



MAHI MIHINARE
ANGLICAN ACTION

Recruitment and Disciplinary Procedure Policy

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RECRUITMENT AND DISCIPLINARY PROCEDURE POLICY

Recruitment of well qualified, motivated staff members is the key to the agency's success in meeting the goals of its mission. The pursuit of justice through service is a unique goal which means that staff must be public spirited and committed in their role as advocates for marginalised and often disempowered people within the community. In recruiting staff members, the agency aims, through application of a fair, ethical appointment process, to appoint employees who are best suited to advertised positions.

Recruitment of new staff members occurs because an employee retires or resigns, or a new position is established, or there is a need for additional staff members.

The needs of the agency as an employer change from time to time, but the agency will always endeavour to ensure that its recruitment process is above all fair and transparent.

Similarly, Anglican Action must have a procedurally fair disciplinary procedure in place. Employees are reminded that they must be aware of the disciplinary procedure, and what it entails. The procedure outlined in this part of the Manual is designed to ensure that any employee who is subject to the procedure is treated fairly and that his or her rights and welfare are safeguarded, while at the same time meeting the needs of the employer to make decisions in the interests of good management of the organisation.

Advertising of vacancies

A vacancy will be advertised online in websites such as Trade Me, and in newspapers, including community newspapers. An advertisement will outline the vacancy and the essential requirements, and usually allow two weeks for the submission of applications.

It is expected that applicants will complete an application for vacancy form which can be downloaded [see Schedule to Recruitment Policy] and in addition provide a covering letter, curriculum vitae, and the names of at least three referees, two of whom should be a previous manager, or supervisor. While the application form is quite detailed, it will, if correctly completed provide a considerable amount of information about each applicant. While some applicants prefer not to have to complete detailed applications, an applicant who is serious contender for a position will take the time to complete an application. The application form may deter applicants with a lesser degree of commitment.

Applications which do not include a curriculum vita will not be considered, unless the covering letter explains why a curriculum vita has not been provided. If the applicant fails to provide a covering letter, he or she will be asked to provide one. If a covering letter is not provided, the application will not be considered further.

Once the application is submitted, receipt of the application will be acknowledged. Each applicant will be advised that he or she will be informed of the outcome of his or her application.

Job descriptions

Job descriptions for each advertised vacancy will be prepared, and be available for inspection as part of the vacancy advertisement, or alternatively, the advertisement will make it clear that the job description will be provided on request by an applicant.

Selection of Interviewing Panel.

Once the vacancy has been advertised, a decision will be made as to who will be on the interviewing panel. The preference is to have the team leader of the hub for which the vacancy is advertised and one other person not immediately connected with that hub, available for the interview. The advantage of one panel member not being connected with the hub is that an objective assessment can more readily be obtained and the choice of applicants may therefore be wider than it would be if a more narrow focus dictated by only the concerns of the hub was involved. This in turn relates to the transparency of the process.

The interviewing panel will carefully consider all applications for the vacancy by reference to the requirements for the position and the overall merits of each applicant. Care must be taken not to exclude any applicant for reasons not connected with the vacancy, and so it is important that the interviewing panel take into account relevant rather than irrelevant considerations

As an example:

The vacancy advertised is as a support worker in the Kids First Whanau Centre. The advertisement specifies that a qualification in social work is a desired qualification. An applicant submits an application indicating appropriate skills and experience, and states that she has a diploma in social work. One of the interviewing panel takes the view that a diploma in social work is not a qualification of a high enough level for this position, and recommends that the applicant be excluded from further consideration. Care needs to be taken with this. The advertisement did not specify that any particular qualification in social work was required, and mentioned only that a 'qualification' in social work was desirable. A diploma is a qualification in social work, and unless there are other reasons to exclude the applicant, she should be included on the shortlist.

