

## **Model Disciplinary Code and Grievance Procedure**

### **DISCIPLINARY CODE AND GRIEVANCE PROCEDURE**

#### **1. PURPOSE**

- 1.1 To provide a set of guidelines which will be applicable to all employees and which will guide action taken by the employer to correct behaviour which contravenes the codes, rules and standards of the employer.
- 1.2 To promote good order and efficient functioning of the employer.
- 1.3 To ensure that discipline is applied in a prompt, fair and consistent manner.
- 1.4 To provide employees with a quick and easy guide to disciplinary and grievance procedures.

#### **2. PRINCIPLES APPLICABLE**

- 2.1 Discipline is primarily a corrective measure and not a punitive one.
- 2.2 Discipline is a management function, although external support may be obtained.

#### **3. CODES, RULES AND STANDARDS**

- 3.1 This code and procedure must be interpreted in accordance with the spirit and letter of provisions of the Labour Relations Act 1995 (LRA) with particular reference to Schedule 8 thereof, which promotes fair labour practices.
- 3.2 Employee conduct which may warrant disciplinary action is listed in Annexure A. The list is not exhaustive. Management may discipline any employee in respect of any other conduct if the employee knew, or ought reasonably to have known, that the conduct constituted grounds for disciplinary action.
- 3.3 The recommended sanctions in Annexure A are guidelines only and may be departed from in appropriate circumstances.
- 3.4 Where applicable, the incident giving rise to the hearing shall be investigated to determine whether there are sufficient grounds to warrant taking disciplinary action against the employee.

#### **4. PROCEDURES**

##### **4.1 Discussion / verbal warning**

- In the event of minor offences on the part of an employee, the disciplinary action will be a verbal warning coupled with an instruction from the employee's superior to correct his/her behaviour.
- A record that such verbal warning or warning has been issued should be kept by the manager/supervisor concerned and recorded on Template: Record of Disciplinary Sanction.

- Depending on the nature of the transgression, it will be in the discretion of the manager/supervisor concerned to decide on the number of verbal warnings to be issued to an employee.

#### 4.2 Written Warnings

- If a verbal warning fails to correct an employee's conduct, or if the conduct warrants a written warning without a prior verbal warning, the person in authority to exercise discipline may give the employee a written warning.
- The written warning may be in the form of the Template: Record of Disciplinary Sanction.
- In the event of the employee refusing to sign receipt of the written warning, a witness will be called upon to sign confirming that the warning has been issued to the employee and that the employee has refused to acknowledge receipt thereof.
- The written warning may be filed in the employee's personal file.
- A written warning remains valid for six (6) months.
- If during the 6-month period the employee commits a further transgression of a similar nature, the written warning may be taken into account in deciding an appropriate sanction.

#### 4.3 Final Written Warnings

- If the employee has one or more previous written warnings, which is/are still valid, or it is appropriate for a final warning to be given without previous written warnings, the person in authority to exercise discipline may give the employee a final written warning for further misconduct that warrants further disciplinary action.
- The final written warning may be in the form of the Template: Record of Disciplinary Sanction.
- In the event of the employee refusing to sign receipt of the written warning, a witness will be called upon to sign confirming that the warning has been issued to the employee and that the employee has refused to acknowledge receipt thereof.
- The written warning may be filed in the employee's personal file.
- A final written warning remains valid for twelve (12) months.
- If during the 12-month period the employee commits a further transgression of a similar nature, the final written warning may be taken into account in deciding an appropriate sanction.

#### 4.4 Dismissal:

Dismissal may be effected when-

- repeated warnings have been issued, in line with the disciplinary code, without improvement in the conduct of the employee concerned; or
- when a final written warning has been issued; or
- serious misconduct has been committed.

## **1. DISCIPLINARY PROCEDURE**

### **1.1 Notice of hearing**

- The employee may be given notice in the form of the Template: Notice of Disciplinary Hearing, at least 48 hours before the hearing unless there are exceptional circumstances that warrant a shorter notice period. Longer notice may be required in complex cases; the period of notice given must be sufficient to allow the employee a reasonable opportunity to prepare for the hearing.
- The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee, who must sign as a witness.
- An employee is entitled to be represented by a fellow employee or a trade union representative (shop steward) of the employee's registered trade union that has a recognition agreement with the employer or has organisational rights to trade union representation in the workplace. Regardless, if the employee is a national office bearer of the registered trade union, the employee may be represented by an official from that registered trade union. If the employee is a shop steward of a recognised registered trade union, the employer will consult with that trade union before instituting disciplinary action against the employee.

### **1.2 Precautionary Suspension**

- An employee may be suspended by his/her superior on full pay when an investigation into alleged serious misconduct is to be instituted during a disciplinary hearing or when the superior believes that the presence of the employee at the workplace may jeopardize any investigation into the alleged misconduct or endanger the well-being or safety of the employer or any person.
- A precautionary suspension is a measure which does not constitute a judgment or penalty. It is aimed at protecting the employer from prejudice or harm pending the hearing.
- The employee may be issued with a suspension letter in the form of the Template: Precautionary Suspension Letter.

### **1.3 Constitution of the Disciplinary Hearing**

1.3.1 The disciplinary hearing shall be held as soon as is reasonably and practicably possible after the employer becomes aware of the commission of the alleged offence, allowing for reasonable notice as per paragraph 5.1 above.

1.3.2 The hearing may be attended by:

- (i) The chairperson
- (ii) The person who will initiate the complaint on behalf of the employer (usually the immediate supervisor)
- (iii) The employee concerned
- (iv) The employee representative, if the employee has appointed one (co-employee or trade union representative)

- (v) A person who can act as an interpreter, if required
- (vi) Witnesses when required to testify.

- 1.3.3 The responsibility of instituting disciplinary action usually lies with the immediate superior of the employee concerned.
- 1.3.4 The responsibility of presiding over a disciplinary hearing lies with management. Management has the right to appoint an external chairperson in its sole discretion.
- 1.3.5 The chairperson, if an employee, must be senior to the person being disciplined except where circumstances dictate otherwise.

#### **1.4 Sanction**

- 1.4.1 The chairperson may impose the sanctions listed below depending on the nature of the case, the employee's previous record, any mitigating or aggravating circumstances and past practice (precedent).
  - A written warning
  - A final written warning
  - Suspension without pay
  - Demotion, and/or
  - Dismissal.
- 1.4.2 The chairperson may only impose the sanctions of suspension without pay or demotion as an alternative to dismissal if the employee agrees to this. If the employee does not agree to the alternative sanction the chairperson may impose the sanction of dismissal.
- 1.4.3 Annexure A provides a guideline on sanctions that may be instituted for various acts of misconduct. The guideline must be considered within the context of the merits of each case and thus not applied rigidly.

### **2. RIGHT TO REFER TO CCMA OR RELEVANT BARGAINING COUNCIL**

If an employee is not satisfied with the outcome of a disciplinary hearing, s/he may refer a dispute to the CCMA / bargaining council in terms of the LRA.

### **3. RECORDING OF ENQUIRIES**

- 7.1 The employer may, but is not obliged to, record proceedings. If the proceedings are recorded the employer has no obligation to transcribe the record of the disciplinary hearing. If an employee so wishes to obtain a transcription, s/he shall bear the costs of such transcription.
- 7.2 The employer shall keep brief minutes of the hearing, and the employee shall be entitled to receive a copy thereof.

### **4. INQUIRY BY ARBITRATOR**

Nothing herein prevents the employer and an employee from agreeing to invoke the provisions of Section 188A of the LRA should the need for discipline arise.

