

**Industrial Relations (IR)  
(Employee Discipline , Rights &  
Procedure)  
by**

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# What is Industrial Relations

- The relationship between employer and employee that is covered specifically under collective bargaining and industrial relation laws
- Means different things to different people

# Employee's & Employer's Perspective

## 1. Employee's Perspective

- Better pay
- Work place safety
- Job security
- Training & Development

## 2. Employer's Perspective

- Productivity
- Flexibility
- Employment Laws
- Managing employment conflicts

# Employee Discipline

- A tool used by managers to improve poor performance and enforce appropriate behaviour to ensure a productive and safe workplace.

# The Purpose of Employee Discipline

- Eliminate inappropriate behaviour
- Create a "win-win" situation for manager and subordinates
- Not to exercise vengeance or eliminate a problematic employee

# Reason's to discipline an Employee

<b>Issues Related to Conduct</b>	Tardiness
	Absenteeism
	Insubordination
	Negligence
	Fighting
	Stealing
	Falsification of documents
	Abusiveness
	Harassment
	Use of obscene language
	Possession of a controlled substance
	Reporting to work under the influence of alcohol or other controlled drug
	Substance abuse
	Infractions of published work rules (for example, dress code, safety procedures, and so on)
<b>Issues Related to Performance</b>	Low productivity
	High error rate, overall
	Repetition of a specific error

# Sources of Discipline and Dismissal Law

- Certain statutes in South Africa are our primary references to disciplinary and dismissal procedures.
- They include the Constitution and our labour laws.
- ***Constitution of the Republic of South Africa, Act 108 of 1996***
- The Constitution is the basis for all laws in the country. Everyone has the right to fair labour practices: Section 23(1).
- ***The Labour Relations Act, No 66 of 1995***
- This law describes what is legal and illegal in relationships between employers and employees.

# Purpose of the Disciplinary Policy and Procedure

- The Disciplinary Policy and Procedure provides employers and employees with a guideline for being fair about discipline in the workplace through:
- Making sure that disciplining is done legally and not done in an unfair way
- Encouraging employees to respect and follow suitable rules for behaviour and perform according to set standards.



# THE DIFFERENCE BETWEEN DISCIPLINARY AND INCAPACITY PROCEDURES

- Disciplinary procedures apply to conduct where employees are responsible for their behaviour – they carry blame for their behaviour.
- In incapacity hearings on the other hand, the employee carries no blame for his/her performance. Issues of health and an inability or lack of capacity to perform a job are not disciplinary issues.

# Implementation of the Disciplinary Procedure-Employers

- Employers have the power to set standards and rules for the workplace, and they can take steps against employees who break them.
- Employers must set clear rules and standards of behaviour for the workplace.
- Employers should make sure that all employees know what the rules are, and what standards are expected of them.

# Implementation of the Disciplinary Procedure-Employers

- Employers should apply the rules and standards fairly and in the same way for all employees.
- The Code says the purpose of disciplinary action is to help employees correct their behaviour rather than to punish them.
- Employees who break the rules all the time, or behave extremely badly can be dismissed.

# Implementation of the Disciplinary Procedure-Employers

- The principles written down in the Code intend to make sure that employers set rules that are clear, reasonable and legal.
- The Code also says that employees should know the rules and that employers must apply them in the same way for all employees.
- The Code has also allowed for the form and content of the rules to vary according to the type and size of business

# Implementation of the Disciplinary Procedure-Employee

- If the employer believes an employee has broken the workplace rules or not met the standards:
- There should be a formal hearing for serious misconduct (bad behaviour), or a less formal meeting for less serious misconduct.
- The employee should be told within a reasonable time of the accusation against them.

# Implementation of the Disciplinary Procedure-Employee

- The employee may be represented by another employee or a shop steward where there is a recognised trade union in the workplace.
- There should be written reasons for any decision taken.
- The employee has the right to appeal.

# Serious Misconduct: Steps to be followed

1. When an employer gets to know that an employee has committed a serious misconduct offence, she/he should investigate the allegation.

# Serious Misconduct: Steps to be followed

2. A disciplinary hearing should as far as practically possible take place within 30 days of the employer hearing about the offence, or from the end of the investigation. If the hearing doesn't take place within 30 days, the employer must tell the employee or his/her representative why there is a delay, and give the employee or his/her representative a possible time when the case will be heard.