Once the shortlist has been prepared, the preferred applicant/s should be advised, and invited to attend an interview

The interview

Interviews should be held as soon as can be conveniently arranged following the short listing process. The interview panel should meet to prepare a series of questions for the interview. Each interview should involve questions relating to key aspects of the advertised vacancy. The questions should preferably be open questions [questions which do not involve a 'yes' or 'no' response from the applicants]. The questions must be based on the job description, but it is also permissible to ask questions not specifically related to the job description, for example, about a person's interests, or social activities, to gain a more rounded appreciation of an applicant.

If preferred, questions should be rated. Those relating to professional skills and competence may be given the highest rating. The rating system allows a value to be assigned to answers given by applicants which means that applicants can be scored, say out of ten, for questions answered during an interview.

The panel must be consistent in the interview, and all the applicants should be asked the same questions. Where supplementary questions are asked, these should be noted, together with any responses.

At the conclusion of the interviews, the panel will need time to deliberate and make a decision concerning the successful applicant. This process should not be rushed and it would be advisable to

set aside time to review each of the interviews and the outcomes, in order to ensure a fair decision as to the successful applicant. Part of this process, where the successful applicant is to work with children or young people will involve a risk assessment to determine whether the successful applicant is a safe person to work with children. While there is no set pattern to this process, the risk assessment will involve very close examination of the information provided by the successful applicant, including the successful applicant's work history.

In some cases, it may not be possible to make a clear choice, and accordingly arrangements for a second interview may be necessary, in order to select the successful applicant.

At the conclusion of the interview process, all notes made during the interview process should be provided to Anglican Action's Administrator so that a record of the interview process is kept by placing notes in the Vacancy Schedule for the position and in the successful applicant's file.

In some cases, none of the short listed applicants may appear suitable for the position, as a result of the interviews. In that case, the vacancy should be re-advertised, and the process recommenced.

Safety checks

Once the successful applicant is chosen, and that person is to work with children or young people, that person must be asked to provide evidence of identity, and submit to a safety check as set out in the Mandatory Safety Checks Policy contained in the Policy and Procedure Manual.

Careful checks with referees must also be conducted. It will be necessary to obtain the consent of the successful applicant before the referees can be contacted, but careful notes should be taken of any responses obtained, and these must be the subject of consideration by the interview panel before any final decision is made.

If a successful applicant is chosen, that person should be informed, and invited to attend for the induction process as a new employee.

Unsuccessful applicants must be informed in writing that they have not been successful. It is usually not necessary to provide reasons for the decision not to consider an unsuccessful applicant further, but it can be helpful to do so. Usually a brief statement will suffice.

Reference should be made to the Mandatory Safety Checks policy for full details of safety checks process and procedures

Unsuccessful applicants

Unsuccessful applicants should be treated with respect. They will have devoted a considerable amount of time to preparing an application, and they should be advised of the outcome of the application and the reasons why it has not been successful. A brief statement of reasons should suffice. It is not acceptable practice to ignore unsuccessful applicants once the successful applicant has been selected.

Confidentiality of information obtained from unsuccessful applicants must be maintained. This includes applications, curricula vitae, and interview notes.

The options in managing information provided by an unsuccessful applicant following the selection process are as follows:

- To retain the information in a secure place (if the applicant wishes to be considered for future vacancies)
- To return any items provided by the applicant
- To retain the information securely for a set period, in case of any follow-up by the unsuccessful applicant, and then to destroy the information after the expiration of the set period. The Privacy Act 2020 does not set any time limit for the keeping of information, but provides that information should be kept as long as necessary for the purpose of collection of the information.

Induction process

Once the successful applicant commences work, he or she will be offered an individual contract of employment. This contract must comply with the Employment Relations Act 2000, and contain the Information required by the Act. The successful applicant must be advised that he or she may seek independent legal advice in relation to the agreement, and the employer must be prepared to negotiate with the successful applicant if he or she has any issues to raise concerning the agreement. Once the agreement is signed by the successful applicant and the employer, it becomes binding on both parties

The successful applicant must participate in the induction process, as contained in the Policy and Procedure Manual. The induction and orientation checklist and the health and safety checklist must be signed by the successful applicant once each part of the induction process has been completed. A copy of the checklists should be placed on the successful applicant's personnel file.

