

Can I be fired for that?

Can I be fired for that? It's a question that thousands of Kiwis have asked over the years after losing their jobs. Sometimes they can. But sometimes, they can't.

There are some things you definitely can't and shouldn't do in a role, or leading up to securing one, that could put you in the firing line. They include:

- Telling lies in your job application
- Sexually harassing or assaulting co-workers
- Complaining about your company on social media
- Sharing company secrets with competitors
- Being dishonest – especially stealing from the company or breaking other laws
- Breaching company policies on things such as viewing pornography, and misusing company phones and email
- Breaking health and safety procedures
- Repeated poor performance or failing to complete assigned work

Don't panic! The laws are fairly robust and protect workers from one-off incidents for a range of disciplinary issues, such as tardiness or poor performance, says [Randstad](#) Employment Market Analyst, Steve Shepherd. "Employers cannot let people go if they have not demonstrated a track record of informing workers of acceptable standards," he says.

This of course assumes that your organisation knows the law and follows it. Not all do, as cases before the employment courts show.

There are also specific processes in New Zealand that employers must follow, and some New Zealand-specific rules include:

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- To be fired you must commit "serious misconduct" not just "misconduct," according to the [Ministry of Business, Innovation and Employment](#). Only "serious misconduct" overrides the notice period in your contract.
- A "misconduct" is some form of wrongdoing, usually deliberate, or serious carelessness. "Misconduct" only becomes "serious misconduct" if after a fair process it is established

that your actions were serious.

- You can only be fired if the process has been carried out fairly, otherwise you might be able to claim a personal grievance against your employer.
- Part of that process is that employers must raise the issue of a misconduct with you as soon as possible, and consider both the facts and your response, and treat you with respect and consideration. Damages can be awarded if you're caused distress by your employer that could have been avoided.
- If your employer wants to take disciplinary action they must forewarn you and provide you with all the relevant information. The employer must detail their preliminary decision and give you time to comment on it.
- Following this process your employer can decide to warn you, dismiss you, or fire you (but only if serious misconduct is proven). If it is simply dismissal, you must be given the notice in your employment agreement.
- If you're on a [90 day trial period](#), you can't take a personal grievance on the grounds of unjustified dismissal, although there are other grounds such as discrimination or harassment that may apply.
- If an employer forces you to resign or makes your work life intolerable, this is called "constructive dismissal" and you can take up a personal grievance claim.
- Redundancy, where your position is no longer needed by the company, is not the same as being fired.

Next steps. If you think your employer has breached the rules, then seek help. If you're a union member, contact your union and they will assist you through the complaints process.

Alternatively, if you believe you've been unjustifiably dismissed you can take a personal grievance against your employer under the Employment Relations Act. You have 90 days to raise the grievance with your employer if you want to be able to complain to the [Employment Relations Authority \(ERA\)](#). If a complaint to your employer is unsuccessful you can lodge a complaint with the ERA. Or if you prefer, you can use the Employment Relations Service mediation facility first, by calling 0800 20 90 20.

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