

DISCIPLINARY CODE AND PROCEDURE

This particular format of the Disciplinary Code and Procedure is effective as of the 20th November 2006 and does not differ in content or Management intent from the Disciplinary Code and Procedure en force prior to this date.

1. INTRODUCTION

1.1 Objective of this code and procedure

- Discipline in any working environment is one of the responsibilities of management.
- The objective of the disciplinary code and procedure is to assist management in complying with its responsibility to discipline, if and when necessary.
- In dealing with discipline management must act fairly.
- To act fairly there must be:
 - ⇒ some uniformity in the process and in the outcome of the disciplinary action;
 - ⇒ employees must be properly informed of their transgressions;
 - ⇒ employees must be given a fair opportunity to defend themselves;
 - ⇒ the disciplinary action taken, if any, must be fair; and
 - ⇒ the employee must be informed of the outcome of the disciplinary investigation and finding.
- It must be emphasized that the procedure does not prescribe rigid rules which have to be slavishly applied without considering the diversity of human behaviour as well as the working conditions and circumstances that are especially associated with the Company's widely divergent activities.
- This disciplinary code and procedure is merely a guide and does not make provision in detail for every conceivable offence. Discipline must therefore be applied with discretion and in accordance with the guidelines and spirit of this procedure.
- The Company acknowledges that every employee is important and will therefore strive to maintain and improve the performance of the employees in the work place. Disciplinary action must be seen and taken as a way of improving improper performance and behaviour. A penalty will be appropriate if an employee does not respond to corrective action. It is therefore important that record is kept of any action taken to improve or rectify unacceptable performance and/or behavior.

1.2 Legal Guideline

The Code of Good Practice (The Labour Relations Act 66 of 1995, Schedule 8) requires that:

“Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.”

1.3 Scope of Application

- This disciplinary code and procedure sets out the procedure to be followed should there be a transgression of:
 - ⇒ policies,
 - ⇒ rules,
 - ⇒ procedures,
 - ⇒ established practices,
 - ⇒ any law,
 - ⇒ regulations, or
 - ⇒ any condition of employment.

It is therefore necessary in each instance to first identify the policy, rule, procedure, practice, law, regulation or condition of employment that was not complied with.

- This disciplinary code and procedure is applicable to all employees.
- This procedure does not make provision for action in the case of strikes. Striking employees must be treated in accordance with the prescribed procedure applicable to strikes.
- This procedure does not make provision for collective misconduct for example where a group of employees jointly refuse to carry out legitimate instructions.
- Discipline against a recognized shop steward or an employee who is an office bearer or official of a trade union should not be instituted without first informing and consulting the trade union.

1.4 Responsibility

The Chief Executive Officer of the Company is responsible for discipline in the Company. As in most matters, it is impossible for the Chief Executive Officer to attend to all disciplinary matters and therefore it is delegated to the various managers.

Each manager is responsible for the discipline of direct subordinates, and like the Chief Executive Officer, could delegate this responsibility, provided that the responsible person's position in the Company shall always be higher than that of the person to be disciplined.

The Company may designate any manager to deal with the matter.

Only a person, who has the authority to appoint personnel, can give the final approval to dismiss a person.

2. STRUCTURE

2.1 Employees' Code of Conduct

Every employee is expected to:

- execute duties and assignments conscientiously, diligently, with dedication and to behave in a proper manner towards the Company, clients, fellow employees and the public;
- comply with the Company's policies, rules, procedures, established practices, any law, regulations or any conditions of employment;
- perform work in accordance with reasonable and acceptable standards;
- always act in good faith and in the best interests of the Company.

2.2 Employer's Conduct

The maintenance of discipline is the responsibility and prerogative of management and the following must be borne in mind when conducting a disciplinary inquiry:

2.2.1 Corrective action

In the enforcement of discipline the emphasis must rather be placed on guidance and correcting behaviour than on the imposition of punishment, but where necessary, punishment may also be used as a legitimate deterrent tool in the maintenance of discipline.

