

SECTION HR 02

AMAHLATHI
MUNICIPALITY

DISCIPLINARY
POLICY
AND
PROCEDURE

SECTION HR 02

DISCIPLINARY POLICY AND PROCEDURE

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SECTION HR 02

DISCIPLINARY POLICY AND PROCEDURE

Preamble

Disciplinary Code Agreement entered into by and between the South African Local Government Association and South African Municipal Workers Union and Independent Municipal and Allied Trade Union dated 26 March 2003 and which came into operation on 1 July 2003.

1. Intent and Purpose

- 1.1 The purpose of this Code is to establish a common and uniform procedure for the management of discipline and to replace all existing procedures and regulations.
- 1.2 The Code is a product of collective bargaining and the application thereof is peremptory.
- 1.3 The Code shall be deemed to be a condition of service.

2. Application

- 2.1 The Code shall apply to all employers and employees falling within the scope of the South African Local Government Bargaining Council.

3. Disciplinary Policy

- 3.1 Discipline is to be effected fairly, consistently, progressively and promptly.
- 3.2 The maintenance of discipline is the responsibility of management and falls within the control function of any supervisory position.
- 3.3 The principles of natural justice and fair procedure must be adhered to notwithstanding any criminal and/or civil action having been instituted.
- 3.4 Subject to the requirements of substantive and procedural fairness, the Tribunal has the right to determine the sanction to be applied, having regard to the seriousness of the offence, provided it is consistent with the provisions set out herein.

- 3.5 This Code, as amended from time to time, will define the disciplinary process and the rights and obligations of management and employees.

4. Standard of Conduct

- 4.1 Employees are expected to comply in every respect with the conditions of employment and collective agreements and any related regulation, order, policy and practice and to refrain from any conduct which would give just cause for discipline.
- 4.2 In particular, employee should:
- 4.2.1 Attend work regularly and punctually;
 - 4.2.2 Conform to the reasonable dress and uniform requirements of the employer;
 - 4.2.3 Perform their tasks and job responsibilities diligently, carefully and to the best of their ability;
 - 4.2.4 Obey all lawful and reasonable instructions given by a person having the authority to do so;
 - 4.2.5 Conduct themselves with honesty and integrity;
 - 4.2.6 Request permission in advance for any leave of absence whenever possible;
 - 4.2.7 Refrain from being absent from duty without leave or permission except on good cause;
 - 4.2.8 Refrain from accepting any other employment outside of normal working hours without prior permission of the Department Head or Municipal Manager, which permission shall not be unreasonably withheld;
 - 4.2.9 Refrain from any rude, abusive, insolent, provocative, intimidatory or aggressive behaviour to a superior, fellow employee or member of the public;
 - 4.2.10 Refrain from wilful or negligent behaviour, which may result in the damage of property;
 - 4.2.11 Refrain from participating, either individually or collectively, in any form of action, which will have the effect of disrupting the

operations of the employer, other than the actions contemplated by the Labour Relations Act;

4.2.12 Refrain from wrongfully disclosing privileged information; and

4.2.13 Refrain from consuming alcohol or using intoxicating drugs whilst on duty.

5. Sanctions for Misconduct

5.1 In accordance with the Disciplinary Policy any sanction that is imposed for misconduct will be intended to deter future repetition of that behaviour. The sanction imposed must be based on the seriousness of the offence and considering the employee's disciplinary record.

5.2 The imposition of discipline is progressive in that sanctions are to be applied with increasing severity with repetition of the offence. Except in cases of misconduct which would constitute grounds for immediate dismissal or suspension without pay or the immediate imposition of a final written warning, sanctions will generally be applied in the following sequence:

Written Warning Final Written Warning

5.3 All written warnings and suspensions are to be recorded in the employee's personal file.

5.4 A written warning remains valid and on the record of the employee for a period of six (6) months from the date of imposition.