## Annexure A

### DISCIPLINARY CODE (A GUIDELINE THAT MAY BE ADAPTED TO SUIT THE NEEDS OF A PARTICULAR WORKPLACE)

#### Abbreviations:

VW = Verbal Warning

WW = Written Warning

FWW = Final Written Warning,

SD = Summary Dismissal

DN = Dismissal on Notice

TRANSGRESSIONS		GUIDELINES ON SANCTION			
CATEGORY 1: SERIOUS MISCONDUCT		<u>1st Offence</u>	<u>2nd Offence</u>	<u>3rd Offence</u>	<u>4th Offence</u>
1.1	Gross Insubordination	FWW	SD		
1.2	Assault, threatening violence, abusive behaviour	SD			
1.3	Harassment of any nature, including sexual harassment	SD			
1.4	Gross Dishonesty, including, but not limited to Theft, Fraud, Attempted Theft, Forgery, Making false statements, Misrepresentation	SD			
1.5	Corruption, Bribery (including offering, accepting or soliciting a bribe)	SD			
1.6	Unauthorised possession of company property, or the property of a customer, supplier or fellow employee	SD			
1.7	Any tampering with, wilful damage to, or grossly negligent handling of any property of the employer, supplier or customers of the employer	SD			
1.8	Insolence, including but not limited to swearing and abusive language	FWW	SD		
1.9	Intimidation / Victimization	SD			
1.10	Dereliction of duty	FWW	SD		
1.11	Gross Negligence	SD			
1.12	Misuse of company e-mail, internet and/or other company equipment	FWW	SD		

TRANSGRESSIONS		GUIDELINES ON SANCTION			
CATEGORY 1: SERIOUS MISCONDUCT		<u>1st Offence</u>	<u>2<sup>nd</sup> Offence</u>	<u>3<sup>rd</sup> Offence</u>	<u>4<sup>th</sup> Offence</u>
1.13	Gambling on company premises	FWW	SD		
1.14	Money-lending to fellow employees	FWW	SD		
1.15	Possession of / consuming of / being under the influence of alcohol or illegal drugs at workplace	FWW	SD		
1.16	Fighting, provocation at work	FWW	SD		
1.17	Being in possession of a dangerous weapon	SD			
1.18	Sleeping on duty (In the case of a Security Guard)	FWW SD	SD		
1.19	Acting in conflict with the company's interests	SD			
1.20	Wilful damage to company property	SD			
1.21	Uttering or circulating or distributing racially or sexually offensive language or material	SD			
1.22	Inciting others to commit an offence	SD			
1.23	Intentional interference with or obstruction of other employees in performance of their duties	FWW	SD		
1.24	Absence from work without authorisation for five days or more	SD			
1.25	Driving a company vehicle without a valid licence	FWW	SD		
1.26	Negligent / reckless driving	FWW	SD		
1.27	Disclosure of confidential company information	SD			
1.28	Participation in unprocedural work stoppage	FWW	SD		
1.29	Participation in unprotected industrial action	SD			
1.30	Inciting unprotected industrial action	SD			
1.31	Damaging company property during industrial action (protected or unprotected)	SD			

TRANSGRESSIONS		GUIDELINES ON SANCTION			
CATEGORY 1: SERIOUS MISCONDUCT		<u>1<sup>st</sup></u> <u>Offence</u>	<u>2<sup>nd</sup></u> <u>Offence</u>	<u>3<sup>rd</sup></u> <u>Offence</u>	<u>4<sup>th</sup></u> <u>Offence</u>
1.32	Wilfully preventing access to and exit from company premises during strike action (protected or unprotected)	SD			
1.33	Riotous and/or grossly offensive behaviour	SD			
1.34	Improper/indecent/disgraceful conduct	SD			
1.35	Failure to wear protective clothing / use safety equipment	FWW	SD		
1.36	Serious infringement of health, hygiene and safety rules and regulations	SD			
1.37	Any act or omission that has or may detrimentally affect the health and safety of any of the employer's employees, suppliers or customers	SD			
1.38	Desertion	SD			

#### Abbreviations:

VW = Verbal Warning

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TRANSGRESSIONS		GUIDELINES ON SANCTION			
CATEGORY 2: LESS SERIOUS MISCONDUCT		<u>1<sup>st</sup></u> <u>Offence</u>	<u>2<sup>nd</sup></u> <u>Offence</u>	<u>3<sup>rd</sup></u> <u>Offence</u>	<u>4<sup>th</sup></u> <u>Offence</u>
2.1.	Failure to carry out a lawful instruction	WW	FWW	SD	
2.2.	Failure to follow company procedures / adhere to company standards	WW	FWW	SD	
2.3.	Failure to comply with conditions of employment	WW	FWW	SD	
2.4.	Negligence (not gross)	WW	FWW	SD	
2.5.	Insubordination (not gross)	WW	FWW	SD	
2.6.	Performing work for another employer without prior written consent	WW	FWW	SD	
2.7.	Unauthorised absence from work (2- 4 days)	WW	FWW	SD	



