

DISCIPLINARY CODE FOR EMPLOYEES

HPP School, March 2017

The disciplinary code forms part of the terms and conditions of employment.

PURPOSE AND RESPONSIBILITIES

The disciplinary procedure provides guidelines in correcting unacceptable behaviour or unsatisfactory performance by any employee.

The employer commits itself to a code of conduct that is consistent with sound industrial relationship as reflected in current South African labour legislation and the Codes of Good Conduct that are relevant to education.

The employer undertakes to maintain disciplinary procedures which are fair, just and equitable for all its employees, irrespective of race, creed, gender or job category.

The employer will:

- maintain fair, just and consistent discipline;
- ensure that all employees are made aware of the standards of acceptable behaviour expected of them.

Employees are expected to:

- comply with the law,
- behave in an orderly and lawful manner at all times,
- carry out all reasonable and lawful instructions given to them,
- treat the employer's property with care and respect and not to use such property for their own benefit,
- treat all other employees and their property with respect,
- not to victimise or intimidate any other employees or learners,
- make themselves available for work in terms of the rules set by the employer and to keep to the specified working hours,
- perform their duties in accordance with the standards required by the employer as described in the policies and procedures of the employer.

OVERVIEW

The exercise of discipline is a responsibility of the Board of directors. The Board may delegate this responsibility to an appropriate person. The chairperson of the disciplinary hearing is to be determined by the Board of directors. The Board may at its discretion appoint external consultants to chair disciplinary hearings when it deems this to be in the interests of a fair hearing.

In all instances of misconduct, where the employee is found guilty after following a fair procedure, the sanction imposed may range from a verbal warning to dismissal, depending on the seriousness of the offense and the circumstances surrounding the commission of that offense and other factors.

In all cases, verdicts and findings shall be determined by the chairperson of the disciplinary hearing.

RIGHTS

The employer may:

1. take the appropriate action when it considers that an employee's behaviour or performance is unacceptable or unsatisfactory;
2. call witnesses to testify on its behalf;
3. decide when an employee's behaviour or performance is unacceptable or unsatisfactory; and
4. institute criminal charges against an employee if it feels that it is appropriate.

The employer may:

1. be given advance warning of any charge against him / her;
2. be advised of the charge in writing,
3. be given time to prepare his / her defence,
4. be allowed a formal hearing or enquiry,
5. be present at a formal hearing or enquiry,
6. be represented or assisted at the hearing by a colleague of the employee's choice;
7. cross examine any person giving evidence and to ask questions of any evidence produced,
8. call witnesses to testify on his / her behalf,
9. have access to an interpreter, who is an employee of the school.

DISCIPLINARY PROCESS

Step 1: Initiating action

1. Explanation: Whenever any disciplinary action is contemplated against an employee, such employee shall have the right to furnish an oral or written explanation to the employer.
2. If dismissal is contemplated, such explanation, if oral, shall be reduced to writing immediately by such person who is in authority of the employee in question.

Step 2: Disciplinary hearing

1. If disciplinary action against an employee is contemplated, a disciplinary hearing shall be held within five (5) working days of the event which is also subject to come to the attention of the board of directors.
2. The employee shall, at the commencement of a hearing, be fully informed of his/her rights to:
 - Be fully informed and appraised of the complaint and evidence against him.
 - Call any relevant witnesses and produce evidence.
 - Be represented by a fellow employee or a representative Trade Union official (if applicable).
 - No legal representation will be permitted.
3. Opportunity to implement rights
If necessary, a reasonable opportunity shall be afforded to the employee to enable him to exercise the aforesaid rights.
4. Recording and Minutes
Save where proceedings are electronically or mechanically recorded, the hearing shall be minuted.
5. Written decision
A written decision pursuant to the hearing shall be given to the employee with reason within 48 working hours of the hearing.

Step 3: Appeal

The employer does not have a formal Appeal Procedure. The employees may exercise their rights in terms of the Labour Relations Act and refer their case directly to the CCMA.