2.2.2 Uniformity/Consistency

Discipline must be enforced uniformly and consistently throughout the Company.

One of the potential manners in which management could undermine discipline is to take disciplinary steps against some employees while others are allowed to break rules with impunity.

2.2.3 Fairness

Disciplinary action must always be both procedurally and substantively fair.

With regard to procedural fairness, this disciplinary code and procedure must be followed as far as is reasonably possible and practicable.

With regard to substantive fairness, a fair and valid reason for disciplinary action must always exist and must be just and equitable, taking into consideration inter alia the circumstances of the specific offence, as well as the circumstances of the employee concerned.

2.2.4 Balance between uniformity and fairness

The maintenance of a healthy balance between uniformity and fairness must always be pursued.

When disciplinary action is considered, an attempt must always be made to treat the employee concerned fairly but without impairing uniformity.

2.2.5 Time lapse between the committing of an offence and the holding of a disciplinary inquiry

The disciplinary inquiry must be held as soon as possible after an offence has been committed and the employee must be allowed a reasonable period of time to prepare a case and, should the employee so choose, to arrange to be assisted by a representative of the employee's choice in terms of paragraph 2.2.10. As a general rule two (2) working days notice will be regarded as a reasonable period.

2.2.6 Inquiry before dismissal

No employee shall, irrespective of the seriousness of his offence, be dismissed before a disciplinary inquiry has been held in terms of this disciplinary code and procedure, unless the employee clearly waives his/her rights to a disciplinary inquiry.

2.2.7 Notification of a disciplinary inquiry

The employee must be notified in writing of a disciplinary inquiry.

The notice form must indicate the alleged transgression, the date and time of the inquiry as well as the place where it will be held.

The employee shall within 24 (twenty four) hours of receipt of notice of a disciplinary inquiry, request the language in which the disciplinary inquiry shall be conducted. If such request is not received, the disciplinary inquiry shall be conducted in the languages mostly used by the Company.

2.2.8 Follow-up interviews

Follow-up interviews, (if applicable) with employees who have acted contrary to and was disciplined in terms of this disciplinary code and procedure, must be aimed at rehabilitation and guidance in order to reinforce the effect of the corrective steps taken.

2.2.9 Availability of the disciplinary procedure

A copy of this disciplinary code and procedure must be made available for perusal at the Human Resources Department or the Administrative Office.

2.2.10 Right of representation

Every employee has the right to be represented by one of the following persons should the employee so choose:

- The employee's representative, who may not be a lawyer or a person who is not employed by the Company;
- The employee's recognised shop steward;
- The employee's recognised full-time trade union official;
- A fellow-worker of the employee's choice.

A manager may not act as a representative for his subordinates.

2.3 Right to be heard

2.3.1 Right to lead evidence

The Company and the employee have the right to lead evidence relating to the charge.

2.3.2 Right to produce witnesses

The Company has the right to call witnesses against the employee and the employee is also entitled to call witnesses.

2.3.3 Right of cross-examination

The employee and the employee's representative have the right to be present when witnesses are heard and to question witnesses on relevant matters.

2.3.4 Appeal

Any employee may appeal to the next, higher line authority against any disciplinary measures imposed on the employee.

2.3.5 Trial in absentia

If the employee is in prison or if the employee fails or refuses to attend the disciplinary inquiry, the inquiry may continue without the employee being present and this fact must be recorded and signed by the chairperson.

2.4 Suspension with pay pending disciplinary inquiry

2.4.1 Introduction

The responsible manager has the right to suspend an employee with full pay, pending the arrangement and completion of a disciplinary inquiry.

Should a manager decide to suspend an employee, the manager's direct superior must be advised prior to the action being executed. The latter must approve the decision to suspend.

The suspension of an employee's service must be limited to specific circumstances. The following guidelines must be applied:

- When an employee is suspected of having committed an act of such a nature that the employee cannot be allowed to continue service; and/or
- The possibility of the employee interfering with the investigation, destroying evidence or intimidating witnesses or aggravating a sensitive situation (i.e. assault) or causing disruption at the work place. This type of transgression includes, but is not limited to, fraud, theft, victimisation, sexual harassment and illegal possession of the Company's property.

2.4.2 Procedure

- The employee must be informed of the suspension decision, as well as the reasons therefore.
- The employee must be given a Notice of Suspension indicating the preliminary alleged transgression(s).
- The manager must make the necessary arrangements with the employee as to where the employee can be contacted at all times.

2.4.3 Sending an employee home and docking the employee's remuneration

An employee who reports for work in an unfit state or condition may be sent home and the remuneration for the day shall be forfeited.

The following are some applicable examples:

- Being under the influence of drugs or intoxicating liquor
- Sleeping on duty

If the employee is subsequently found to be innocent, the forfeited remuneration must be repaid.

2.5 Progressive application of disciplinary sanction

Disciplinary sanctions will normally be applied progressively, but, depending on the circumstances of the employee, the nature of the job, the seriousness, nature and circumstances of a specific offence, even a first offence may result in dismissal.

2.5.1 Reprimands

Reprimands are normally given for minor offences that are not included in the Disciplinary Code.

These reprimands are issued on the spot and a record of reprimands must be kept in a register.

Where a pattern of minor offences is established, disciplinary action may be instituted.

A reprimand shall remain valid for a period of 3 (three) months, where after it must be removed from the register.

In the event of an employee refusing to accept a reprimand, a disciplinary inquiry may be held.

Any disciplinary action resulting from the disciplinary inquiry is to be recorded in the offender's personal file.

2.5.2 Written warning

A written warning informs an employee that his or her conduct is unacceptable to management and that a further similar offence may result in more stringent disciplinary action, including dismissal.

2.5.3 Final written warning

A final written warning informs an employee that a further similar offence will, in all probability, result in the employee's dismissal.

2.5.4 Demotion

All cases of demotion or suspension without pay must be ratified by the Human Resources Manager.

Demotion is a disciplinary step by means of which an employee is removed from the present post and assigned to an available post with a lower grading and reduced responsibility as well as an accompanying decreased salary or wage.

Demotion may only be imposed if a serious offence warrants dismissal but management wishes to extenuate the punishment, because for example, the person concerned has been in the employ of the Company for a long time and has been a good employee in other respects.

Take note however that the examples of extenuating grounds given above may not always be sufficient or appropriate. The following guiding principles are applicable:

- The employee must accept in writing demotion as a reduced punishment in stead of dismissal.
- If the employee refuses to accept demotion, he or she must be dismissed.
- Demotion will remain in force indefinitely, but in any event for at least 6 (six) months.
- Depending on the merit of the employee, management may reconsider the case after 6 (six) months, if a suitable vacancy is available at that stage.

2.5.5 Suspension without pay

Any case of suspension without pay must be ratified by the Human Resources Manager. Suspension without pay may only be imposed if a serious offence warrants dismissal but management wishes to extenuate the punishment. The following guiding principles are applicable:

- The employee must accept suspension in writing as a reduced punishment in stead of dismissal.
- If the employee refuses to accept suspension, the employee must be dismissed.
- Suspension must be carried into effect as soon as possible after an offence has been committed.
- Employees may not be suspended on off days, paid holidays or any other non-working days.

As a guideline it should be borne in mind that an employee should not, except in exceptional cases, be suspended for more than ten (10) working days.

2.5.6 Dismissal

Depending on the circumstances of the employee, the nature of the job, the seriousness, nature and circumstances of a particular offence, a first offence can result in a dismissal.

The Human Resources Manager must be notified of all cases of dismissal.

2.5.7 Previous Offences

Only relevant disciplinary records in the employee's personal file, will be taken into account when disciplinary sanction determined.

A record of any disciplinary action taken against an employee shall remain valid for a period of six (6) months. Only offences committed within the previous six (6) months may be taken into consideration when disciplinary sanction for a further similar offence is determined.

3. PROCEDURE FOR CONDUCTING A DISCIPLINARY INQUIRY

3.1 Establishing whether a disciplinary transgression may have been committed

The Company representative, or in the absence of such person, the supervisor of the employee must in all cases, establish whether the employee may have transgressed any policy; rule; procedure; established practice; law; regulation; condition of employment; and/or any standard regulating conduct in or of relevance at the workplace.

3.2 Formulating a charge

The person/s referred to in paragraph 3.1 must, with the aid of a personnel functionary, formulate the alleged transgression in terms of this disciplinary code and procedure.

3.3 Notifying the employee of a disciplinary inquiry

The notice form (notification of disciplinary inquiry) must be fully completed and handed to the employee within a reasonable period before the inquiry takes place. A minimum of two working days is recommended as a reasonable period.

The notice form must be completed in duplicate and, after it has been signed by the employee as an acknowledgement of receipt, the duplicate must be placed in safekeeping. Refusal by the employee to sign such notice shall not constitute defective service thereof.

The employee must also where practicable, be verbally notified by the employee's direct superior. If necessary, the information must be made clear in the official language preferred by the employee, through an interpreter.

The following must be conveyed to the employee:

- the alleged transgression to be investigated;
- the date; time; and place of the inquiry;
- that the employee may use a representative as defined in paragraph 2.2.10 above; and
- that the employee is responsible to ensure that the employee's witnesses are present at the inquiry. If necessary, the manager must assist the employee in obtaining witnesses from other sections or divisions and in making arrangements for transporting the witnesses to the venue of the inquiry.

3.4 Persons who must be present at an inquiry

The following persons must be present at an inquiry:

- the manager designated by the Company as chairperson;
- the Human Resources Manager or his delegated personnel functionary, if required by the chairperson;
- the employee's representative, if the employee wishes to have one;
- the employee who allegedly committed the offence;
- an interpreter, if necessary;
- the Company representative, if applicable;
- co-opted persons to assist the chairperson, if required; and
- any witnesses, including the complainant.

3.5 Course of the disciplinary inquiry

3.5.1 Obtaining information

The chairperson must:

- if the employee does not wish to have a representative, record this fact;
- inform the employee of the alleged transgression and record that fact;
- ask the employee whether the employee understands the charge;
- ask the employee to plea to the charge and record the employee's response
- advise the employee or where applicable, request the Company representative to advise the employee of the evidence against the employee;
- if there were witnesses and their evidence is necessary and available, individually call such witnesses to give evidence;

- afford the employee or the employee's representative an opportunity to cross-examine any witnesses;
- afford the Company representative and/or complainant an opportunity to re-examine their witnesses;
- request witnesses to leave the room after completing their testimonies;
- afford the employee an opportunity to give evidence, by requesting the employee to describe the chain of events relating to the transgression and to furnish reasons for the employee's behaviour;
- if the employee has any witnesses, call such witnesses individually to give evidence and allow the cross-examination by the Company representative and/or the complainant;
- afford the employee the opportunity to re-examine the employee's witnesses;
- ask questions as the chairperson in clarification to all witnesses, including the complainant and the employee;
- summarise the evidence given by every person before that person is excused;
- allow the Company representative and/or complainant, as the case may be, to express an opinion on what decision the chairperson should take and the reasons therefore; and
- allow the employee or the employee's representative to express an opinion on what decision the chairperson should take and the reasons therefore.

3.5.2 Coming to a decision

The chairperson must decide whether the employee has transgressed this disciplinary code and procedure. The chairperson must announce the decision and the reasons for it, to the employee and the employee's representative if any.

If there is any doubt, the chairperson may adjourn and postpone the inquiry to obtain the necessary information or to have an opportunity to consider the matter.

