

Attachment 4: Regulation 1.07 of the Fair Work Act Regulations 2009

Meaning of serious misconduct

1. For the [definition](#) of **serious misconduct** in section 12 of the Act, serious misconduct has its ordinary meaning.
2. For subregulation (1), conduct that is serious misconduct includes both of the following:
 - a. wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
 - b. conduct that causes serious and imminent risk to:
 - i. the health or safety of a person; or
 - ii. the reputation, viability or profitability of the employer's business.
3. For subregulation (1), conduct that is serious misconduct includes each of the following:
 - a. the employee, in the course of the employee's employment, engaging in:
 - i. theft; or
 - ii. fraud; or
 - iii. assault; or
 - iv. sexual harassment;
 - b. the employee being intoxicated at work;
 - c. the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
4. Subregulation (3) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
5. For [paragraph](#) (3)(b), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.