

Resignation vs. Termination

Allowing an employee to resign in favour of undergoing a disciplinary process or termination of employment is not necessarily in the Employers best interest. New legislation provides the opportunity for an Employee to make application for Unfair Dismissal, even when they have resign, based on the conduct of the Employer.

Here is an example of how, in the absence of proper process, an Employee can make application against an Employer based on their conduct being found to be harsh, unjust or unreasonable.

Recently (2009 case) an Employer was experiencing performance and conduct issues with a member of the administration department, over a period of 6 months. The issues were not serious enough to amount to serious misconduct but were sufficient to warrant performance management and termination if necessary. Ultimately the Employer sought to terminate the Employee's employment but accepted a resignation from the Employee instead. It was agreed between the parties that this would be a softer approach. Subsequently, the Employer was surprised to find that an application was lodged by the Employee for unfair dismissal. The outcome of the conciliation conference was that the Employer agreed to 2 months termination pay, rather than go through arbitration.

The result of allowing the employee to resign for performance and conduct issues cost some 8 weeks pay. Had the Employer appropriately and correctly conducted performance management and discipline, and had the records in place to track the consultation between both parties, at most the Employer's payout would have been limited (in those circumstances) to 1 week's pay.

Employer and Manager training for performance and conduct is absolutely necessary. Much has changed in industrial relations over the last 10 years and particularly since 2006. Small and medium enterprises can no longer "sail under the radar". Unfair dismissal is now a popular avenue for many employees to access 'go away' money and what's more, it is a low cost process with most employers being advised to "just pay the money and avoid the cost of representation".

If you are experiencing performance and conduct issues with an employee, you must act quickly to resolve the issue. Proper record keeping is more important than ever.