

Checklist: The Difference between Misconduct and Poor Performance (Incapacity)

Misconduct and poor performance enquiries are different. The checklist below is a guide and will assist the employer to distinguish whether the conduct in question is characterised as misconduct or poor performance:

MISCONDUCT	POOR PERFORMANCE
<p>Blame is involved – intentional or negligent.</p> <p>The employee is able but unwilling to meet the required standard of conduct.</p>	<p>No blame or fault is involved.</p> <p>The employee is unable to meet the required standard of performance.</p>
<p>Breach of a workplace rule</p>	<p>Failure to meet a workplace standard</p>
<p>Test to determine misconduct:</p> <ul style="list-style-type: none"> • Did the employee break a rule or standard regulating conduct in the workplace? • Was the rule valid or reasonable? • Was the employee aware of the rule? • Was the rule consistently applied? • What sanction would be appropriate? 	<p>Test to determine incapacity:</p> <ul style="list-style-type: none"> • Did the employee fail to meet a performance standard? • Was the standard reasonable / achievable? • Was the employee aware of the required standard? • Was the employee given a fair opportunity to meet the standard? • Would dismissal be the appropriate sanction for not meeting the required standard? • What alternatives to dismissal have been considered?
<p>Steps that can be taken:</p> <p>Disciplinary steps are taken, including informal advice, correction, warnings or dismissal (following a disciplinary hearing) depending on the seriousness of the transgression.</p>	<p>Steps that can be taken:</p> <p>Training, instruction, guidance, evaluation, counselling and ultimately dismissal (following an incapacity hearing).</p>

