

DISCIPLINARY CODE AND PROCEDURES FOR THE PUBLIC SERVICE

1. PURPOSE AND SCOPE

The purpose of this Code and Procedures is:

- 1.1. to support constructive labour relations in the public service;
- 1.2. to promote mutual respect between employees and between employees and employer;..
- 1.3. to ensure that managers and employees share a common understanding of misconduct;
- 1.4. to promote acceptable conduct **in terms of the Code of Conduct as outlined in Part 1 and 2 of chapter 2 of the Public Service Regulations, 2016, and PSCBC Resolution 1 of 2013 (the Public Service Charter)**;
- 1.5. to provide employees and the employer with a **procedure** on the application of discipline;
- 1.6. to avert and correct unacceptable conduct; and
- 1.7. to prevent arbitrary or discriminatory actions by managers towards employees.

2. PRINCIPLES

The following principles inform the Code and Procedure and must inform any decision to discipline and employee:

- 2.1. Discipline is a corrective measure and not a punitive one.
- 2.2. Discipline must be applied in a prompt¹, fair, consistent and progressive manner.
- 2.3. Discipline is the function and **responsibility of supervisor and line manager**.
- 2.4. A disciplinary code is necessary for the efficient delivery of service and the fair treatment of public servants, and ensures that employees:
 - a. have a fair hearing in a formal or informal setting.
 - b. are timeously informed of allegations of misconduct made against them; and
 - c. receive written **outcome** and reasons for a decision taken; and
 - d. have the right to appeal against any decision.

¹ Without unjustified delays.

- 2.5. The disciplinary procedures shall be held at the place of work, **physical or on virtual platform² or written submissions** and the process must be understandable to all employees.
- 2.6. If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- 2.7. Disciplinary proceedings do not replace or seek to imitate court proceedings.
- 2.8. The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provision of the framework.

3. SCOPE OF APPLICATION

This Code and Procedure apply to the employer and all employees falling within the registered scope of the Public Service Co-ordinating Bargaining Council. It does not, however, apply to the employer and employees covered by a disciplinary code and procedure,

- 3.1. Concluded by a sectoral council and approved by the PSCBC to ensure uniformity of procedures across the public service, or
- 3.2. Contained in legislation or regulations.

4. CODES, RULES AND STANDARDS

- 4.1. The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, in so far as it relates to discipline, constitutes part of this Code and Procedure.
- 4.2. Employee conduct that may warrant a disciplinary action is listed in Annexure A. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or ought to have known, that the conduct constitutes grounds for disciplinary action.

² The tools required for virtual connectivity must be provided by the employer.

- 4.3. In applying **Annexure A**, management must assess the seriousness of the alleged misconduct by considering:
- a. The actual or potential impact of the alleged misconduct on the work of the public service, the employee's component and colleagues, and the public;
 - b. The nature of the employee's work and responsibilities; and
 - c. The circumstances in which the alleged misconduct took place.

5. PROCEDURES: DISCIPLINARY ACTIONS

For less serious misconduct, no formal enquiry shall be held, and the process must be finalised within 90 working days of the allegations reported to the employer.

- 5.1. Corrective counselling. In cases where the seriousness of the misconduct warrants counselling, the **supervisor or line manager** of the employee must:
- a. bring the misconduct to the employee's attention;
 - b. determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
 - c. **discuss the impact of the misconduct with the employee and where necessary, issue any progressive sanction; and**
 - d. **Implement the sanction.**
- 5.2. Verbal warnings. In cases where the seriousness of misconduct warrants a verbal warning, the **supervisor or line manager** of the employee may give a verbal warning. The **supervisor or line manager** must inform the employee that further misconduct may result in more serious disciplinary action and record the warning. **The verbal warning is valid for three months.**
- 5.3. Written warnings. In cases where the seriousness of the misconduct warrants a written warning, the **supervisor or line manager** may give the employee a written warning. The following provisions apply to written warnings:
- a. the written warning may use the form of **Annexure B**.
 - b. the supervisor or line manager must give a copy of the written warning to the employee who must sign for receipt. If the employee refuses to sign the receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the written warning was conveyed to the employee.