The chairperson must convey the decision to the employee and the employee's representative if any, as soon as possible

3.5.3 Determination of disciplinary sanction

The personnel functionary must ensure that the employee's disciplinary record is available at the disciplinary inquiry prior to the determination of the appropriate sanction.

When making a decision on the appropriateness of a disciplinary sanction the following factors must be considered:

- the seriousness of the transgression;
- the circumstances under which the transgression was committed;
- the nature of the job;
- whether the employee is or should have been aware of the fact that the conduct was unacceptable;
- the number and nature of previous transgressions committed by the employee during the preceding six (6) months (for purposes of determining the progressive disciplinary sanction, relevant previous transgressions must be taken into account);
- the employee's service record;
- how similar transgressions were treated in the past;
- whether there are extenuating or aggravating circumstances; and
- the influence that the disciplinary action may have on other employees.

When deemed appropriate by the chairperson or on application by the employee, witnesses may also be called at this stage of the proceedings to testify on matters relevant to the determination of the disciplinary sanction.

When contemplating a dismissal after due consideration of these factors, the chairperson must be satisfied that dismissal is appropriate in the circumstances.

3.5.4 Advising the employee of the finding

The chairperson must inform the employee and the employee's representative if any, of the following:

- the finding and the reasons therefore;
- the disciplinary sanction/s that will be taken or, if applicable, recommended for ratification.

If there is doubt about the disciplinary sanctions that should be applied, the chairperson may reserve the decision until a later date.

3.5.5 Completing a disciplinary report form

The personnel functionary and/or the chairperson is responsible for the proper completion of the disciplinary report, including the summary, in which the following information is to be furnished:

- The names of the persons present at the inquiry.
- The approximate date on and time at which the transgression(s) was/were committed.
- The employee's rights that were explained to the employee.
- The exact chain of events.
- The employee's defense.
- The evidence given by witnesses, if applicable.
- The representations by the employee and/or the employee's representative.
- The disciplinary steps taken or recommended.
- The comment of the employee thereon, if any.
- The rights to appeal or to refer the matter to the CCMA were explained to the employee.

3.5.6 Signing of the disciplinary report form

- The chairperson must read the disciplinary report to the employee and request the employee's signature thereof as evidence that the employee has taken cognizance of the decision.
- It is not compulsory for the employee to sign the document. Refusal by the employee to sign the document will have no influence on the implementation of disciplinary measures.
- If the employee or the employee's representative (if any), refuse to sign the form, the chairperson must note the fact, and that they have been advised of the decision. The chairperson must sign this entry.

- In cases where suspension without pay or demotion is involved, the employee is under an obligation to sign the form thereby indicating or confirming the employee's election to accept suspension without pay or demotion (as the case may be) in stead of dismissal. Failure by the employee to do so, will result in the Company processing the dismissal. The employee must be advised however, that written acceptance of suspension without pay or demotion (as the case may be), does not constitute a waiving of the right to appeal and/or to refer the dispute to the CCMA in terms of Section 186(2) of the 1995 Labour Relations Act (as may be amended).
- If applicable in terms of the delegated approval authority, the personnel functionary must submit the report to the person(s) concerned for recommendation/approval of the disciplinary action taken.
- All warnings and other disciplinary action will be in writing and kept in the employee's file. Warnings issued more than 12 (twelve) months prior to the incident shall not be considered for disciplinary purposes, except where a pattern of continued bad discipline has developed.

3.5.7 Arranging a follow-up interview (if applicable)

The chairperson may, if necessary, come to an agreement with the employee on the standards that have to be reached and the steps, which have to be taken to reach these standards. The chairperson may also arrange a follow-up interview during which an attempt will be made to smooth over problems that may still exist.

4. RIGHT TO APPEAL

An employee has the right to appeal against the procedural or substantive fairness of any disciplinary measure taken by a chairperson.

