

Letter of first/second warning template

Warning letters are useful to confirm and address a performance or conduct issue with an employee. You usually issue an employee with a warning letter after meeting with them to discuss the problem. Following this process can help resolve issues before the situation becomes worse.

There is no legal requirement to provide formal written warnings or a certain number of warnings. However, to determine whether an employee was unfairly dismissed, the Fair Work Commission will consider if the employee was:

- warned about performance or conduct issues, and
- provided a reasonable opportunity to improve their performance and conduct.

You can find more information on this topic in the [Best Practice Guide on managing underperformance](#). If you are unsure how to manage a performance or conduct issue, seek advice from a lawyer or your employer association.

Please note that warnings may not be appropriate in some cases of serious misconduct. The [Termination of employment \(summary dismissal – serious misconduct\) template](#) may be useful in these situations. Seek advice from a lawyer or your employer association if you are unsure.

Are you a small business owner?

If you operate a small business it is important that you follow the [Small Business Fair Dismissal Code](#) when terminating an employee's employment. Using this template letter may help you to comply with the code.

Suggested steps for preparing a warning letter

If at any time you need more information or assistance, call the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

Step 1: Identify and consider the problem

Clearly identify the performance or conduct issue. Think about how serious the problem is, how long it has existed and what actions you are going to take to address it.

Step 2: Meet with the employee

Generally, meeting with the employee is important for:

- identifying and resolving issues before the situation becomes worse
- clarifying your expectations of the employee, and
- agreeing on solutions to improve the situation.

The [Best Practice Guide on managing underperformance](#) can help you with the process.

It is best practice to let the employee know the purpose of the meeting in advance so they can adequately prepare for the meeting and offer the employee the opportunity to be accompanied by a support person to the meeting. When reviewing unfair dismissal claims, the Fair Work Commission may consider whether an employer unreasonably refused to allow an employee to have a support person at any discussion relating to their dismissal.

Important: When managing a performance or conduct issue it is very important that you do not set requirements or targets that are discriminatory, unlawful or otherwise unreasonable. You may wish to seek professional advice about discrimination and other general protections.

Always document the details of any performance or conduct meeting held with an employee. You can use the [Recording details of a meeting template](#) to help with this.

Step 3: Create your letter of warning

The warning letter should include:

- details of the performance or conduct issue of concern
- what has been discussed with the employee about the issue
- what the employer will do to assist
- an action plan of what steps the employee needs to take
- a reasonable timeframe in which the changes or improvements need to occur.

This letter of warning template has been colour coded to assist you to complete it accurately. You simply need to replace the red < > writing with what applies to your employee and situation. Explanatory information is shown in blue italics to assist you and should be deleted once you have finished the letter.

Step 4: Provide the employee with the letter of warning

Ensure that the employee receives the warning letter and document the details of providing the letter (e.g. the time, date, who was there, what was said, etc.). You may wish to use the [Recording details of a meeting template](#) to do this. Remember, if you are meeting with the employee they may want to be accompanied by a support person.

It is important that the employee reads and understands this letter. Depending on the circumstances, you could ask the employee to sign a copy of the letter and return it to you, or you could follow up with the employee to make sure they received it and keep a note that you did this. Please note that employees are not required by law to sign a copy of the letter.

You should also keep a copy of the letter for your records.

Important: An employee may choose to submit a complaint or claim against you (e.g. unfair dismissal, discrimination) even if you follow these steps.

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<Date>

Private and confidential

<Insert employee's full name>

<Insert employee's residential address>

Dear <insert name>

Warning letter

I am writing to you about your <performance/conduct> during your employment with <insert company/partnership/sole trader name and the trading name of business> (the employer).

The next part of this letter sets out an example of best practice performance/conduct counseling. It is not prescribed by law. You may not have done all these things or they may not be relevant in your situation so you should delete what isn't needed.

*If you are a small business it is **very important** that you ensure you have complied with the Small Business Fair Dismissal Code if you are considering terminating an employee. Visit www.fairwork.gov.au for a copy of the Code.*

On <insert date> you met with <insert name of others at the meeting>. At this meeting you were advised that your <performance/conduct> has been unsatisfactory, and that immediate improvement is required. In particular you were advised that <insert explanation of unsatisfactory performance or conduct, for example regularly attending work late or not completing required tasks>.

In the meeting you were asked if you had anything you wished to say or to respond to the situation and you <insert details of the employee's response or if no response was provided you can note here that the employee 'did not respond'>.

After considering the situation it is expected that your <conduct/performance> improves and specifically that you <insert advice given to employee regarding improvement of performance or conduct, for example outline deadlines for improvement, specific performance targets set (ensure whatever you require is reasonable and fair in the circumstances and that you have considered any response or reasons from the employee)>.

*It is **very important** that you do not set requirements that are discriminatory, unlawful or otherwise unreasonable. You may wish to seek professional advice about discrimination and other general protections.*

This is your <first/second> warning letter. Your employment may be terminated if your <conduct/performance> does not improve by <insert date that is reasonable in this situation>.

I propose that we meet again on <insert date> to review your progress. Please let me know if this time is convenient to you. If you wish to respond to this formal warning letter please do so by contacting me on <insert phone number> or by replying in writing.

Yours sincerely,

<Insert name>

<Insert position>

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS