

ISSUE

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# MISCONDUCT VS. INCAPACITY

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Do you know the difference?

Not all workplace “wrongs” are the same. The Labour Relations Act (LRA) treats them differently — and so should you.

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## Misconduct = Won't Do

You know the rule.

You can follow it.

You choose not to.

👉 Examples:

- Late without a reason
- Ignoring instructions
- Misuse of company property
- Dishonesty

🌟 Consequence: Disciplinary process (warnings → dismissal if serious).

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## 🟢 Incapacity [ill health or poor work performance= Can't Do

You try, but fall short.

It's not about refusal, it's about ability.

👉 Examples:

- Missing targets
- Lack of skills
- Errors despite effort
- Extended absence due to ill health

 Consequence: Support first (training, guidance, improvement plan). Dismissal only if no improvement after fair help.

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## Examples

### Case 1 – Misconduct


John ignores safety rules after repeated warnings. He won't follow procedure.

 Outcome: Disciplinary action → Written warning/dismissal.

### Case 2 – Poor Performance

Thandi misses her sales targets despite trying. She can't achieve them.

Incapable of continuing with job functions due to ill health for an unreasonable period

 Outcome: Performance counselling → Training, support, time to improve.

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## Procedures

### Misconduct (Willful / Fault-based)

- **Nature:** Employee **can but won't** comply (choice, fault, intent or negligence).
  - **Process:**
    1. **Investigate** → establish facts.
    2. **Charge** → formulate allegation (clear & specific).
    3. **Notice** → written, reasonable time to prepare, advise of rights.
    4. **Hearing** → fair, impartial chairperson, allow representation & evidence.
    5. **Verdict** → guilty/not guilty.
    6. **Sanction** → warning, final warning, dismissal (progressive discipline unless serious).
    7. **Record** → reasons and outcome documented.
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## Incapacity [ill health or poor work performance]

- **Nature:** Employee **wants to but can't** perform (lack of skill, competence, ability).
- **Process:**
  1. **Investigate**
  2. **Identify shortfall** → through appraisals, KPIs, supervision.
  3. **Counsel & warn** → explain gaps, expectations, timelines.
  4. **Assist & train** → mentoring, training, resources provided.
  5. **Set targets** → measurable, reasonable, time-bound.
  6. **Monitor** → regular feedback & review.
  7. **Final review** → if still failing → incapacity hearing.
  8. **Outcome** → redeployment, demotion, or dismissal (last resort).

### Quick Takeaway

Won't do = Misconduct

Can't do = Incapacity [ill health or poor work performance]

 Both can cost you your job – but the process is different.

Regards



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