

How To Give A Warning

It is not just dismissals that can give rise to a personal grievance, warnings also need to be justifiable to avoid a disadvantage grievance. A warning also needs to be justifiable so that the employer can safely rely on it later, when issuing a final warning or dismissing the employee.

Some useful lessons can be learned from a recent case which provides a textbook example of how **not** to give a warning. The case is *Te Ariki v Omaet Investments Limited trading as The Commercial Hotel*. Ms Te Ariki's manager was Ms Te Amo. The first warning letter was dated 26 December 2012, the second warning letter was dated 24 January 2013, and Ms Te Ariki was dismissed at a meeting on 8 February 2013.

1. **Talk to the employee first.** Tell them what you think they might have done wrong, why you think that, and that you are considering giving them a warning.

Ms Te Amo prepared the first warning letter without any discussion or notice to Ms Te Ariki. As an example of Ms Te Ariki's poor attitude and performance Ms Te Amo referred to Ms Te Ariki not coming to work on 26 December 2012.

2. **Give the employee an opportunity to respond.** Genuinely consider the employee's explanation before deciding what action to take.

Ms Te Ariki had a good excuse for not being at work on 26 December 2012 – that was the third of the three days' leave Ms Te Amo had approved.

3. **Make sure the employee receives the warning.** It is not enough to just put a warning on the employee's personnel file.

Ms Te Amo left the warning letter outside the office for Ms Te Ariki to collect, even though she knew that Ms Te Ariki had a habit of not picking up papers left for her. Ms Te Amo did not tell Ms Te Ariki there was a letter there for her. Ms Te Ariki did not receive the warning until 8 February 2013.

The Employment Relations Authority held that no reliance or weight could be placed on this warning. It could not be taken into account to justify the second warning and the dismissal, which also suffered from some of the same problems.

In this case Ms Te Ariki significantly contributed to her own dismissal, including telling Ms Te Amo that everyone hated her. The compensation and lost wages awarded to Ms Te Ariki were reduced by 70% as a result, otherwise the employer would have had to pay her over \$15,000.

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