

GUIDELINES FOR DETERMINING THE APPROVAL OF THE SUSPENSION OF A TRAINING CONTRACT

PREAMBLE

Section 51 of the *Training and Skills Development Act 2008* states:

- (1) Subject to this Part, no person, other than the Commission, may terminate or suspend, or purport to terminate or suspend, a training contract.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) Subject to this Part, the Commission may, on application or of its own motion, terminate or suspend a training contract.
- (3) An application for termination or suspension of a training contract must be made to the Commission in the manner and form approved by the Commission.
- (4) An applicant must provide the Commission with any information required by the Commission for the purposes of determining the application.
- (5) The Commission must specify the date on which the training contract will terminate or be suspended or will be taken to have been terminated or suspended.
- (6) A party to a training contract may, after the commencement of the term of the contract and within the probationary period, terminate the contract by written notice to the other party or parties to the contract.
- (7) If a training contract is terminated during the probationary period, the employer under the contract must, within 7 days of the termination, notify the Commission in writing of the termination.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Definitions

In these guidelines the **Commission** means the Training and Skills Commission or its delegates currently recognised as staff within Traineeship and Apprenticeship Services.

What is a suspension?

A suspension is a temporary postponement of a training contract for a period of time agreed by both the apprentice/trainee and the employer.

All suspensions are required to meet the general guidelines outlined below.

A suspension may be sought for a COVID-19 pandemic related reason, a business-related reason or a non-business-related reason. The guidelines differentiate between these reasons for a suspension and specify the particular requirements for each.

When does a suspension not apply?

A suspension will not be approved in the following circumstances under these guidelines:

- where a suspension is sought for disciplinary reasons;
- where an employer has reasonable grounds to believe the apprentice/trainee is guilty of wilful and serious misconduct; or
- where the employer has issues or concerns with an apprentice/trainee's performance or behaviour.

In these cases, information and advice should be sought from Traineeship and Apprenticeship Services.

The final decision on whether to approve a suspension lies with the Commission.

GENERAL GUIDELINES REGARDING A SUSPENSION

1. Both the apprentice/trainee and the employer should agree to suspend the training contract for a suspension to be approved by the Commission. Neither the apprentice/trainee nor the employer is obliged to agree to the suspension. Undue influence or coercion must not be exerted on either the apprentice/trainee or the employer in order to obtain agreement to a suspension of a training contract.
2. A suspension is for a period of time agreed between the apprentice/trainee and the employer and must comply with either section 12, 20 or 24 of these guidelines.
3. A suspension is based upon a commitment by both the apprentice/trainee and the employer to resume the training contract after the period of suspension.
4. Both the apprentice/trainee and the employer, including a parent or guardian where the apprentice/trainee is under the age of 18 years, must sign the approved application form.
5. The period of suspension is not recognised as part of the nominal term of the training contract. Upon resumption of the training contract, the period of suspension will be added to the nominal term of the training contract.
6. During the period of suspension, the apprentice/trainee and the employer are required to keep in contact about resuming the training contract.
7. The training contract resumes at the end of the period of suspension. However, if both the apprentice/trainee and the employer agree, and the Commission is advised in writing, the training contract can resume prior to the end date of the suspension.

8. If a suspension commences during the probationary period of the training contract, the probationary period is to be extended by the amount of the probationary period lost through suspension of the training contract.
9. The apprentice/trainee may continue with their off-the job training during the period of suspension. If proof of attendance at off-the-job training is provided to the Commission, this time will be credited towards the training contract and an adjustment made to the nominal term of the contract. Such apprentices and trainees should continue to be paid for the time they are engaged in their off the job training.
10. If either the apprentice/trainee or the employer does not agree to the suspension, the Commission may take appropriate action to assist the parties to resolve the matter, including advising the parties that they may apply to the South Australian Employment Tribunal for consideration of the matter.
11. The final decision on whether to approve a suspension lies with the Commission.

Reasons for a Suspension

COVID-19-related reasons

12. An application for a suspension may be made for a COVID-19-related reason for a period up to and including Friday 1 January 2021 in circumstances where there is a COVID-19 related stoppage of work for any cause for which the employer cannot reasonably be held responsible. A COVID-19-related reason may include:
 - there was an enforceable government direction requiring the business to close (which means there is no work at all for the apprentice/trainee to do, even from another location)
 - a large proportion of the workforce was required to self-quarantine with the result that the remaining employees/workforce cannot usefully be employed
 - there was a stoppage of work due to lack of supply for which the employer could not be held responsible
 - the personal circumstances of the apprentice/trainee mean that the apprentice/trainee is unable to attend work.
13. Applications for a suspension for a COVID-19-reason must be an action of last resort. The Commission encourages the parties to exhaust other avenues to avoid the need to suspend, including reducing the hours per week of employment and training to the minimum part-time hours permitted by the Commission. Where an employer has more than one apprentice/trainee, employers should also consider reducing the hours per week of employment and training for each apprentice/trainee and arrange rostering so that employment and training continues to be provided to each apprentice/trainee.
14. *The General Guidelines Regarding a Suspension* apply to a suspension for a COVID-19 related reason, with the exception of clause 4. In such instances clause 15 below will apply.
15. An application for a COVID-19-related suspension may be signed and submitted by one party only, that is, either the employer, the apprentice/trainee, or a parent/guardian where the apprentice/trainee is under the age of 18 years. Where an application is

signed by one party only, the Commission will seek the views of the other party/s before deciding the application.

Business-related reasons

16. An application for a suspension may be made for a business-related reason. Business-related reasons may include, for example business re-structuring and re-location.
17. An application for a suspension for a business-related reason must be an action of last resort. In addition to meeting the general guidelines for a suspension, the Commission must be provided with evidence that the employer and the apprentice/trainee have exhausted other avenues to avoid the need for a suspension.
18. Other avenues include:
 - a. Complete outstanding off-the job training or bring forward future off-the-job training;
 - b. Placement of the apprentice/trainee with an alternative appropriate employer, host employer or group training organisation;
 - c. Negotiate a reduction in hours if it is possible under the industrial award/agreement and vary the training contract accordingly;
 - d. Take any accrued leave, for example, annual leave, rostered days off;
 - e. Rotate the apprentice/trainee with another apprentice/trainee who is due to attend off-the job training or due to take leave where both are employed by the same group training organisation or employer.
19. During the period of suspension approved for a business-related reason, the apprentice/trainee and the employer are required to continue to exhaust other avenues to avoid the need for an extension of the suspension.
20. The maximum period for a suspension for a business-related reason is 30 days. However, after this period the Commission may review and extend such a suspension upon consideration of the circumstances, including ongoing action taken to exhaust other avenues by the apprentice/trainee and the employer during the period of suspension.

Non-Business-related reasons

21. The Commission will usually approve an application for suspension of a training contract for a non-business related reason provided the general guidelines are met, particularly the need for both the apprentice/trainee and the employer to agree to suspend the training contract.
22. Non-business related reasons include the following:
 - a. pregnancy
 - b. maternity/paternity leave
 - c. the apprentice/trainee has suffered a non-work related injury or illness which affects their ability to undertake work and training, and they have used all their sick leave
 - d. undertaking work or duties with the employer at a higher level
 - e. personal commitments/reasons.
23. Any appropriate accrued leave should be taken prior to seeking a suspension for a non-business related reason.

24. The maximum period for a suspension for a non-business related reason is 30 days. However, discretion may be exercised by the Commission on a case by case basis for such matters as pregnancy and illness.

Disputes about suspensions

If an employer or apprentice/trainee seeks a suspension which is not agreed by the other party, the party seeking the suspension may make an application to suspend the training contract to the relevant authority.

Further Information

Further information and advice is available from Traineeship and Apprenticeship Services on 1800 673 097.