

# A-Z Guide

## Incompatibility



## Contents

Overview	2
Definition	2
Employer's Obligations	3
Ignoring or discounting the problem	3
Investigate	3
Problem solving	4
Last resort	4
Justification	5
Conclusion	5



# Overview

Incompatibility is sometimes used incorrectly as a reason for disciplinary action against an employee.

Leaving conflict situations to fester can cause irreparable harm to employment relationships and may expose you to multiple claims from unhappy employees.

Investigating conflict situations thoroughly to find the cause of the conflict is important; often the problem is not about personality but poor understanding, supervision or management.

Managing incompatibility situations appropriately and according to the rules of procedural fairness may result in a higher chance of a resolution to the problem and prevent claims of unjustified dismissal or unjustified disadvantage.

## Introduction

Incompatibility has a number of common meanings, but generally it is used to describe two or more parties that are unable to establish or maintain an amicable working relationship. In employment, it is a term used to describe the total breakdown of a relationship within employment that justifies the employer taking action to resolve it. Generally, that action will be the removal of the incompatible employee from the workplace, usually by dismissal. Justifying a dismissal based on incompatibility is problematic because the obligations of employers in this context are complicated by the need to be fair to several parties at the same time.

Ignoring or mishandling incompatibility may cause resentment and affect productivity in the workplace. At worst, unaddressed incompatibility can become a chronic problem which can dramatically increase staff turnover and expose your organisation to the uncertainty and expense of legal action. This **A-Z Guide** will provide some indication of what incompatibility means, when and how the term should be used, and what your obligations are in managing an instance of it.

## Definition

Incompatibility means behaviour that an employee exhibits towards either the employer or their fellow employees. These may include but are not limited to the following kinds of scenarios.

A sustained unwillingness to communicate except as strictly necessary for very long periods of time.

A prolonged tension between employees caused by a lack of clear definition of one employee's status i.e. the supervisor.

A resentment towards management manifested by inflexible attitudes and increasing uncooperation to the point of direct confrontation.

A sustained pattern of abusive and argumentative behaviour towards colleagues.

Just because an employee's behaviour can be described as incompatible does not mean that their dismissal or any other disciplinary action taken for that behaviour will necessarily be justified. This always needs to be determined on a case-by-case basis.



# Employer's Obligations

## Ignoring or discounting the problem

It is often easy to label inter-employee relationship problems as 'personality clashes' when in fact the problems that are arising between them can be due a number of reasons. The following list of examples illustrates some common reasons which give rise to inter-employee relationship problems.

- Unclear reporting lines
- Disproportionate workloads caused by "slacking off"
- Poor communication skills
- Language barriers
- Lack of training
- Cultural and social differences
- Repeated mistakes or lack of care
- Absenteeism

Ignoring or discounting a problem of serious incompatibility may injure that relationship. Through this, you run the risk of losing all the employees involved and the possibility of them raising personal grievances. An outcome may be that the more valued employee(s) leave, often leaving the employer with the employee(s) who is the cause of the incompatibility issue and with no intention to address or rectify their behaviour. The obligation lies on the employer to treat all employees fairly and reasonably so as to maintain trust and confidence the employment relationship is based on.

## Investigate

In any situation that appears to constitute incompatibility there will always be several sides to the story, and it is important to hear them all. When finding out what the concerns are of the complainant(s), best practice suggests an employer should identify some key findings. The following points identify some key areas of questioning:

- What the issues are which have given rise to the complaint.
- When did they arise?
- What context gave rise to the complaint.
- Who was involved?

It is not best practice to simply accept the complaint on prima facie, for instance, "so-and-so is always rude". Once you have conducted an investigation and are satisfied that the problem is genuinely one of incompatibility, and not one of performance or behaviour that could constitute misconduct or serious misconduct, then you will need all relevant details of that problem to address them with the person(s) involved.

Genuine incompatibility is rare and usually upon further enquiry into the issue it may be revealed that one or more persons are behaving in this manner as a result of an underlying issue such as insubordination, abusive conduct or harassment of some nature.