- c. The written warning must be filed in the employee's personal file and **recorded on the PERSAL system.**
- d. A written warning remains valid for six months.
- e. If during the six-months period, the employee is subject to disciplinary action on the same or related offence, the written warning may be taken into account in deciding an appropriate sanction.

5.4. Final written warnings. In cases where the seriousness of misconduct warrants a final written warning, the manager may give the employee a final written warning, the manager may give the employee a final written warning. The following provisions apply to final written warnings:

- a. The final written warning may use the form of **Annexure C.**
- b. The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the final written warning was conveyed to the employee.
- c. The final written warning must be filed in the employee's personal file **and recorded on the PERSAL system.**
- d. A final written warning is valid for **nine months.**
- e. If during the **nine-months** period, the employee is subject to disciplinary action on the same or related offence, the final written warning may be considered in deciding on an appropriate sanction.

5.5. To determine appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

6. SERIOUS MISCONDUCT

If the misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer may initiate a disciplinary enquiry. The employer must appoint an employee **from the public administration** as a representative, to initiate the enquiry.

7. DISCIPLINARY ENQUIRY

The hearing must be concluded within 90 working days of allegations reported to the employer. The Chairperson of the hearing may extend the period by postponement to a fixed date(s).

7.1 Notice of enquiry

- a. The employee must be given notice at least five working days before the date of the hearing.
- b. The employee must acknowledge receipt of the notice in writing or **electronically**. If the employee refuses to sign receipt of the notice, it must be served to the employee in the presence of a fellow employee who shall sign confirmation that the notice was conveyed to the employee. **In case of electronic methods, documents shall be served by electronic mail.**
- c. the written notice of the disciplinary meeting must use the form of Annexure D, and provide:
 - i. a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - ii. details of the time, place and venue (**or virtual platform**) of the hearing.
 - iii. information on the rights of the employee to be represented by a fellow employee or a representative or official of a recognized trade union, to bring witnesses to the hearing.
- d. **Should it be impractical to hold a hearing physical or virtual, the employer may dispense the process on written submissions. In this case:**
 - (i). **the employer must notify the employee of the allegations using a form and language that the employee can reasonably understand;**
 - (ii). **the employee should be allowed the opportunity to state a case in response to the allegations; and**
 - (iii). **the employee should be afforded 10 working days to submit representations.**

Based on submissions, the employer may decide on appropriate sanction(s) and furnish the employee with written notification of the decision and reasons thereof.

7.2. Precautionary suspension

- a. The employer may suspend an employee on full pay or transfer the employee if:
 - i. The employee is alleged to have committed serious misconduct; and

- ii. The employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct; or
 - iii. The presence of the employee at the workplace might endanger the wellbeing or safety of any person or state property; or
 - iv. **The continued presence of an employee at the workplace is disruptive or has a potential to negatively affect operations.**
- b. A suspension of this kind is a precautionary measure that does not constitute a judgment and must be on full pay.
 - c. If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within 60 working days, depending on the complexity of the matter and the length of the investigation, the chair of the hearing **may extend the suspension period by thirty working days. The chair of the hearing may extend the precautionary suspension or transfer period by thirty working days, or extend to a fixed date(s).**
 - d. **If at the end of the 60 working day period or the extended 30 working days, the employer has not initiated or started a hearing, the suspension or transfer lapses.**

7.3. Conducting the disciplinary hearing

- a. The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 7.1(a) is delivered to the employee.
- b. (i) The chair of the hearing must be appointed by the employer and **be an employee within the public administration.**
 (ii) **Before the commencement of the hearing, the employer representative and the employee or his/her representative may bargain a plea and sanction, should they reach an agreement, it must be presented to the chairperson for endorsement. Should parties not reach consensus, the hearing must be convened.**
- c. The employer and employee charged with misconduct may agree that the disciplinary hearing will **be held in terms of section 188A of the Labour Relations Act 66 of 1995 (LRA)**. The decision of the arbitrator will be final and binding and only open to review in terms of section 145 of the LRA. the *Labour Relations Act, 1995*. The employer will be responsible to pay the costs of the arbitrator.