5. APPEAL PROCEDURE

5.1 Purpose

The purpose of appeal is to afford the employee an opportunity to have the case heard by the next higher line authority against any disciplinary measures taken against the employee.

5.2 Delegation of authority

The Chairperson of the Appeal can be a Manager of equal status or higher than the Chairperson of the Disciplinary Inquiry and does not have to be in the same Department as the Chairperson of the Disciplinary Inquiry.

5.3 Appeal procedure

If an employee or employee representative indicates, before any disciplinary measure has been implemented, that the employee intends to appeal, the disciplinary measure must, pending the outcome of the case of appeal, not be implemented.

5.3.1 Step 1

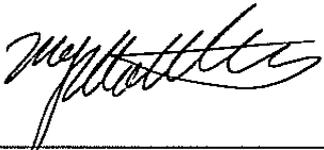
- a) If an employee is dissatisfied with the decision of the chairperson of the disciplinary inquiry, the employee and/or the employee's representative must complete a notice to appeal in writing. The reason for appealing, motivation thereof as well as any additional information relevant to the case, must be noted on the notice to appeal.
- b) The notice to appeal form must be handed in at the Human Resources Department within four (4) working days after the finalization of the disciplinary inquiry. The personnel functionary must acknowledge receipt of the notice to appeal.
- c) The personnel functionary must submit the notice to appeal along with the disciplinary report and other relevant documents that served in the disciplinary inquiry to a next, higher line authority for further consideration. Thereafter step 2 will come into force.

5.3.2 Step 2

- a) After consideration of the relevant documents, the appeal chairperson must decide whether the case warrants a complete rehearing; partial rehearing; or no rehearing.
- b) If the appeal chairperson decides that the case does not warrant a rehearing, the appellant and appellant's representative (if any) must be advised of the chairperson's decision to uphold or dismiss the appeal together with reasons as soon as possible. The chairperson must note the decision on the notice to appeal form, sign the form and forward the relevant documents to the Human Resources Department for filing.
- c) If the appeal chairperson decides that a complete or partial rehearing must indeed be held, the chairperson must arrange such rehearing as soon as possible.
- d) The rehearing must be attended by the appeal chairperson, the Human Resources Manager or delegate (if required by such chairperson), the complainant, Company representative, the employee and employee's representative (if any) an interpreter if necessary, co-opted persons and any relevant witnesses if required. Unless the chairperson of the disciplinary inquiry is the complainant at the appeal inquiry, he/she may not be involved in any capacity other than merely as a witness in the appeal rehearing. As in the case of any other witness the chairperson of the initial disciplinary hearing may also not be present when the disciplinary measures are deliberated.
- e) Should there be any procedural incorrectness the manager dealing with the appeal could rectify that in the manner deemed fair.
- f) The appeal chairperson must, in accordance with the prescribed rules as contained in paragraph 3 of the disciplinary code and procedure (*mutatis mutandis*), conduct a thorough inquiry and, *inter alia*, hear relevant evidence concerning matters relating to the appeal.
- g) After hearing the appeal, the appeal chairperson must advise the employee and employee's representative (if any) of the appeal decision and the reason for it. The appeal chairperson must also record this decision on the notice to appeal form and sign it. It is advisable that the employee and employee representative (if any) also sign the notice to appeal as proof that cognizance has been taken of the decision.
- h) The relevant documents must be sent to the Human Resources Department for filing.
- i) The decision of the appeal chairperson is final and no further appeal within the Company will be granted. The decision of the appeal chairperson shall be implemented retrospectively to the decision date of the disciplinary enquiry.
- j) The employee must be informed of the right to refer the matter to the CCMA in the event of the appeal not being entirely upheld.

6. APPROVAL

This policy is approved by the Head of Human Resources

	NAME	TITLE	SIGNATURE
Recommended for approval	M. MATTHEE	HEAD OF INDUSTRIAL RELATIONS AND PROJECTS	
Approved	N MEIRING	ACTING HEAD OF HUMAN RESOURCES	