A copy of the Induction Checklist is included in the Schedule to this Policy

Personnel files

A personnel file should be made up for each new employee. The file must contain the employee's application for the vacancy as well as the curriculum vitae and any supporting information. It will also contain the contract of employment and job description. The file must be held in a locked cabinet and may be seen by the staff member on request.

Documentation of the recruitment process

Contracts under which the agency provides services require the agency to be able to demonstrate that its staff members have appropriate qualifications and experience for the work which is undertaken both in the residences and in the community. In order to meet that requirement, employees' files must contain the details outlined under the heading "Personnel Files." In addition an accurate record of the recruitment process must be held. This will include a copy of the vacancy advertisement, job description, list of applicants, list of shortlisted applicants including CVs, an outline of the short listing process, a copy of the interview questions, notes made during the interview concerning responses to the questions, details of any scoring of the responses and the reasons for the scoring, notes of the interview panel's deliberations concerning the successful applicant, including the risk assessment, completed referee checklists, and a copy of the letter to the successful applicant. These records should be placed on a file marked, for example – 'Vacancy Schedule, Support Worker, Te Ako Rangatahi.' This file should be available for inspection during any agency audit.

Dealing with problems in the employment relationship

When problems arise in the employment relationship, it is advisable that the employer have a process in place for the fair and expeditious resolution of any problem. An employer may be faced with the following problems:

- Poor performance or unacceptable behaviour
- Lateness or absenteeism
- Long-term illnesses
- Failure to comply with health and safety procedures
- Breaches of policy
- Misconduct, including serious misconduct
- Conflict between employees

An employee may raise any of the following issues:

- Discrimination or harassment
- Disagreement about whether or when a warning should be issued, and the circumstances in which it should be issued
- Problems with health and safety
- Disagreement about the meaning of words or clauses in an employment contract
- Misunderstood or poorly managed discipline, dismissal or restructuring
- Disputes over leave periods, including holiday pay, or deduction from pay

In dealing with employment problems, Anglican Action will follow the following process:

- The problem will be identified
- After the employer has had time to consider the problem and the circumstances leading to the problem, the employee who has raised the problem or who is the subject of enquiry in relation to the problem, will be asked to attend a meeting with the employer, so that the employee is able to provide an explanation of any actions which have been called into question
- The employer must take into account any explanation offered by the employee before deciding what action should be taken
- Once a decision has been made by the employer, the employer must advise the employee of that decision, either verbally or in writing, and the reasons for it

DISCIPLINARY PROCESS

In certain situations an employee may act in a certain way, or may take certain actions which actually, or potentially, undermine the contract of employment. This situation can arise in cases of poor work performance and misconduct, including serious misconduct. Employees should in this context refer to the Anglican Action Code of Conduct which establishes expected behavioural standards for employees.

In any situation in which serious allegations are raised about an employee's work performance, or conduct, the employer has an obligation to act fairly and in good faith towards the employee.

A fair process will usually involve the following:

- Provision of information: employees must be given the information the employer is relying on when considering disciplinary action, including details of any allegations against the employee
- Opportunity to comment: employees must be given an opportunity to comment on that information
- The employer must advise the employee that a disciplinary process has been invoked, and what the options may be

Where the disciplinary process is invoked, employees are entitled to seek legal advice. Legal advice is available from the Community Law Centre [phone 07 839 0770] or the Department of Business and Innovation and Employment [phone 0800 836 262 – for advice, information and mediation]

Poor work performance

Poor work performance may constitute misconduct if it continues without improvement after a period in which the employer has endeavoured to assist the employee to improve performance. Poor work performance is usually managed under a performance management process.

If the employer receives an allegation, or becomes aware that an employee's work is not meeting expectations the employer must investigate the allegation thoroughly, before deciding what action to take. In the case of poor performance this will mean speaking with the employee's team leader and perhaps looking at examples of work carried out by the employee.