5.5 The employer may impose as a sanction a suspension without pay having regard either to the serious nature of the misconduct or the fact that there has been a previous warning(s) for the same behaviour in which event:

5.5.1 the maximum period will be ten (10) days;

5.5.2 the period of suspension will run consecutively;

5.5.3 in the event of a suspension in excess of five (5) days, the suspension without pay shall be spread over three (3) monthly pay periods;

- 5.5.4 a suspension without pay shall be regarded as a sanction more serious than a final written warning.
- 5.6 As a guideline, an employee may be dismissed on the first occasion for inter alia:
 - 5.6.1 Intimidation, fighting and/or assault;
 - 5.6.2 Theft, unauthorised possession of or malicious damage to the employer's property;
 - 5.6.3 Being under the influence of alcohol or intoxicating drugs whilst on duty such that performance is seriously impaired or diminished;
 - 5.6.4 The consumption of alcohol or intoxicating drugs whilst on duty if the nature of work to be performed is such that intoxication endangers the safety of the employee or that of others;
 - 5.6.5 Any act of gross dishonesty;
 - 5.6.6 Any act of gross negligence;
 - 5.6.7 Gross insubordination;
 - 5.6.8 Wrongful disclosure of privileged information;
 - 5.6.9 Any act of bribery or corruption; and
 - 5.6.10 Any other act of misconduct which would constitute just cause for dismissal.

6. Discipline Procedure

- 6.1 An accusation of misconduct against an employee shall be brought in writing before the Municipal Manager or his authorised representative for investigation. If the Municipal Manager or his representative is satisfied that there is *prima facie* cause to believe an act of misconduct has been committed, he may institute disciplinary proceedings. The employer shall proceed forthwith or as soon as is reasonable possible with a disciplinary enquiry.
- 6.2 Depending on the seriousness of the misconduct, the Municipal Manager or his representative may refer the matter before either a Departmental Enquiry or Disciplinary Tribunal. A Departmental

Enquiry proceeding shall be reserved only for matters where the sanction is a verbal or final written warning. In proceedings before a Departmental Enquiry the employee shall enjoy the same rights as he would have had before a Disciplinary Tribunal.

- 6.3 If in the opinion of the Municipal Manager or his representative the misconduct is serious and may result in a sanction of suspension, demotion or dismissal, a Disciplinary Tribunal shall be established to conduct the enquiry.
- 6.4 In which event:
 - 6.4.1 The Municipal Manager or his authorised representative shall constitute a Disciplinary Tribunal by appointing a suitably qualified person to serve as the Presiding Officer. In general, a person appointed to serve as the Presiding Officer should be a senior employee of the employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.
 - 6.4.2 6.4.2 The Municipal Manager or his authorised representative shall also appoint a person to be referred to as the Prosecutor to represent the employer and to serve the function of prosecution. In general a person appointed to serve as Prosecutor should be a person in the employ of the employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.
- 6.5 The Prosecutor shall, within five (5) days of his appointment, formulate and present the charges to be brought against the employee. The charge(s) is (are) to be set out in a Notice of Misconduct detailing:
 - 6.5.1 the alleged misconduct;
 - 6.5.2 the time, date and venue at which the enquiry will be conducted;
 - 6.5.3 the name of the Presiding Officer and the Prosecutor and the address at which notices and correspondence may be served on the Disciplinary Tribunal;
 - 6.5.4 the fact that the employee may appoint a representative of choice who may be a fellow employee, shop steward, union official and if this is not possible or desirable, any suitably qualified person; and

- 6.5.5 the fact that if the employee or his representative fails to attend the enquiry it may be conducted in *absentia*.
- 6.6 The employee should, whenever possible, acknowledge receipt of the notice.
- 6.7 The disciplinary enquiry should commence on a date not less than five (5) days or more than fifteen (15) days calculated from the date of service of the Notice of Misconduct on the employee.
- 6.8 The period referred to in 6.7 above may be varied by agreement and failing agreement either party may apply to the Disciplinary Tribunal for an extension of the period.
- 6.9 The Disciplinary Tribunal, on good cause shown, may extend any period of time fixed by order under this clause provided a return date is fixed and made certain.

