

# Letter of final 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 to discuss the problem.

Final warning letters are usually issued to an employee after you have warned him or her about a particular performance or conduct issue and his or her conduct or performance has not improved. You can use the [First warning letter](#) for this.

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 [Letter of termination \(serious misconduct\)](#) 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 may help you to comply with the code.

## Suggested steps for preparing a letter of final warning

**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](http://www.fairwork.gov.au).**

### **Step 1: Identify the problem and consider your options**

Clearly identify the performance or conduct issue. Think about how serious the problem is, how long it has existed, what steps you have already taken to address it and what you are going to do next.

Before issuing a final warning letter, consider taking the following steps:

- meet with the employee to discuss the problem and agree on steps you will take to resolve the problem
- issue a [Letter of first/second warning](#) to confirm the details discussed in the meeting
- if the problem continues, meet with the employee again to discuss the problem
- issue a letter of final warning.

### **Step 2: Meet with the employee**

Meeting with the employee is important for:

- identifying and resolving issues before the situation becomes worse
- reviewing the person's performance against any agreed action plan from previous discussions
- 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 this process.

Best practice employers will 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 bring 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 meetings with employees template](#) to help with this.

### Step 3: Create your letter of final warning

The final 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
- details of how the employee performed against an action plan, and
- a reasonable timeframe in which the changes or improvements need to occur.

This letter of engagement 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 final warning letter to the employee

Ensure that the employee receives the final 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 meetings with employees template](#) to do this. Remember, if you are meeting with the employee they may want to bring 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 this 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.

*The Fair Work Ombudsman is committed to providing you with advice that you can rely on.*

*The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.*

<Print on your business letterhead>

<Date>

**Private and confidential**

<Insert employee's full name>

<Insert employee's residential address>

Dear <insert name>

**Final 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 counselling. 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 is irrelevant. Using this letter also assumes you have already provided written warnings about this issue. If you have not done this already, it is recommended you consider using the ['First/second warning letter template'](#).*

*If you are a small business it is **very important** that you comply with the Small Business Fair Dismissal Code if you are considering terminating an employee. Visit [www.fairwork.gov.au](http://www.fairwork.gov.au) for a copy of the code.*

On <insert date> you attended a meeting with <insert name of others at the meeting>. At this meeting you were advised that your <performance/conduct> has been unsatisfactory. You were issued with a formal warning letter dated <insert date>, which stated that if your <performance/conduct> did not improve your employment may be terminated.

At our meeting on <insert date>, your <performance/conduct> was again reviewed and you were advised that improvement had not been achieved to the level required by the employer. You were provided with a second warning letter dated <insert date>.

*Remove the above sentence if you are going straight from a first to a final warning letter.*

As I advised at our meeting on <insert date>, your performance has not improved and continues to be unsatisfactory.

This is a final warning letter. If significant improvement in your <performance/conduct> is not achieved by <insert date> your employment may be terminated. To reiterate, our expectation is that you <insert details of expected outcomes>.

*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.*

I propose that we meet again on <insert date> to review your progress. If you wish to respond to this final warning letter please do so by contacting me on <insert phone number> or by replying in writing.

Yours sincerely,

<Insert name>

<Insert position>