An investigation should include a check to make sure that the employee has a job description and has received adequate on-site training to enable the work to be undertaken. It is otherwise possible for an employee to complain that he or she lacked training, or was not provided with sufficient information to allow the employee to understand his or her role.

An employee whose work is not meeting expectations must, initially be given support to improve work performance or to meet requirements. This may involve training or in-work supervision to enable the employee to overcome any problems that have occurred. The employer must provide time for work performance to improve, but the time must be specified and the employee must be monitored to determine whether there has been an improvement in work performance.

If, over the specified period of time, work performance does not improve, despite support being provided to the employee, then the issue may become a disciplinary issue.

Disciplinary issues involve a process in which a number of options may be considered, including dismissal. The employer must make it clear to an employee that this process is involved and also allow the employee to have a support person present in any meetings with the employer

It is arguable that unsatisfactory work performance will usually justify dismissal, but as mentioned above, before that point can be reached, there must be clear evidence that the employer has given the employee notice of the employer's dissatisfaction, as well as the opportunity to improve

If the employer decides to dismiss an employee for poor performance, and the employee issues a personal grievance based on unjustified dismissal, the Employment Relations Authority or the Court will expect the employer to have –

- Discussed the performance with the employee and expressed dissatisfaction concerning the work level or standard

- Provided the employee with a clear statement of the expected standard or level of performance
- Warned the employee of the consequences, including the possibility of dismissal, if performance does not improve to the required level or standard
- Provided the employee with training, supervision and other assistance needed for improvement
- Given the employee a reasonable opportunity to improve
- Considered and discussed with the employee what changes have occurred and whether they meet the employer's expectations or requirements

Anglican Action's policy is that dismissal is the last resort in dealing with poor performance. The employee will be given every opportunity to improve his or her work performance, but ultimately, the employer will expect an improvement, and if that is not possible, then consideration will be given to all available remaining options, including dismissal.

Misconduct and serious misconduct

Misconduct can be described as behaviour that is inconsistent with the requirements of the employment contract. The Code of Conduct outlines instances of behaviour which constitute misconduct

When an employee acts in a manner which jeopardises the work of the employer, or which involves a breach of policy, the employer is entitled to treat this as misconduct and in dealing with the employee, to enter into a disciplinary process to deal with the misconduct

Anglican Action's policy is that dismissal of an employee is always the last resort. However, there are circumstances in which the behaviour of an employee allows few other options. Whether or not misconduct is sufficiently serious to warrant dismissal will depend on –

- the facts of each situation
- the terms of the employment agreement
- any organisational rules or policies

In investigating misconduct, the employer must act fairly. This involves a process for investigation of the allegation to determine whether misconduct has occurred, and the nature of the misconduct. The employee must be given an opportunity to answer the allegation, and may have a support person present if he or she so wishes, in any meeting with the employer. The employer must advise the employee of the reasons for the meeting, and of the consequences being considered. Any explanation given by the employee must be carefully considered by the employer, before any decision is made. If the decision is made to dismiss the employee, the employee must be advised in writing of the reasons for dismissal.

In cases of serious misconduct involving dishonesty or a serious breach of policy by an employee, for example, the same process must be followed. However, in a case of serious misconduct, if the employer considers that the employment relationship has been undermined to the point where the employer can no longer remain in the employment, steps may be taken to dismiss the employee immediately. Written notice must be given to the employee setting out the reasons for that decision.

Instant or summary dismissals, or dismissals without warning, are justifiable in cases of-

- serious disobedience of a lawful and reasonable order given by the employer; or

- serious misconduct amounting to a fundamental breach of the employment agreement.

Examples of serious misconduct include theft from the employer, dishonesty, misuse of computer equipment, intimidation, bullying or assaulting another employee.