2.8.	Permitting an unlicensed person to drive a company vehicle	WW	FWW	SD	
2.9.	Failing to report an accident at work, or an accident involving a company vehicle	WW	FWW	SD	
2.10.	Refusal to work agreed overtime	WW	FWW	SD	
2.11.	Behaviour which could damage the employer's image or reputation	WW	FWW	SD	
2.12.	Smoking in a non-smoking area (In a hazardous area / near inflammable material)	WW FWW	FWW SD	SD	
2.13.	Less serious infringement of health, hygiene and safety rules and regulations	WW	FWW	DN	

**Abbreviations:**

VW = Verbal Warning

WW = Written Warning

FWW = Final Written Warning,

SD = Summary Dismissal

DN = Dismissal on Notice

TRANSGRESSIONS		GUIDELINES ON SANCTION			
CATEGORY 3: MINOR MISCONDUCT		<u>1st Offence</u>	<u>2nd Offence</u>	<u>3rd Offence</u>	<u>4th Offence</u>
3.1.	Unauthorised absence from work (1 day)	VW	WW	FWW	DN
3.2	Failure to advise employer of reason for absence	VW	WW	FWW	DN
3.3	Late coming / poor timekeeping without a legitimate reason	VW	WW	FWW	DN
3.4	Leaving workplace without permission	VW	WW	FWW	DN
3.5	Unauthorised breaks from work	VW	WW	FWW	DN
3.6	Abuse of sick leave	VW	WW	FWW	DN
3.7	Conducting private affairs during working hours (e.g. selling goods)	VW	WW	FWW	DN
3.8	Loafing, malingering, excessive socialising	VW	WW	FWW	DN

## **Annexure B**

### **GRIEVANCE PROCESS**

#### **1. PURPOSE**

- 1.1. the main purpose of implementing the procedure will be to prevent and resolve conflict in the workplace;
- 1.2. to protect the interest of the business, management and the employees;
- 1.3. to recognise the rights of an employee or employees to raise their grievances; and
- 1.4. to be given a fair hearing against any measure which may be considered to be unjust.

The only exception to this rule is that the grievance procedure is not designed to resolve concerns relating to discipline, poor performance, retrenchment, or matters which are not work-related.

#### **2. PRINCIPLES APPLICABLE**

- 2.1. It is in the mutual interest of both employer and employee to observe a grievance procedure by which issues arising between them can be resolved.
- 2.2. Grievances should be resolved as soon as possible at the lowest possible level taking into account the severity of the complaint.
- 2.3. Employees have the right to be accompanied by a co-employee, or where the employee is a member of a registered trade union that has the necessary recognition agreement with the employer, or where the union has organisational rights a trade union representative. Both the employee and the employee's representative are free to submit a grievance without prejudice whatsoever, and without fear of victimization.
- 2.4. A grievance may be lodged against a fellow employee (including the employee's supervisor), or against a specific employment condition which the employee feels is unfair.

#### **3. PROCEDURE**

##### **Step 1: The informal process**

An employee who has a grievance should first report such a grievance to his/her immediate supervisor verbally (first reporting level) and discuss the matter with him/her on an informal basis. The employee may be accompanied by his/her representative if s/he wishes. (This is submitted without prejudice by the employee concerned)

1. If the grievance is against the immediate supervisor, then it must be reported to the next level of authority (supervisor's line manager) or to Human Resources if applicable.
2. The supervisor (or line manager) must, to the best of his/her ability-
  - (i) listen to the employee in the privacy;
  - (ii) encourage the employee to express his/her grievance freely and openly;
  - (iii) obtain all relevant facts about the grievance (distinguishing facts from opinion).
3. The supervisor should endeavour to resolve the grievance as speedily as possible and resolve this within, at most three working days.
4. In the event of the grievance not being resolved by the supervisor, step 2 becomes effective, and the supervisor must advise the employee of the subsequent stages of the procedure.