DISCIPLINARY PROCESS: KEY POINTS

1. *Time Limits*
 - A disciplinary hearing shall be held within five (5) working days of the event and be notified to the board of directors during this time.
 - Disciplinary action other than any other hearings should be taken within ten (10) working days of it being discovered by a person in authority that a breach of discipline has occurred.
 - Should further investigation into the matter be needed which will result in the specified time limit being exceeded, the employer must inform the employee of the reason for the delay.
2. *Effect of disciplinary action and work record*
 - An employee's work record and previous disciplinary actions taken against such employee shall be taken into account in determining the severity of any contemplated disciplinary action to be taken against him.
 - In such an instance, a consolidated/comprehensive final written warning may be applicable.
3. *Suspension*
 - The employer is entitled to suspend an employee pending an investigation into any alleged breach. Depending upon the severity of any gross misconduct, the employer reserves the right to suspend the services of the employee without pay until the investigation and disciplinary action has been finalised.
 - Should the misconduct against the employee be dismissed, the employee will be entitled to full remuneration from the date of suspension.
4. *Additional evidence and information*
 - At any stage of any disciplinary matter, any party may ask that additional evidence be given or cross-examined, and that additional information be provided.

5. *General considerations*

- Neither the employee nor the witnesses can be compelled to make statements either prior to or during a disciplinary hearing or enquiry.
- Wherever possible, disciplinary hearings or enquiries should be held within normal working hours (e.g. during day shift).
- If the employee is absent from the hearing or enquiry with a reason, then the case should be postponed and he/she should be notified of another date on which to attend. Should the employee fail to attend again, then the hearing or enquiry may proceed without the employee, but the employee and his/her representative must be informed thereof in writing.
- If an employee is dismissed in his/her absence because of failing to be at work for any reason such as desertion, imprisonment or other causes, then on his/her return to work, an enquiry must be held in order to allow the employee to explain the reason for absence. If the reason is not acceptable, then the decision to dismiss will stand.
- The fact that misconduct may result in criminal charges being laid against an employee does not prevent the employer from holding a disciplinary hearing or enquiry in accordance with its procedures. It is preferable for such a hearing or enquiry to be concluded prior to the laying of criminal charges.
- The Chairman of the hearing or enquiry should only have access to the employee's previous valid disciplinary record after he/she has made the decision that the employee is guilty of the charge(s). This record should only be referred to for the purpose of determining an appropriate sanction.

COUNSELING / TRAINING

- Where it has been found that an employee's work performance or conduct is below the employer's acceptable levels, then it may be advisable to counsel such employee rather than to discipline him/her if such unacceptable performance/conduct has occurred for the first time, or where an employee may be on a final written warning. Counseling is a positive intervention as compared to disciplinary action, which often has a negative impact on the employee.
- Counseling/training involves explaining to the employee what performance/behaviour is expected of him/her and in which areas the employee is not meeting with such expectations.
- If there has been no progress or no attempt by the employee to improve, then disciplinary action may follow. The time period given to an employee may vary from two weeks to maximum six months depending on the circumstances.
- The employee should be given a letter containing all the relevant points covered in the discussion and a copy should be kept in the employee's personnel file.
- Counseling details must not be entered on the disciplinary record as counseling is an attempt to correct, not punish, deviant behaviour or unsatisfactory performance.
- However, when taking disciplinary action subsequent to counseling for the same misconduct or poor performance, then the previous counseling may be referred to when determining an appropriate penalty.

EXAMPLES OF GROSS MISCONDUCT

These examples could result in summary dismissal, but only after a formal Disciplinary Hearing.

