

DEFINITION – SERIOUS MISCONDUCT

The termination of an employee's employment in circumstances of serious misconduct (also known as a 'summary dismissal') are complex, and there is no single definition or list of what conduct can be categorised as warranting such a dismissal. The below extract, from the *Fair Work Regulations 2009* (Cth) however provides some guidance.

For further information regarding disciplinary procedures, please refer to the fact sheet *Disciplinary and Warning Procedures*.

Fair Work Regulations 2009 – Regulation 1.07

- 1) For the definition of serious misconduct in section 12 of the Fair Work Act, serious misconduct has its ordinary meaning.
- 2) For sub-regulation (1), conduct that is serious misconduct includes both of the following:
 - (a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
 - (b) conduct that causes serious and imminent risk to;
 - (i) the health or safety of a person; or
 - (ii) the reputation, viability or profitability of the employer's business.
- 3) For sub-regulation (1), conduct that is serious misconduct includes each of the following:
 - (a) the employee, in the course of the employee's employment, engaging in:
 - (i) theft; or
 - (ii) fraud; or
 - (iii) assault;
 - (b) the employee being intoxicated at work;
 - (c) The employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- 4) Sub-regulation (3) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- 5) For paragraph (3) (b), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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