DISCIPLINARY PROCEDURES

PURPOSE

The purpose of a disciplinary code and procedure is to regulate standards of conduct and incapacity of employees within a company or organisation. The aim of discipline is to correct unacceptable behaviour and to adopt a progressive approach in the workplace. This also creates certainty and consistency in the application of discipline.

PARTIES OBLIGATIONS

The employer needs to ascertain that all employees are aware of the rules and the reasonable standards of behaviour that are expected of them in the workplace. Some rules or standards such as that of displaying honest behaviour, do not have to be in writing.

The employee needs to comply with the disciplinary code and procedures at the workplace. The employee also needs to ensure that he / she is familiar with the requirements in terms of the disciplinary standards in the workplace.

COUNSELLING VERSUS DISCIPLINARY ACTION

There is a difference between disciplinary action and counselling.

Counselling will be appropriate where the employee is not performing to a standard or is not aware of a rule regulating conduct and / or where the breach of the rule is relatively minor and can be condoned.

Disciplinary action will be appropriate where a breach of the rule or standard cannot be condoned, or where counselling has failed to achieve the desired effect.

Before deciding on the form of discipline, management must meet the employee in order to explain the nature of the rule or standard s/he is alleged to have breached. The employee should also be given the opportunity to respond and explain his / her conduct. If possible an agreed remedy on how to address the conduct should be arrived at.

FORMS OF DISCIPLINE

Disciplinary action can take a number of forms, depending on the seriousness of the offence and whether the employee has breached the particular rule before. The following forms of discipline can be used (in order of severity):

- Verbal warning;
- Written warning;
- Final written warning;
- Suspension without pay (for a limited period);
- Demotion, as an alternative to dismissal only; or
- Dismissal.

The employer should establish how serious an offence is, with reference to the disciplinary rules in its company or organisation. If the offence is not very serious, informal disciplinary action can be taken by giving an employee a verbal warning. The law does not specify that employees should receive any specific number of warnings, for example, three verbal warnings or written warnings, and dismissal could follow as a first offence in the case of serious misconduct.

Formal disciplinary steps would include written warnings and the other forms of discipline listed above. A final written warning could be given in cases where the contravention of the rule is serious or where the employee has received warnings for the same offence before where appeal procedures exist, an employee can appeal against a final warning. The employer can hold an enquiry if the employer believes that it is only through hearing evidence that the outcome can be determined.

Written warnings often remain valid for 3 to 6 months. Final written warnings often remain valid for 12 months. A warning for one type of contravention is not applicable to another type of offence. In other words, a first written warning for late-coming could not lead to a second written warning for insubordination.

Employees will be requested to sign warning letters as acknowledgement of receipt and will be given an opportunity to state their objections, should there be any. Should an employee refuse to sign a warning letter, this **does not** make the warning **invalid**. A witness will be requested to sign the warning, stating that the employee refused acknowledgement of receipt of the warning.

Dismissal is reserved for the most serious offences and will be preceded by a fair disciplinary enquiry, unless an exceptional circumstance results in a disciplinary enquiry becoming either an impossibility (e.g. the employee absconded and never returned) or undesirable (e.g. holding an enquiry will endanger life or property).

WHEN CAN AN EMPLOYER HOLD A FORMAL ENQUIRY?

An employee may be suspended on full pay pending a hearing especially in instances when the employee's presence may jeopardise any investigation, may tamper with evidence, may retaliate against the complainant or commit similar misconduct. The employer should give the employee not less than three days' notice of the enquiry and the letter should include:

- The date, time and venue of the hearing;
- Details of the allegations against the employee;
- The employee's right to representation at the hearing by either a fellow employee or shop steward;
- The employee's right to an interpreter, if needed; and
- The right to call relevant witnesses in support of his or her case.

Note: If the employer intends disciplining a shop steward, the employer must consult with the union on the intention to discipline the shop steward before serving notice to attend the inquiry and include the reasons, date and time.

WHO SHOULD BE PRESENT AT THE ENQUIRY?

- A chairperson;
- A management representative;
- The employee (and his representative);
- Any witnesses for either party;
- An interpreter if required by the employee.

HOW SHOULD A HEARING BE CONDUCTED?

The employer should lead evidence. The employee is then given an opportunity to respond. The chairperson may ask any witnesses questions of clarity. At the end, the chairperson decides whether the allegations against the employee have been proved on balance of probability. If guilty, the chairperson must ask both parties to make submissions on the appropriate disciplinary sanction. The chairperson must then decide what disciplinary sanctions to impose and inform the employee accordingly.

The employee should be informed that s/he has right to appeal. If the company policy does not provide for an appeal procedure, the employee must be reminded that he / she could take the case further to the CCMA or relevant Bargaining Council.

Failure to attend the hearing cannot stop the hearing from continuing, except if good cause can be shown for not attending.

Note: This procedure should not substitute disciplinary procedures subject to collective agreements.

Parties can also request, by mutual consent, the CCMA or a Bargaining Council to appoint an arbitrator to conduct a final and binding disciplinary enquiry. The employer would be required to pay a prescribed fee. (See Info Sheet – Inquiry by Arbitrator for more information).

RELEVANT LEGISLATION

- Code of Good Practice for Dismissal: Schedule 8 of the Labour Relations Act 66 of 1995 as amended.