

A serious matter: the warning notice for employees covered by collective agreements!

In a warning notice, the department complains about a breach of contractual obligations. Examples are unexcused absences, late sick leave, unpunctuality, poor work performance, misconduct towards colleagues and superiors. A warning notice opens up the possibility of improving the employee's conduct. **The aim is to continue the employment contract.** Since dismissal is always the last resort, a warning letter should be considered beforehand.

In the case of civil servants, the Disciplinary Act of the State of North Rhine-Westphalia regulates disciplinary proceedings in cases of misconduct.

What does a warning have to look like?

The warning is usually given in writing. The wording must contain three central elements. The misconduct must be described specifically (**complaint function**). A general formulation is not sufficient. The department must make it clear that it disapproves of the conduct and will no longer tolerate it (**notice function**). Finally, it must be clear from the wording that certain consequences under labour law will occur in the event of a repetition (**warning function**).

What happens next? What is the role of the staff council?

The person concerned must be heard in order to be able to comment on the allegations. Depending on the facts of the case, it may be advisable to seek legal advice before making a statement. According to §74 LPVG, the staff council must be consulted before the warning becomes effective. All documents must be submitted to the council. The final decision on the measure is made by the department. If the warning becomes effective, it becomes part of the personnel file, including all documents from the hearing.

Good to know!

Warnings lose their warning function over time. If the conduct is subsequently impeccable, the warnings can be removed from the personnel file at some point. Warnings are not passed on to other employers.

For further reading:

§74 LPVG NRW:

https://recht.nrw.de/lmi/owa/br_bes_detail?sg=0&menu=0&bes_id=4223&anw_nr=2&aufgehoben=N&det_id=556215

Disciplinary Act of the State of NRW:

https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=2120100114101336801

§3 (6) TV-L: (Right to be heard)

https://www.tdl-online.de/fileadmin/downloads/rechte_Navigation/A_TV-L_2011_/01_Tarifvertrag/TV-L_i.d.F.des_%C3%84TV_Nr.12_VT.pdf

§3 (6) TV-Ärzte: (Right to be heard)

https://www.tdl-online.de/fileadmin/downloads/rechte_Navigation/C_Aerzte/01_TV-Aerzte/TV-%C3%84rzte_i.d.F.des_%C3%84TV_Nr.8_VT.pdf

Do you have any questions? Please feel free to contact us!