# Serious Misconduct: Steps to be followed

3. The employer should make sure that a suitable venue is used for the hearing.

# Serious Misconduct: Steps to be followed

4. The employer must give written notice to the employee who is accused at least 4 days before the hearing so that he/she can prepare for it. (The employee can ask for this period to be longer, and the employer cannot unreasonably refuse the request). The employer should use the Notice to Attend a Disciplinary Hearing

# Role of the Hearing Chairperson

1. Chair the disciplinary hearing fairly by giving the employee a chance to hear the allegation against him/her, and allowing the employee to respond to the allegation and give his/her own story of what happened.

# Role of the Hearing Chairperson

2. Make sure that the employee is aware of his/her rights and that the employee understands the allegations against him/her. Ensure that the employee received a Notice to Attend the Disciplinary Hearing with all the relevant details.

# Role of the Hearing Chairperson

3. Hear the evidence from both sides, and allow cross-examination (questions for clarity). Then decide whether the employee is guilty or not based on the evidence and arguments presented in the case.

# Role of the Hearing Chairperson

4. Give the employee a chance to argue why the sanction should be lessened.
5. Decide on a suitable course of action.

# Role of the Hearing Chairperson

6. Tell the employee that they have a right to appeal within 10 days (if an appeal is allowable) or of their right to take the case to the CCMA within 30 days.

7. Complete the necessary record. (A brief description of the hearing proceedings, and the warning form or dismissal letter (depending on whether the person was found guilty or not).

# Rights of the employer

- Hold a disciplinary hearing to consider allegations of serious misconduct.
- Tell their side of the story, and get evidence by calling witnesses and presenting any other evidence related to the case, as well as cross-examine the employee's witness(es).
- Submit evidence to show that the misconduct was extremely bad.



# Rights of the employee

- Tell his/her side of the story to defend himself/herself.
- Be represented by a fellow employee or shop steward (of a trade union recognised by the employer). If the employer has an allegation of misconduct against a shop steward, it is a separate matter between the employer and the union to sort out.

# Rights of the employee

- Call witnesses, and cross-examine the employer and the employer's witnesses. He/she may provide any other evidence for the case, including mitigating evidence.
- ✓ If the employee is found guilty of misconduct and given a sanction, the employee should be told that they have a right to appeal (where allowable) or that they can refer their case to the CCMA within 30 days. Where the employee wants to appeal the outcome of the disciplinary hearing the employee should use the Appeal Form

# Sanctions

If an employee is found guilty of serious misconduct at a disciplinary hearing, the employer may issue any of the sanctions listed below. These will depend on whether the circumstances made the misconduct worse or whether they softened it.

## 1. A Final Written Warning

**2. Final Written warning & Suspension:** Instead of being dismissed, the employee may get a Final Written Warning valid for 12 months, together with suspension without pay for 14 days. For this sanction to be valid, the employee must of his/her own free will agree to this sanction in writing.

# Sanctions

If an employee is found guilty of serious misconduct at a disciplinary hearing, the employer may issue any of the sanctions listed below. These will depend on whether the circumstances made the misconduct worse or whether they softened it.

**3. Final Written warning & Reduction:** Instead of being dismissed, the employee may get a Final Written Warning valid for 12 months, together with a reduction in grade and salary for a period of between 3 and 6 months. When the time mentioned by the employer is over, the employee won't automatically be given their previous position and salary, but they can apply for promotion in the normal way for any suitable vacancies. For this sanction to be valid, the employee must of his/her own free will agree to this sanction in writing.

**4. Dismissal**

# Appeal Procedure

Appeals can be lodged for following reasons :

- The hearing didn't follow the right procedure (procedural unfairness)
- The finding was unfair (procedural and/or substantive unfairness)
- The sanction was too extreme (substantive unfairness)

# Appeal Procedure

Appeals can be lodged for following reasons :

- The chairperson was biased or one-sided (procedural unfairness); or
- New evidence has come to light which is relevant to the disciplinary hearing.

*All appeals must be submitted to the chairperson of the disciplinary hearing within 10 working days since the employee was informed of the disciplinary action or dismissal*

# Disputes Which May Be Referred to the CCMA

The following disputes may be referred to the CCMA:

- Unfair dismissal disputes (Section 186 (1) of the Labour Relations Act)
- Unfair labour practice disputes (Section 186 (2) of the Labour Relations Act)

# Disputes Which May Be Referred to the CCMA

Unfair labour practice disputes involve:

- When an employer acts unfairly in relation to promotion, demotion or probation of an employee. (This excludes disputes about dismissals for reasons relating to probation). Disputes could also be about training or benefits provided to an employee.
- When an employer unfairly suspends an employee or takes any other unfair disciplinary action against him/her, except dismissal.
- When an employer doesn't reinstate or refuses to reinstate or re-employ a former employee in terms of any agreement.



## EXAMPLES OF DISCIPLINARY OFFENCES

### GROUP A OFFENCES

INCIDENT	1	2	3	4
Poor work performance	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Insubordination	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Absenteeism repeated. Fewer than 3 working days unauthorised or deliberate	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Poor time-keeping	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Littering	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Commits a breach of any rule prescribed for good order, discipline or health	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Failure to keep equipment or work place for which employee is responsible in proper condition	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Contravention of regulations relating to the road traffic ordinance	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice
Consuming food in unauthorised areas	Recorded verbal warning	Written warning	Final written warning	Termination of service with notice

## GROUP B OFFENCES

INCIDENT	1	2	3
Negligence	Written warning	Final written warning	Termination of service with notice
Disrespectful behaviour	Written warning	Final Written warning	Termination service with notice
Any other act harmful to the interest of the firm or its other employees	Written warning	Final written warning	Termination of service with notice
Failure to report in and out on commencement and ceasing of work	Written warning	Final written warning	Termination of service with notice
Using insulting language	Written warning	Final written warning	Termination of service with notice
Carelessness and failure to conserve safety regulations and hygiene rules	Written warning	Final written warning	Termination of service with notice
Willful disregard of rules relating to use of Company vehicles	Written warning	Final written warning	Termination of service with notice
Failing ID comply with procedures as prescribed in the conditions of service and letter of appointment	Written warning	Final written warning	Termination of service with notice
Receiving undeclared moneys or gifts from clients or supplier	Written warning	Final written warning	Termination of service with notice
Playing cards during official working time or gambling on Company premises	Written warning	Final written warning	Termination of service with notice
Sleeping on duty	Written warning	Final written warning	Termination of service with notice

**THE PERIOD OF VALIDITY OF WARNINGS FROM GROUP B OFFENCES IS SIX MONTHS**

## GROUP C OFFENCES

INCIDENT
<b>IF AN EMPLOYEE COMMITS ANY OF THE FOLLOWING OFFENCES. HE MAY BE SUMMARILY DISMISSED. (WITHOUT NOTICE) IF SO DECIDED FOLLOWING A PROPER HEARING.</b>
Unauthorised consumption on the premises of intoxicating liquor and/or habit forming drugs or being under the influence of such substances whilst on duty, or offering to any other person, or having in his possession intoxicating substances whilst on the premises
Entering or remaining on the premises of the firm whilst in a state of intoxication.
Smoking in areas where "No Smoking" signs are exhibited.
Refusing to execute any reasonable and lawful order given by a supervisor or inciting other employees to refuse.
Fighting or assaulting others; whilst on the premises or attempting to injure or in any other way to intimidate an employee
Being in possession of a firearm or other dangerous weapon on the premises without authority granted by management.
Being guilty of bribery or attempts thereof.
Clocking in or out on behalf of another employee or making unauthorised alterations to a time card or job card
Willfully making a false report or making false entries on returns or other documents or to management.
Proven theft or fraud or being an accessory thereto or making an attempt thereof.
Being in possession of Company property without permission (This is <u>not</u> theft; which must be proven in a court of law)
Committing violence or inciting other employees to violence.
Willful damage to, willful neglect of or destruction of firm property, tools, machinery, etc.
Arranging unauthorised meeting.
Gross Insubordination

# GROUP C OFFENCES

## INCIDENT

Revealing of secret or confidential information to unauthorised persons relating to the operation of the firm. Without derogating from the generality of the foregoing prohibition, the following in particular:

- The manufacturing process of the firm's product and/or
- The materials used in the manufacturing of the firm's product and/or
- The names of the suppliers of materials used in the manufacturing process of the firm's product and/or
- Security arrangements applicable to the Company and/or
- Disclosing personal information on any employee of the Company including management

Using confidential information for own purposes.

Misrepresentations of particulars on staff application form.

Undertaking without permission any private agency work in direct competition of Company business

An employee who prior to his confirmation of employment had previously *been* found guilty of a criminal offence Or had been declared insolvent and failed to disclose this information.

Adversely affects the image and business of the Company through comments, statements and allegations to clients, customer; and suppliers

Intimidation - (proven in a court of law).

Desertion or continued absence without notification for a period of more than 3 days.

Failure to account for Company money in possession of the employee for which the employee is responsible.

Use of Company vehicle without permission or authority.

Incitement to strike without exhausting Company procedures namely, dispute, grievance, or appeal procedure