DISCIPLINARY PROCEDURES

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**PURPOSE:**

The purpose of this policy is to inform and guide both the employer and the employee on matters pertaining to progressive disciplinary steps.

**SCOPE:**

This policy applies to all employees of the company.

**RESPONSIBLE PERSONS:**

1. Operations Director - Implementation and facilitation.
2. Operations Director/All managers - Administration, monitoring and enforcement of this policy.
3. Employees - Adherence to this policy and procedures outlined in this policy.

**POLICY STATEMENT:**

It is agreed between management and employees that this policy is not a unilateral change in the employment conditions of the employees of this company; and that the implementation of this policy is as a result of the required alignment of policies within the .........................................

The company recognises that leave may be taken under circumstances as outlined below but reserves the right to grant such leave under specific conditions.

**GENERAL OBLIGATIONS OF THE EMPLOYEE:**

In order to effectively manage this leave policy, all employees shall ensure;

* **LEAVE POLICY IN LINE WITH THE BASIC CONDITIONS OF EMPLOYMENT ACT:**

1. **INTRODUCTION**

For the COMPANY to ensure that it conforms to the requirements of the Labour Relations Act 66 of 1995, which provides certain fundamental rights to fair treatment, it is imperative to have a Disciplinary Code and Grievance Handling Procedure to ensure procedural and substantive fairness with respect to all disciplinary cases and grievances.

The disciplinary code and grievance handling procedure therefore, provide guidelines to all members of the company on how to relate and address issues around discipline and grievances.

All parties within the company should adopt the disciplinary code and grievance handling procedure.

The disciplinary code and grievance handling procedure will apply to all level of employees, including managerial employees.

**DISCIPLINARY ENQUIRY PROCESS**

**2.1 Requirements to demonstrate substantive fairness**

It is essential to ascertain the following before disciplining an employee:

* Is there a **rule or standard** regulating conduct in the workplace that the employee has contravened?
* Is the rule or standard **fair,** **valid and reasonable?**
* Was the employee **aware or reasonably expected to be aware** of the rule or standard?
* Was the employee aware or reasonably expected to be aware of the **consequences**?
* Has the rule been **consistently** applied by the company *i.e.* where the rule or standard was contravened before, was action taken against the transgressor?
* Are there **mitigating or aggravating** circumstances e.g. length of service, previous disciplinary record and the employee’s personal circumstances.
* Is dismissal the **appropriate sanction** *i.e.* is the misconduct serious or of such gravity that it makes the **employment relationship intolerable**?
* Is **corrective or progressive** discipline *i.e.* counselling, demotion, suspension without pay or warning not the appropriate disciplinary measure or is the sanction of dismissal not too severe?

**2.2 Procedural Fairness Requirements**

* A reasonable notice of a disciplinary enquiry;
* Clear and unambiguous charge detailing particulars of the alleged misconduct;
* A timeous enquiry (as soon as the company has become aware of the misconduct);
* Reasonable time to prepare;
* A representative;
* Call witnesses;
* Cross-question all witnesses;
* An opportunity for the employee to state his/her case;
* A decision with reasons;
* An impartial chairperson;
* A translator if required;
* Be present in person.

**2.3 Parties to a Disciplinary Enquiry**

* The Chairperson
* The employee
* The employee representative
* The initiator (complainant)
* Witnesses

2.3.1 The Chairperson

* The Chairperson assesses the evidence put forward at the Disciplinary Enquiry, within 3 working days and decides whether or not the employee has committed the misconduct as alleged or not. The Chairperson must be a senior manager to the initiator or on the same level if the case is not serious *i.e.* if a final written warning or dismissal is not possible.
* In the event that the complainant is the Principal Officer, the chairperson would have to be either a member of the Board of Trustees if the case is serious. If the case is minor, a senior person within the company could chair.
* He/she will then decide as to whether disciplinary action is appropriate and what form this should take. It is important that the Chairman is objective and impartial.
* The Chairperson has power to question witnesses and or ask for witnesses whose evidence he/she deems important and relevant, to be called.

2.3.2 The Employee

* The employee has the right to defend himself/herself against any allegations made against him/her and to state his/her case. It is advisable to warn the employee in the notification of the disciplinary enquiry that should they not attend, the hearing may proceed in their absence.
* An employee may of course choose not to exercise this right and may choose not to be present during the enquiry. The enquiry would still, however, have to be held in the employee’s absence. Every attempt should be made to get the person accused to the enquiry. Otherwise, he/she will not be able to hear the case against him/her, and to cross-examine witnesses.

2.3.3 The Employee Representative

* The employee has the right to a representative to assist him/her in putting forward his/her case or to assist in formulating his/her defence *in re*ply to the allegations made against him/her. This representative may be a fellow employee who agrees to fulfil this role. Where an employee is a member of a registered Trade Union, the employee will have the option to have representation from the Union. Legal representation would not be permitted at an internal proceedings stage.

2.3.4 The Initiator (Complainant)

* The initiator will in most instances but not always be the employee’s immediate manager or supervisor. The initiator will often investigate the alleged offence, prepare the case against the employee and then lead evidence at the enquiry. He/she may recommend what he/she believes to be the appropriate corrective and/or disciplinary action in the circumstances.

2.3.5 Neutral Person

* The role of this person is to advise both parties on procedure and precedent. He/she may also be the minute-taker for the Enquiry. The minute taking role could be delegated.

2.3.6 Witnesses

* These are individuals who will lead evidence in person as to what exactly occurred.

**3. STAGES OF A FORMAL DISCIPLINARY ENQUIRY**

A formal enquiry is a three-stage process:

* The Investigation
* The Hearing
* The Finding

**3.1. The Investigation**

The following questions must be asked before embarking on a formal investigation:

* What alleged misconduct has the employee committed? And;
* Is formal discipline likely to be the appropriate procedure?

***NB:*** *If the misconduct alleged is a misdemeanour, refer to the counselling guidelines. If the alleged misconduct is serious, follow these steps:*

**Investigate circumstances surrounding alleged misconduct:**

* What happened?
* How did it happen?
* Why did it happen?
* Who was involved?
* When did it happen?
* How did it affect the company’s operations?
* Are there witnesses?

**Take statements from witnesses as to what they saw and heard:**

Take statements as soon as possible after alleged misconduct has been committed or became aware of the misconduct. Statements may not be used at a disciplinary enquiry without calling the person who made the statement.

**Collect all necessary physical evidence, etc.**

This evidence must be kept in a safe place and be produced at the enquiry. This evidence will also be valuable during later proceedings (e.g. arbitration) should the employee not accept the finding of the enquiry.

**Detail the appropriate allegations**

The notification must contain a clear and unambiguous charge detailing all the particulars of the misconduct in a narrative form.

**Write-up “Notification of intention to hold disciplinary enquiry”**

Detail: Time

Date

Place

What exactly occurred?

Persons involved?

Chairperson will be?

**Detail employee’s rights at the hearing:**

* Right to be represented by a fellow employee of his/her choice
* Right to a translator if required
* Right to cross-question any witnesses
* Right to call witnesses

**3.2. The Hearing**

**3.2.1. Stages of a Disciplinary Enquiry**

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| Step | Person Responsible |
| 1. Introduction and housekeeping | Chairperson |
| 2. Opening statement | Complainant |
| 3. Opening statement by/or for the employee | Employee and/or representative |
| 4. Possible narrowing of the issues | Complainant |
| 5. First complainant witness | Complainant representative leads the witness |
| 6. Cross-examination of this witness | Employee/representative |
| 7. Complainant (NB: Will lead all its witnesses who will be cross-examined as in above step) | Complainant |
| 8. Cross-examination of these witnesses | Complainant/representative |
| 9. Closing statement | Complainant/representative |
| 10. Closing statement | Employee/representative |
| 11. Finding | Chairperson |
| 12. Mitigating/Aggravating circumstances |  |
| 13. Sanction |  |

**3.2.2. Commencement of Hearing**

1. The Chairperson will open the hearing by:

* Introducing all present;
* Explaining their roles during the course of the enquiry;
* Explaining the procedure to be followed during the course of the enquiry;
* No interruptions;
* Cross-questioning will be allowed after evidence is led;
* Detailing the employee’s rights at the hearing;
* Right to be represented by a fellow employee of his/her choice;
* Right to a translator if required;
* Right to cross-question witnesses;
* Right to call witnesses;
* Ask employee if he/she has had sufficient time to prepare for the enquiry.

1. Opening statement: Initiator to detail allegations against employee:

(This may be done in conjunction with the “notification of intention to hold disciplinary enquiry”)

Begin with a description of the misconduct:

* Time, date, place;
* What exactly occurred;
* Persons involved;
* Why the misconduct has caused problems for the company;
* Evidence led, including documents, etc.
* Name witnesses to be called.

***NB:*** *This is referred to as the opening statement. It is not evidence but what evidence will prove.*

1. Opening statement: Chairperson calls upon employee or employee representative to state their case

* Employee may accept that he/she has committed the offence or may refute it;
* Employee and or representative may explain why the offence was committed, or explain why the employee could not have committed the offence;
* Representative, initiator and Chairperson may further cross-question employee if required.

1. The initiator calls witnesses to tell the enquiry what transpired

The initiator may probe for details using open-ended questions:

* Why?
* What?
* When?
* How?

NB The initiator may not use leading statements.

1. The Chairperson allows for cross-examination by the employee or representative

* Employee and/ or representative to cross-question witness;
* Chairperson should not allow intimidation, badgering or leading of witness;
* Chairperson to ask clarifying questions only.

1. Employee / representative may call witnesses to substantiate any issues raised

* Initiator may cross-question witness;
* Chairperson should not allow intimidation, badgering or leading of witness;
* Chairperson to ask clarifying questions only.

1. Closing statements

Initiator to summarise case against the employee & Employee / Representative to summarise employee’s case

* Both parties are given an opportunity to review the evidence and challenge the other party’s evidence pointing out inconsistencies, contradictions, unreliable evidence, etc. They will show why their own evidence should be accepted and recommend the outcome.

***NB:*** *This is often referred to as the closing argument.*

1. **Chairperson to adjourn enquiry to consider his decision**

The question to be answered is: “Did the employee, on a balance of probability, commit the misconduct as alleged?”

The evidence burden is on the company. In making his/her decision the Chairperson needs to establish that:

* An act or omission took place;
* This act was clearly unacceptable or prohibited;
* The act or omission caused actual / potential damage to the company;
* The employee knew the consequences of his/her actions.

***NB:*** *The decision can only be based on sufficient, reliable, relevant evidence presented at the hearing. The chairperson must refer to the* ***“fundamental requirement of substantive fairness”*** *in 2.1 above.*

**3.2.3. The Finding**

1. Chairperson reconvenes the hearing, states his/her finding and the reasons behind the decision

* If he/she finds that the employee has not committed the misconduct or that there is insufficient evidence to prove “on a balance of probabilities” that the misconduct has been committed, the enquiry is ended. All present are thanked for attending.
* If he finds that the misconduct has been committed, the Chairperson will explain how he came to this decision. (The credibility of witnesses and evidence may be referred to and commented upon).
* The Chairperson’s attention then turns to the questions “what disciplinary and/or corrective action is appropriate in the circumstances?”

1. The Chairperson to call for aggravating and mitigating factors from initiator and employee or representative

* Ask for evidence on “any factors that may influence my decision as to what disciplinary action to take”.
* Chairperson only to consider factors brought up by initiator, employee and representative
* Chairperson should use open-ended questions to obta*in re*sponses on the following:
* The seriousness of the misconduct;
* The impact on or acts to the company including the employment relationship;
* Whether the misconduct was committed with intent or not;
* Employee’s prior valid disciplinary record (especially for the same or similar offences);
* Employee’s personal work record (including letters of commendation, performance appraisals, etc.);
* Precedent in similar hearings carried out by managers in the company (consistency of application records if any to be made available by the Office Administrator);
* The Employee’s personal circumstances;
* If the initiator recommends dismissal, enquire why corrective action should not be considered as appropriate disciplinary measure.

**3.2.4. Sanction**

1. If necessary, the Chairperson adjourns the hearing to consider appropriate sanction

The hearing reconvenes to inform the employee of the decision as to disciplinary action:

* Verbal warning, or
* Written warning, or
* Final written warning, or
* Dismissal/Summary dismissal, or
* Offer suspension, demotion to employee as an alternative to dismissal if appropriate.

1. **If any measure other than dismissal, explore possible corrective action plan**

* Ask the employee what needs to be done to ensure that offence is not committed again.
* Suggest certain steps to avoid the offence from being committed again.
* Gain commitment from the employee to the proposed action plan (if appropriate).

**Confirm the Action Plan (if appropriate)**

* Go through the action plan with employee
* Confirm the plan with employee
* Confirm that action will be taken

**Follow up**

* Give the employee time to implement the agreed action plan and then follow up.
* Reinforce positive behaviour
* Correct behaviour where improvement is needed

**Complete necessary disciplinary forms**

* Sign, ask employee representative and employee to sign
* If they refuse, write, “Employee/Employee representative refuses to sign Disciplinary Form” and request any other person to sign as a witness to this.

1. **If dismissal**

* Inform employee of termination procedure, e.g. if he/she has to hand back the Company’s property, etc.
* Inform employee when he/she may collect any monies due to him/her (leave, pay, etc.)
* Inform employee of procedure to follow if not happy with the outcome

**3.2.5 The Appeal Provision**

Regardless of the severity of the sanction, the employee has the right to appeal the decision taken. The employee makes a written indication of his/her appeal within 24 hours of the disciplinary hearing decision, stating clearly the grounds for the appeal. The appeal should be sent to the Operations Manager who would discuss the appeal with the manager senior to the disciplinary hearing chair or similar level, if the case is not serious. Depending on the appeal grounds, the appeal chairperson will decide on whether or not to re-open the case, or based on the facts and case information at hand, uphold the sanction, reduce it or dismiss the case. In all instances, the appeal decision will be documented and signed by key parties, that is, the appeal chairperson, complainant, the accused employee and his/her representative. The decision will be treated as final and there is no provision for further internal appeals, other than through the employee referring to the dispute resolution mechanism in the LRA. Should at this stage, either party incur legal representation costs, the party which loses its case would also be liable to cover the costs incurred by the party that wins the case.

4. **COUNSELLING MINOR MISCONDUCT GUIDELINES**

4.1 Privately Explain Purpose of the Discussion

* Meeting must be held in private
* Allow employee representation if required
* Explain how the employee’s conduct differs from the rule or standards required for the job
* Focus on the problem and not on the employee’s personality
* Explain why the action creates a problem

4.2 Uncover the Cause of the Problem

* Explore the employee’s reasons for the difference between actual and expected
* Let the employee explain
* Ask information-gathering questions, why? What? How? Where?

4.3 Ask for Solutions to Rectify Performance

* Ask the employee what needs to be done to rectify the problem

4.4 Discuss each Solution and offer Assistance

* Ask questions to explore the quality of employee’s suggestions
* Reject certain solutions if impractical. Always explain why they are impractical
* Suggest certain steps for improvement

4.5 Help the employee decide on an Action Plan

* Jointly decide on the steps to be taken
* Gain commitment from the Employee so that it is seen as his/her action plan

4.6 Confirm the Action Plan

* Repeat and summarise employee’s action plan
* Confirm with the employee
* Explain the consequences of the employee failing to achieve and maintain the required conduct
* Agree further counselling or follow-up sessions
* Confirm the responsible person to monitor the plan