- d. If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognised trade union.
- e. If necessary, an interpreter may attend the hearing.
- f. In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –
 - (i) the employee is a legal practitioner³ or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or
 - (ii) the disciplinary hearing is conducted in terms of paragraph 7.3(c).
 - (iii) The case is complex and requires special skills; or
 - (iv) The case has potential serious consequences of an adverse finding; or
 - (v) There is no prejudice suffered by either party in granting legal representation.

Should either party require the services of a legal practitioner, an application must be brought to the Chairperson to consider the application and issue a ruling.

- g. If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.
- h. The chair must keep a record of the notice of the disciplinary hearing and record the proceedings of the meeting.
- i. The **initiator** must read the notice for the record and start the hearing.
- j. The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witnesses introduced by the representative of the employer.
- k. The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.
- l. The chair may ask any witnesses questions for clarification.
- m. If the chair decides the employee has committed misconduct, the chair must inform the **employer and** employee of **the findings**.
- n. Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.

³ Public servants admitted as attorneys or advocates are not in practice and therefore not legal practitioners.

- o. The chair must communicate the outcome of the hearing to the **employer and** employee within **ten** working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file and PERSAL system.

7.4. Sanctions

- a. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within a period referred to in clause 7.3.o), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:
 - i. counselling;
 - ii. a written warning valid for six months;
 - iii. a final written warning valid for **nine** months;
 - iv. demotion to **one salary level below**;
 - v. **reimbursement of costs incurred to the State**;
 - vi. a combination of the above; or
 - vii. dismissal.
- b. If an employee is demoted, she/he may only, after a year, apply for promotion to a higher advertised post without prejudice.
- c. The employer shall not implement the sanction during an appeal by the employee.

8. Appeal

- 8.1. An employee may appeal a finding or sanction by complementing Annexure E.
- 8.2. The employee must, within five working days of receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to her or his executing authority, or to her or his **supervisor or line manager**, who shall then forward it to the appeal authority.
- 8.3. The appeal authority may, on good cause shown, condone the late lodging of an appeal.
- 8.4. The appeal authority, shall consider the appeal, shall be:
 - a. The executing authority of the employee, or
 - b. An employee or **committee** appointed by the executing authority, who
 - i. was not involved in the decision to institute the disciplinary proceeding, and
 - ii. who has a higher grade than the chair of the hearing.
- 8.5. If the person referred to in paragraph 8.4 requires a hearing, she or he shall notify the **employer and** employee of the date and place **or platform of the hearing**.

- 8.6. The appeal authority may;
- a. Uphold the appeal, and /or
 - b. Reduce the sanction to any lesser sanction allowed in terms of clause 7.4(a) of the Code, or
 - c. Confirm the outcome of the disciplinary proceeding.
- 8.7. The employer shall immediately implement the decision of the appeal authority. Where the appeal authority decides to reduce the sanction or to confirm the outcome of the disciplinary proceedings (eg. dismissal cases), the sanction will be implemented by the employer from the current date.
- 8.8. Departments must finalise appeal within 30 days, failing which, in cases where the employee is on precautionary suspension, he or she must resume duties immediately and await the outcome of appeal while on duty.

Note: the employee retains the right to utilise dispute resolution mechanisms provided for by the Labour Relations Act.

DEFINITIONS

'Employee' means a person contemplated in section 8 of the Public Service Act.

'Fellow employee' means an employee from the same office/institution than the employee charged with misconduct, except full-time shop stewards.

'Legal practitioner' is a person who is admitted to practice as an advocate or an attorney in terms of the Legal Practice Rules and is in private practice.

'Recognised trade union' means all the unions admitted to the PSCBC as well as any other union that enjoys organizational rights from a particular department (the latter union is recognised for the particular department only).