Suspending, Varying and Terminating Training Contracts

Summary

In most circumstances, you cannot suspend or terminate a training contract unless you have the genuine consent of your apprentice or trainee, or you have approval from the Apprenticeship Office. You cannot vary a training contract without the approval of the Apprenticeship Office.

It is generally a good idea to contact the Apprenticeship Office before any suspension, variation or termination of a training contract and in any other situation where there is a risk the training contract could end. You should also be aware of relevant employment laws.

Suspending a training contract

There are a number of reasons why you may need to suspend a training contract. It may be that your apprentice or trainee wants to suspend the contract due to non-work issues, like the birth of a child or an ongoing medical issue. It may be that you are experiencing a business downturn and want to suspend the contract temporarily. In rarer cases, an apprentice or trainee may have committed serious misconduct and needs to be suspended while the issue is investigated. All suspensions require particular procedures and failing to follow these procedures can result in costly penalties. If in doubt, call the Apprenticeship Office before you act.

Suspension by mutual consent

If both you and your apprentice or trainee agree, you can suspend the training contract by mutual consent for up to 12 months. If you need a longer suspension, you must seek the approval of the Apprenticeship Office. Regardless of how long the suspension is, you need to inform the Apprenticeship Office of the suspension within 21 days of the agreement.

Suspension for serious misconduct

In some circumstances you may need to suspend the training contract because your apprentice or trainee has committed serious misconduct.

Keep in mind that serious misconduct has a particular meaning and only applies to misconduct of such a serious nature that it jeopardises the entire employment relationship.

If your apprentice or trainee has general performance or misconduct issues that aren’t serious misconduct, consider another way of addressing these issues and do not suspend him or her, regardless of whether or not you continue to pay them wages.
Serious misconduct is not defined by the training laws but generally is considered to include:

- Theft
- Fraud
- Assault
- Attending the workplace under the influence of drugs or alcohol
- Behaviour that creates a serious and immediate risk to:
  - The health and/or safety of another person
  - The reputation and/or profitability of your organisation

This is not a complete list and in some circumstances the behaviour listed above may not constitute serious misconduct. It’s always best to contact the Apprenticeship Office before you act, particularly if you are unsure about whether serious misconduct has occurred. They can let you know your obligations, which are likely to include providing your apprentice or trainee with a suspension notice and forwarding a copy to the Apprenticeship Office.

You are required to continue paying your apprentice or trainee full wages during the term of their suspension.

While the apprentice is suspended, you should investigate the misconduct or alleged misconduct that occurred in a timely manner. You must choose to reinstate the apprentice, or apply for the training contract to be terminated within 7 days of the suspension commencing.

**Variations and assignments**

You may also be able to vary a training contract or to assign the training contract to another employer in certain circumstances. However, you cannot vary or assign a contract without the written approval of the Apprenticeship Office, even where you have the consent of the apprentice or trainee.

**Terminating a training contract**

The rules around termination depend upon circumstances, including the following:

**Termination within the probationary period**

The training contract’s probationary period is a time for both parties to assess if the apprenticeship or traineeship will work out in the long term. During the probationary period, both you and your apprentice or trainee can decide to terminate the training contract without the consent of the other and without the consent of the Apprenticeship Office.
Termination outside the probationary period without mutual consent

In some circumstances, you may want to terminate the training contract and your apprentice doesn’t agree to the termination. You might be experiencing a long term business downturn or, in rarer cases, you may have significant behavioural issues with the apprentice or trainee.

The main thing to remember is that if you don’t have the consent of the apprentice or trainee, you cannot terminate the training contract without the approval of the Apprenticeship Office. Significant penalties can apply if you don’t get approval before termination.

You should contact the Apprenticeship Office in writing to explain the change in circumstances that has led to you wanting to terminate the training contract. They can then discuss options with you and let you know the correct procedures and paperwork.

Employment laws

It’s also important to remember that an apprentice is an employee and that generally you have the same obligations to an apprentice as any other employee.

For this reason, you also need to be aware of general employment laws including unfair dismissal, unlawful termination and general protections. These rules apply in addition to the training rules set out in this fact sheet.

For more information on employment laws, you can contact the Fair Work Ombudsman if you are a national system employer or Wageline if you are a state system employer. If you are not sure which system you fall under, call Wageline or see our fact sheet “Am I in the State System or National System?”

Contacts

Apprenticeship Office
Web: www.dtwd.wa.gov.au/employeesandstudents/apprenticeshipoffice
Tel: 13 19 54 or 08 6551 5499
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AMA Apprenticeship and Traineeship Services
Web: www.amaats.com.au
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Wageline/Department of Commerce
Web: www.commerce.wa.gov.au/labour-relations
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Fair Work Ombudsman
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