## **Step 2: Initiating the formal process**

1. If the employee elects to proceed with the grievance s/he must, with the assistance of his/her representative, record the relevant details on the grievance form. (Annexure C).
2. The signed form must be handed to the supervisor, who must record his findings on the grievance form and return it to the employee.

## **Step 3: Grievance Meeting**

1. The employee will hand the grievance form to the next level of management, who shall conduct an investigation into the matter within five working days of receipt thereof.
2. The manager shall convene a meeting, or arrange for an external party to do so. The meeting should be attended by the employee, his/her representative, the employee's immediate supervisor and/or line manager, and the person against who the grievance has been laid, and a Human Resources Officer (if applicable). A record of the meeting should be kept. It is not necessary to obtain an exact record or transcription.
3. The manager or person convening the meeting should give his/her decision within five working days of the conclusion of the meeting, after having applied his/her mind to all the facts presented.
4. The decision must be recorded on the grievance form and a signed copy handed to the employee.
5. If the employee is not satisfied with the outcome, s/he may refer a dispute in terms of the LRA, if this is provided for in the legislation.

## **4. THE ROLES OF THE PARTICIPANTS IN THE GRIEVANCE PROCEDURE**

### **4.1. THE ROLE OF MANAGEMENT**

- Encourage the employee to express his/her grievance freely and openly.
- Clarify the grievance with the employee.
- Distinguish fact from opinion.
- Note the relevant facts relating to the grievance.
- Ask the employee what outcome is desired.
- Verify the facts by questioning witnesses and other people who may be able to contribute.
- Obtain assistance from other people who may be able to contribute.
- Seek acceptance of the decision from other members of management if necessary.
- Monitor adherence to the grievance procedure by all participants at all times.
- Go to all reasonable lengths to exhibit behaviour that shows a desire to amicably resolve the matter of concern.

#### **4.2. THE ROLE OF THE EMPLOYEE REPRESENTATIVE**

- Listen to the employee's grievance and encourage the employee to express his/her grievance freely and openly without fear of victimisation or intimidation.
- Investigate, together with the employee, his/her grievances to ensure that all the circumstances and the facts relating to the grievance are accurate and assist the employee to prepare a reasonable case for presentation to management.
- Counsel the employee as to whether his/her grievance is valid or not and if it does not merit management's attention, to assist the employee by advising how best s/he can resolve his/her grievance.
- Assist the employee during the grievance hearing to make representation.

#### **4.3. THE ROLE OF THE HR OFFICER (IF APPLICABLE)**

- To facilitate an atmosphere which is conducive to reaching consensus resolution of grievance.
- Assist in focusing parties on problem.
- Supply unbiased advice to all parties as and when required.

### **5. COLLECTIVE GRIEVANCES**

1. If employees raise a collective grievance, the grievance can be dealt with as any other collective issue.
2. The employees should choose representatives who will represent the group in the grievance meeting.
3. Management may require that the number of employees to be involved in the meeting be kept to a reasonable number.

## GRIEVANCE FORM

Employee name \_\_\_\_\_

Department \_\_\_\_\_

Job title \_\_\_\_\_

### Statement of Grievance:

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(Attach annexure if more space required)

### Desired Solution

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Signature of Employee: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Supervisor / Manager: \_\_\_\_\_

Date: \_\_\_\_\_

**Notes:**

1. This form must be completed by the employee and submitted to his/her immediate supervisor for signature.
2. If the grievance is against the immediate supervisor, the form must be submitted to the supervisor's manager for signature.
3. The supervisor / manager must process the grievance in accordance with the employer's grievance procedure, adhering to the time frames provided. If it is not reasonably possible to adhere to the time frames, the employee must be notified of the reason and informed of the revised time frames.
4. Despite the above, nothing shall prevent the employee from lodging the grievance with a more senior manager or human resources (if applicable), after obtaining the signature of the supervisor or manager.
5. The employer shall be entitled to attempt to resolve the grievance informally. Should this attempt fail (i.e. the employee is not satisfied with the outcome) the employee may request a formal resolution of the grievance.