

# TAKING IMMEDIATE ACTION

FS5

Stage 1

Allegation or suspicion

When allegations or suspicions are raised, you may need to take immediate action. You may also need to take action during or after the preliminary assessment.

## Types of action that may be necessary

Depending on the circumstances and the seriousness of the allegations, necessary immediate actions may include:

- reporting the allegations to the police or other external bodies [FS6]
- offering support to one or more affected parties [FS4]
- imposing a suspension or a stand down
- moving or altering the duties or physical location of involved parties in the short term
- blocking or restricting access to data
- ensuring the safety of others, and
- securing evidence. [FS18]

## Examples of matters that require a range of immediate actions

### Alleged assault

An employee makes a complaint that a colleague assaulted a member of the public at a meeting during work time. Checks of CCTV as part of the preliminary assessment support the allegations. In this situation, you should consider:

- contacting the police
- identifying and capturing key evidence before it is lost – for example, CCTV, photographs of injuries
- arranging for the employee to be suspended
- providing support and obtaining evidence from the person who was allegedly assaulted, and
- providing the employee with support when they are told about the allegations.

In this situation, you should seek consent from the police before you take any action that may alert the employee to the process.

### Alleged misuse of information

An employee is accused of accessing a database without authorisation, and using the information obtained to gain financial advantages. Checks on databases as part of the preliminary assessment support the allegations. In this situation, you should consider:

- blocking the employee's access to information
- identifying and capturing key evidence before it is lost – for example, database logs, CCTV
- arranging for the employee to be suspended
- contacting the police, and
- providing the employee with support when they are told about the allegations.

In this situation, you should seek consent from the police before you take any action that may alert the employee to the process.

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## Stage 1

### Allegation or suspicion

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## Suspension, stand down and reassignment of duty

Depending on the type of alleged misconduct, you may need to stand down or suspend an employee before or during an investigation. You may also need to suspend an employee if they are being investigated by an external body such as the police, Ombudsman Tasmania or the Integrity Commission.

Suspensions are most often required if people are at risk, the conduct is very serious, or it is ongoing.

You should consider reassignment before you consider suspension. Suspensions and stand downs are actions taken primarily:

- to protect people (including the respondent), effective workplace relations, or your organisation from harm
- to protect the public interest
- to protect the integrity of the investigation, and/or
- if the alleged misconduct, if proved, may lead to dismissal.

You should take the possible length of the suspension into account when making a decision.

It is likely that your organisation will have mandatory procedures in place about how to suspend, stand down, or reassign an employee. It is important that you comply with these procedures.

## Procedural fairness

Depending on the procedures applicable in your organisation, you may need to comply with procedural fairness principles when you suspend an employee.

This means giving them notice that you intend to suspend them, and asking them to 'show cause' why you should not do so. You should stand down or reassign the employee while you wait for their response.

In serious cases where there is an immediate risk, procedural fairness may not be required.

*Make sure that you are consistent in your suspension decisions.*

*If the same or similar allegations are made against two employees, you should not suspend only one of them – unless you have a justifiable and documented reason for treating them differently.*

## When to suspend an employee

If there are grounds to suspend the employee, you should do so as soon as possible. This may be at the beginning of the process, or at a later point during the course of the investigation.

If the matter is a protected or public interest disclosure under the *Public Interest Disclosures Act 2002 (Tas)*, this may impact on your ability to suspend the employee. [FS2]

## Welfare management and public interest considerations

Suspensions, stand downs and reassignments at this stage of your response are not meant to be punitive. It is important that you make the respondent aware of this. You should not treat these actions like a sanction or a penalty.

For most people, being suspended on pay is a difficult situation. You should offer the employee appropriate support, and regularly review the suspension to ensure that it is still necessary.

Also keep in mind that the employee's suspension is funded by public money. There may be adverse publicity when employees are suspended on pay for long periods of time.

*Suspension without pay is very tricky, if not impossible, to implement in practice under modern Australian industrial law. If you are considering this as an option, you should seek advice.*