'Good reason' for dismissal

In order for an employer to have 'good reason' for dismissal or disciplinary process, the employer must

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- have a genuine work-related reason for the dismissal or disciplinary process
- genuinely and reasonably believe that dismissal or disciplinary action is necessary or appropriate

In the notes above, mention has already been made of serious misconduct or poor performance as being genuine work-related reasons which justify disciplinary action including dismissal. Other reasons are:

(a) Redundancy and restructuring

Redundancy can be described as a situation in which the employer has a surplus of labour which is surplus to requirements. Redundancy may arise, for example where there is a decline in the amount of work going to the business, or there is a need for cost saving, or the agency, or part of the agency is restructured.

Where an employee has been made redundant, that is effectively a dismissal, and the employer must be able to justify the dismissal on both substantive and procedural grounds. In relation to the substantive reasons for redundancy, the employer must be able to show that the redundancy is genuine – that the employee's position is surplus to the needs of the agency. It follows from that, that if a position is made redundant, the employee will not be replaced.

In the case of restructuring, there should be a substantial difference between two positions, and the employer must consider whether the existing employee is suitable for the new role, or could reasonably be trained to perform the role. Redundancy must be the option of last resort, and should not be used as a reason to justify dismissal of an employee for poor performance or misconduct.

Procedural fairness must also be complied with, in the case of redundancy. This means that the employer must consult with the employee before the decision to make the position redundant is made, and also provide the employee with a reasonable period of notice, in making the decision. The period of notice must comply with the requirements set out in the employee's contract of employment.

Employees should note that in Anglican Action, redundancy should rarely arise. If an employee is made redundant, the employment agreement makes no provision for any redundancy payment, and in that situation, the employer has no legal liability to make any redundancy payment. However, the usual salary and leave entitlements will be paid, in accordance with the employment contract.

(b) Abandonment

An employee is deemed to have abandoned his or her employment when the employee does not return to work, and fails to notify the employee of the reasons for his or her absence.

The process in dealing with abandonment must be fair. The employer should try to contact the employee, if the employee has not given any explanation for the absence, and it is advisable to record any attempt to contact the employee. The employer should also write to the employee, at his or her last known address expressing concern at the absence and lack of notification, and asking the employee to contact the employer as a matter of urgency. A deadline for contact should be expressed. If that deadline passes without result, the employer should send a further letter asking the employee to contact the employer by a given date, and indicating that if the employee fails to do so, the employer may have reason to assume that the employee has abandoned his or her employment. If there is still no contact, once the deadline has passed, the employer should advise in writing that it is considered that the employee has abandoned his or her employment without notice. The employee should be paid his or her final pay, less any amount forfeited in accordance with the employment contract for failure to give adequate notice.

In setting deadlines for contact, the employer must consider the nature of the position and its relation to the work of the agency. Where the position is a 'frontline' position involving contact with clients, it may mean that the employer has to ask for contact on an urgent basis. An administrative position may not involve the same degree of urgency.

If the employee contacts the employer before the position is terminated, the employer must, in the interests of good faith listen to any explanation offered by the employee. The issue can be dealt with through the normal disciplinary procedures for unauthorised absence

(c) Incapacity/Long term illness

Absence due to long term illness or injury will not, in itself, terminate the employment relationship. Unless there is reliable information to suggest that the employee will not be able to return to work, the employee should be given a reasonable opportunity to recover before his or her on-going employment with the agency is reassessed.

What is 'reasonable' will depend on the individual circumstances of the case.

In reviewing the employee's employment, the employer must consult with the employee and obtain information about the employee's true medical condition, before any decision to dismiss the employee is made. The employee must be informed that the reason for obtaining the medical information is to assess the employee's on-going employment

Any decision to terminate the employee's employment must be based on a business need to replace the employee due to operational difficulties as a result of his or her absence. The employer should consider whether it is reasonable to accommodate the employee's absence by employing temporary staff. If a decision is made to terminate the employment the reason given should be the inability of the employee to fulfil the requirements of his or her role, not their illness or injury. Dismissal must be on notice.

[The notes dealing with 'good reason for dismissal' are based on guidance provided by EMA in 'A Guide for Employers on Discipline and Termination.' [2006].]