepping back to consider whether the punishment imposed is appropriate for the misconduct. In deciding on the punishment, employers should look not only at the seriousness of the misconduct but also at factors such as the employee's length of service, past record, level of remorse and how similar cases have been handled previously. Termination is considered the most severe form of disciplinary action and is generally meant for serious misconduct.

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Where termination is imposed without properly considering lesser penalties, the action may be seen as excessive and the Industrial Court may find the termination of employment to be unfair even though the misconduct itself was proven.

Ultimately, most misconduct cases do not fail because employers lack valid reasons to discipline an employee but because they underestimate the importance of process. In Malaysia, the Industrial Court looks beyond the misconduct itself and closely examines whether the employer acted fairly, reasonably and adhered to the principles of natural justice and procedural fairness. Shortcuts, assumptions, emotional reactions, or inconsistent practices often become the very reasons an otherwise defensible decision is overturned. Employers must therefore be vigilant, disciplined and deliberate when managing misconduct ensuring proper investigation, procedural fairness, proportionality and timely action. Viewing misconduct as more than just a day-to-day management issue, and recognising its legal implications, helps organisations reduce disputes, maintain their credibility and promote fairness and accountability in the workplace.