**4.7 Elements of misconduct**

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| **Misconduct** | **Essential Element** | **Sample Charge** |
| **Absenteeism** | Unauthorised leave by an individual who intends to return to work. Desertion is different. | Between \_\_ you were absent from work without permission and/or failed to contact the company to explain your absence. |
| **Abusive language** | Usually interferes with working relationship or stability and order at work. The nature of the abuse and consequences together dictate disciplinary action. | On \_\_ at \_\_ you shouted or used abusive language to \_\_\_ in breach of the company’s disciplinary code/good order and acceptable behaviour/to the damage of the company’s good name (if a superior was addressed, add: “and this was also subordination”) |
| **Assault** | An unlawful attack, or threat thereof, upon another person through blows, physical mishandling or use of weapons or objects. | It is alleged that on \_\_ (date) at \_\_ (place) you assaulted \_\_\_ (name) by \_\_\_ (description of attack). |
| **Confidentiality obligations** | Unauthorised or unlawful disclosure of confidential information about the company is unethical and a breach of loyalty. | On \_\_ you disclosed to \_\_\_\_ information regarding \_\_\_\_. This was in breach of clause \_\_\_ of your contract of employment \_\_\_ and of your duty to keep such information confidential. |
| **Damage to property** | The intentional or negligent causing of harm/damage to property or property of a co-worker on the premises or during an event, function or trip sponsored by the company or during the course and scope of employment. | On \_\_\_ you caused (serious) damage to a \_\_\_, the property of the ......................, by \_\_\_\_ (description of action). |
| **Defamation** | The publication, written or verbal, of anything aimed at...... |  |
| **Defamation continued** | exposing another person to hatred, contempt or undue ridicule, where the matter published is not for public disclosure. |  |
| **Desertion** | Unauthorised and unexplained long absence from work, of at least 5 days or more, which justifies the company to reasonably assume the employee has no intention of returning to work. In such cases, the company will have taken some steps to establish the whereabouts of the employee. | Desertion in that between the period of \_\_\_ you were absent from work without permission and/or failed to contact the company to explain your absence in contravention of rules/disciplinary code. |
| **Dishonesty** | Any form of conduct that has the effect of compromising the relationship of trust between the company and the employee. The employee must have the intention to deceive the company. Examples are intentionally making a false statement or representation, failure to disclose information with the intention of concealing it. Other acts such as theft, fraud, forgery, etc. are dishonest conduct. |  |
| **Fighting** | Combat between two or more persons, usually where one is an aggressor and the other the victim. Distinguishable from assault as fighting involves retaliation or bilateral involvement. |  |
| **Forgery / falsification of documents** | The creation of a false document with the intent to mislead (defraud), resulting in or calculated to result in some prejudice, harm or loss to another or undue benefit to the employee. |  |
| **Fraud** | Any wilful perversion of truth made with the intent to deceive, and resulting in actual or potential prejudice or harm or loss to another employee or to the company. |  |
| **Incapacity / unsatisfactory performance** | Not performing or carrying out of work of the right quality and quantity at the right time. |  |
| **Indecent, threatening or objectionable language** | Swearing or using obscene, abusive, insulting or threatening language or swearing, shouting or screaming to the annoyance of the inhabitants, anywhere in the workplace. |  |
| **Insubordination** | The willful disobeying of reasonable and lawful instructions | On (date) it is alleged that you engaged in gross misconduct by challenging the authority of the ..................../supervisor and/or failing or refusing to obey a reasonable and lawful instruction relating to (details  of instruction/incident) |
| **Intimidation** | A threat using words or conduct or a combination of both which, through fear, caused the person to alter their conduct in some way. | Serious misconduct in that it is alleged that on (date) and at (venue) you threatened fellow employees by making statements or (actions) with a view to, or actually, changing their conduct or actions |
| **Intoxication** | Being under the influence of intoxicants when reporting for duty or while on duty or during working hours. | On (date) it is alleged that you were under the influence of alcohol (or drugs) while at work (or on duty) (or on ...................... premises) |
| **Moonlighting** | Having spare-time work outside normal hours of employment, and contrary to the employment contract.  (**Note:** Moonlighting refers to working for reward) | Serious misconduct as it is alleged that you have during (period/incident) performed work for (name of other company) OR  Misconduct as it is alleged that your after-hours activities of (describe) negatively impact on your normal job tasks by (elaborate consequences). |
| **Negligence** | Any failure by an employee to comply with a standard of care, which the employee would reasonably be expected to provide. Negligence will depend on the seriousness of the consequence of the failure to act in the manner expected of the employee. | Negligence in that on (date) you failed, without proper cause, to perform your work as required, because ) briefly describe the problem); OR  Negligence in that on (date) you approved work which did not meet the company’s quality standards (describe). |

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| **Theft** | Any fraudulent and without claim or right or authority taking for own use anything belonging to the company or co-workers, that which is capable of being stolen, with the intention to permanently deprive the owner of ownership. |  |
| **Abuse of property, equipment and facilities** | Any intentional action on the part of an employee, which leads to personal gratification or gain at the expense of the Company. |  |

* **DOCUMENTS MENTIONED AND TO BE USED IN ENFORCING THIS POLICY**

WILL BE SUPPLIED AND INCLUDED HERE

**EMPLOYEE POLICY CONFIRMATION:**

***I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (employee name and surname), declare that;***

1. Ihave been familiarised with and informed of the Disciplinary policy.
2. I understand and agree to the contents of this policy and that;

* it may be amended from time to time,
* it forms part of my employment conditions,
* the implementation and contents of this policy are mutually agreed upon with the employer,
* I have been given the opportunity to question this policy and that my questions were satisfactorily answered

1. I agree to strictly adhere to this policy.

Sig

ned at \_\_\_\_\_\_\_\_\_\_\_\_ (place) on the \_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [YEAR].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Employee

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Manager