- Refusing to obey an instruction from a superior
- Insubordination
- Violence or threatening violence
- Fighting and / or assault
- Intimidation or victimisation.
- Disorderly conduct causing bodily injury to people or damage to property.
- Under the influence of alcohol, drugs or other narcotic or similar substances at work
- Damage to employer's property.
- Disruption of school activities.
- Misuse of employer's property.
- Unauthorised possession or removal of employer's property.
- Unauthorised possession of a weapon on school premises or use, or threatened use, of any such weapon.
- Making of and/or presenting false documents information or evidence for personal gain.
- Altering, falsifying or misrepresenting official employer documents, with the intent to defraud or try to defraud.
- Breach of contract.
- Accepting money or other consideration for performing work or any other favour in order to favour anyone else at the employer's expense.
- Under the influence of alcohol, drugs or other narcotic or similar substances.
- Unauthorised possession of or trading in liquor / drugs.
- Negligence.
- Breach of employer rules or procedures.
- Sexual harassment.
- Failing to report any dangerous contagious disease to employer.
- Sleeping on duty.
- Absenteeism for three or more consecutive working days without a valid doctor's note.

EXAMPLES OF OTHER MISCONDUCT

These examples could result in written warnings or final warnings, but only after a formal Disciplinary Hearing.

- Absenteeism. However, where the employee is absent for three consecutive working days or more, then such employee can be summarily dismissed if the employee was aware thereof.
- Inefficient timekeeping.
- Unauthorised absence from the work place, late arrival, leaving early, extended meal or teatime, loitering or extended sickness.
- Laziness at work.
- Failure to carry out instructions.
- Sleeping on duty.
- Negligence.
- Disorderly conduct.
- Insulting, rude or insolent behaviour.
- Violation of the employer code of conduct.

Depending on the circumstances, the above could be viewed as gross misconduct if the employer / employee relationship is adversely impaired or the property and / or operations are jeopardised or any lives are endangered.

GLOSSARY OFFENCES

Bribery and / or corruption

Giving or receiving or attempting to give or receive any bribe to induce or attempt to induce any person to perform any corrupt / dishonest act that will be to the detriment of the Employer.

Theft or unauthorised possession of funds / assets / property

Being in possession of any funds, assets or property belonging to the Employer, member or co-employee without any due authorisation. The unauthorised removal or taking of property other than the employee's own.

Fraud / Forgery

Any willful misrepresentation by any employee with a view to derive personal gain or to damage / harm or potentially damage / harm the Employer.

Misappropriation

The incorrect application of Employer funds, assets or property for reasons of personal gain or other such purposes.

Giving false evidence making a false statement / declaration

When a deliberate attempt is made to mislead or defeat the ends of justice through misrepresentation of a fact, either verbally or in writing.

Fighting or assaulting any person

Causing or attempting to cause bodily harm to other person. The action to be taken is dependent upon, inter alia Provocation, Self-defence, Intention, Nature and Severity of Injury sustained.

Violent behaviour

Threatening to injure or actual physical injury to any other person.

Possession of firearms and / or any dangerous weapons

It is a breach of security regulations to be in possession of firearms or lethal weapons on Employer premises. However, authorisation in the form of a written letter may be granted by the Employer Administrator and/or Human Resources.

Intimidating or inciting employees to violence of any form

To incite or intimidate other employees to:

- Use of violence
- Damage property
- Adopt impermissible Industrial action, or
- Indulge in any other disorderly behaviour.

Sabotage

Any act by an employee to interfere with the normal operations of the Employer by damaging machinery or equipment or by interrupting any supplies of power, fuel, materials or services necessary to the operations; and bomb threats, whether intended seriously or as a joke.

Sexual harassment

Behaviour of a sexual nature, affecting the dignity of women, men or children. Such behaviour is unacceptable if it is unsolicited, unreasonable and offensive and the conduct creates an intimidating, hostile and humiliating situation.

Any act or omission which seriously impairs the relationship between the Employer and its employees

This refers to any other act not referred to in a code, but which is serious enough to warrant the termination of the employment relationship.

Revealing confidential information to unauthorized persons

Revealing confidential information means unauthorised presentation, revealing discussion, press release, publication and / or any communication whatsoever that could or has the potential to embarrass or harm the Employer.