## Problem solving

In dealing with an issue of incompatibility, an outline should be given to all the parties concerned of the company's expectations in regard to their behaviour towards one another and the consequences of failing to adhere to those standards. If an employee's poor performance or misconduct is the root of the problem, then you should address this according to your code of conduct policies and procedures. When an employee has their failings pointed out to them in a procedurally fair way, and are given a reasonable opportunity to improve, the problem may be resolved fairly quickly without the need for you to progress down the disciplinary pathway which may lead towards dismissal.

Sometimes additional interventions may be considered to assist everyone involved to feel that a positive result is achievable. If the problem is genuinely believed to be one of incompatibility, then you may want to consider bringing the parties involved together in a mediation setting. Various organisations offer industrial psychologists, counsellors, mediators or team builders who may be able to help get you and your employees working together harmoniously again.

At the end of the day, employees and employers do not have to be friends with one another. However, there is behaviour that is professionally acceptable, and behaviour that clearly is not. The notion of 'acceptable behaviour' may vary between organisations and individuals. You and your employees have the right to expect to be treated, and to treat one another, professionally.

## Last resort

The Employment Court accepted some time ago that:

*There may be a time when a clash of personalities between an employer and an employee not only disturbs harmony for the time being but also may render a continuance of the relationship unworkable. A point may be reached where someone must go. If the cause of severe disharmony lies at the door of management, a dismissal of a worker may be unjustified. Sometimes an employer's words and actions are at fault and are the cause of the disharmony resulting in a dismissal or resignation. Conversely, if it is the words or actions of an employee which causes or continues the severe disharmony (whatever the original cause) dismissal may not only be justified but necessary: **Wellington Hotel etc IUOW v Hawthorne NZILR 352.***

A continued irreconcilable conflict may mean an employee is in breach of their obligations of trust and confidence and thus justify dismissal. A relationship is irreconcilable if one party considers it so; it is not a matter that requires mutual agreement.

Whether you decide, in any particular situation, to dismiss an employee or not will depend on the seriousness of the incompatibility and the effect it is having on your organisation. Where an employee does not respond favourably to progressive warnings and their personality is so irreconcilable to the employment relationship that dismissal is the only solution, you will need to be certain you have done all that you can to comply with the rules of procedural fairness.

By the time you come to dismissing an employee for incompatibility they must clearly understand what the problem with their behaviour was and what was expected of them to improve it. They must have been given a reasonable time to improve and reasonable support to rectify the issue(s) raised.

Finally, they must be given a reasonable opportunity to comment in their own defense before they were dismissed, and to have had that comment considered. At the time that dismissal was being considered, the employee should have been told of that fact and encouraged to seek representation and support.

Dismissing an employee for incompatibility is a difficult task, and often it is unclear who the person at fault is, so it is important to keep an open mind right up until the end of the disciplinary process.



Refer to the **A-Z Guide on Discipline** for further guidance on procedural fairness.



## Justification

If an employee challenges a decision to terminate their employment based on their incompatibility the employer will have to show that:

- The necessary level of incompatibility existed - that the employment relationship had irretrievably broken down
- This was largely the employee's fault or largely/solely as a result of the employee's behaviour, and they failed to co-operate with the employer in addressing the issue
- All necessary steps were exhausted in dealing with the issue
- The employer acted in a procedurally fair manner in deciding to dismiss the employee
- The decision to dismiss was one open to a fair and reasonable employer in all the circumstances

## Conclusion

Incompatibility in the workplace is a corrosive force on employment relationships and will quickly affect an otherwise smooth operation. It is important to identify the nature and source of the problem early and take the appropriate steps to remedy it. A thorough investigation involving everyone concerned cannot be undervalued.

If you have any doubts about your ability to be objective in a situation that involves incompatibility don't hesitate to seek the assistance of an external professional who may be available to assist your investigation and provide advice and support about managing the problem.

## Remember:

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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