Absent between 1–3 days

Refers to being absent from work without permission and without a reasonable excuse or a medical certificate. The employer is required to send a SMS to the employee in an attempt to establish contact with the employee.

Serious neglect of / or willful damage to Employer tools, equipment or material, or to the property of other employees

The nature of the case may warrant dismissal.

Insubordination

When an employee direct or deliberately confronts his senior by e.g. refusing verbally and / or making no effort to carry out the work when instructed to do so. The seriousness of the offence is determined by, inter alia, the following:

- The instruction complying with statutory / Employer regulations
- It being within the capabilities of the employee(s)
- It being clearly issued.

Misuse of Employer property for private purposes (which is theft)

This is seen in the same light as theft.

Sleeping at work

Refers to sleeping at workplace during working hours. Seriousness is directly linked to the nature of the job and consideration must be given to safety hazards and the physiological circumstances of the employee.

Failing to produce a medical certificate

A medical certificate must be produced for all absences longer than two days. An employee is expected to obtain such medical certificate within the stipulated two days. Failure to produce a medical certificate will result in the absenteeism being regarded as unauthorized.

Abuse of sick leave

If an employee absent himself/herself from duty under false pretences e.g. in order to conduct private business.

Prejudicial conduct

Any conduct prejudicial to the maintenance of good order and the smooth running of the Employer.

Gross negligence or incompetence

- Any act or omission, which has the potential to give rise to serious consequences to the Employer or its members.
- Any act whereby an employee, through carelessness or negligence, causes the Employer's property to be lost or is unable to account for it properly.
- Any action whereby the employee, through carelessness or negligence, causes or allows Employer property to be damaged.
- Cash will be regarded as gross negligence except where theft or fraud could be proved.

Under the influence or unauthorised consumption of intoxicating liquor / drugs whilst on duty

Incapable of working properly whilst under the influence of alcohol and / or drugs, or reporting for work in an unfit condition whilst under the influence of alcohol and / or drugs.

Unauthorised / illegal possession or selling or distributing of liquor or drugs whilst on duty

Refers to the actual possession and/or sale of liquor or drugs while on duty without his necessary permission or authority.

Non-compliance with prescribed procedures, rules, regulations and / or instructions

This pertains to any procedure, rule, regulation or instruction such as:

- Safety regulations and procedures
- Task / work procedures

Unsatisfactory work performance (carelessness)

If the work done is of a poor quality and / or quantity. Failure to exercise proper care and attention in regard to the manner in which a task should be performed to the extent that the task has to be repeated or that equipment at risk of being damaged. Passing time idly or failing without reasonable cause to complete tasks set, failing to perform duties to the required standard without any acceptable reason. Displaying unreliability, poor co-operation and a lack of interest in work.

Poor timekeeping

- Leaving work early.
- Away from the workplace for excessive periods.
- Taking excessive breaks or breaks that are longer than permitted.
- Not proceeding to the workplace.
- Arriving late for work

Loafing / idleness

To stand or sit about idly or saunter lazily or aimlessly and thereby neglecting one's work. Failing to work when there is work to be completed.

Practical jokes / horseplay

The seriousness will be determined by the possible or actual repercussions of such action. The possible penalties are with regards to less serious repercussions.

Abuse, derogatory or insulting language

The uttering of any words or any written expression or showing hatred, ridicule or contempt for any person. The offence is more serious when it is wholly or mainly because of race, tribe, creed, place of origin or colour.

Insolence

Insolence refers to an unwillingness to submit to authority, i.e. direct challenging the authority of a supervisor or being disrespectful towards the supervisor.

Failure to notify the Employer of his / her absence from work

An employee has a duty to notify his employer of his absence within a reasonable period (at least before 07h30 on the first day of absence). It is of the utmost importance to establish exactly why he failed to do so. Especially if communication channels were at his/her disposal.