7. Conduct of Enquiry

- 7.1 The hearing shall be conducted by the Presiding Officer who may determine the procedure to be followed subject to the following:
- 7.1.1 the rules of natural justice must be observed in the conduct of the proceedings;
- 7.1.2 unless otherwise agreed to by the parties, the hearing must be adversarial in nature and character; and
- 7.1.3 the Presiding Officer in discharging his obligation is to exercise care, proceed diligently and act impartially.
- 7.2 The Prosecutor shall bear the duty to commence and the burden to prove each and every allegation(s) on a balance of probability set out in the Notice of Misconduct.
- 7.3 In discharging these duties the Prosecutor shall be entitled to call before the Disciplinary Tribunal any witnesses and produce any books, documents or things; and
- 7.3.1 subject to legal objection, cross-examine any witness called to testify on behalf of the employee and inspect any books, documents or things produced; and

- 7.3.2 present argument based on the evidence in support of any submission.
- 7.4 The employee summoned before the Disciplinary Tribunal shall have the right to be heard in person or through a representative and to call before the Disciplinary Tribunal any witness and produce any books, documents or things; and
 - 7.4.1 cross-examine any witness subject to legal objection called to testify on behalf of the employer and to inspect any books, documents or things produced; and
 - 7.4.2 present argument based on the evidence in support of any submission.
- 7.5 The Presiding Officer shall have the power to:
 - 7.5.1 determine the procedure to be followed for the conduct of the enquiry that he deems appropriate with the minimum of legal formalities provided that the rules of natural justice shall be observed;
 - 7.5.2 put questions without cross-examining to the parties or their witnesses on any matter relevant to the issues;
 - 7.5.3 proceed with the enquiry in the absence of a party who is in wilful default or fails to attend any meeting despite the expiry of a notice to attend.
 - 7.5.4 make such interim determinations on rulings as he deems necessary;
 - 7.5.5 propose to the parties compromise settlements in disposal of the whole or portion of the issues;
 - 7.5.6 make a finding of fact after having considered the evidence;
 - 7.5.7 invite and hear any plea in mitigation, aggravation or extenuation prior to deciding on the sanction to be imposed; and
 - 7.5.8 impose, inter alia, any of the following sanctions:
 - 7.5.8.1 written warning
 - 7.5.8.2 final written warning

- 7.5.8.3 transfer to another position either with or without financial loss
 - 7.5.8.4 suspension without pay for maximum of ten (10) days spread over a period of three (3) monthly pay periods;
 - 7.5.8.5 the withholding of any salary increment for a period not exceeding twelve (12) months;
 - 7.5.8.6 demotion to another post with or without financial loss; or
 - 7.5.8.7 dismissal
- 7.6 The Presiding Officer shall within ten (10) days of the last day of the hearing confirm in writing the findings of fact, sanction imposed and the reasons in support thereof and provide a copy of the determination to the Municipal Manager or his representative and to the employee or his representative.

8. Summary Procedure

- 8.1 If the employer and the employee so agree in writing the Summary Procedure as set out hereinafter may apply to the proceedings. The Presiding Officer shall, at such meeting(s) with the parties as he deems necessary:
- 8.1.1 confirm that the matter is ready for adjudication;
 - 8.1.2 ascertain and record in writing, signed by himself and the parties, the facts on which the parties agree and those on which they disagree herein called the 'issues';
 - 8.1.3 receive from the parties such document copies thereof as they consider relevant to the determination of the issues;
 - 8.1.4 receive evidence or submission orally or in writing, sworn or unsworn at joint meetings with the parties or, of the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the Presiding Officer provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other;
 - 8.1.5 deliver a determination, in writing, within ten (10) days of the last day of the hearing or submission of the last document to the Presiding Officer if there was no hearing.

9. Right of Resignation

9.1 An employee who receives a Notice of Misconduct shall be entitled to resign from employment or to retire, if eligible and in terms of the retirement fund rules provided that:

9.1.1 the employee does so prior to the handing down of determination;

9.1.2 the employee consents in writing to the deductions of all and any amounts owing by him to the employer from any monies payable to him by the employer (including but not limited to retirement fund monies) arising out of or in connection with his resignation or retirement.

9.2 In such an event the Disciplinary Enquiry shall not proceed.

10. Disciplinary Tribunal

10.1 In general a person appointed to serve as the Presiding Officer should be a senior employee in the employ of the employer. However if this is not possible or desirable any other suitably qualified person may be appointed.

10.2 During the conduct of the enquiry the employee may make application on good cause shown for the recusal of the Presiding Officer.

10.3 The Presiding Officer shall not consult, confer or have casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.

10.4 The determination of the Disciplinary Tribunal shall be final and binding on the employer save that the employee may lodge an appeal thereto.

10.5 In general a person appointed to serve as Prosecutor should be a person in the employ of the employer. However if this is not possible or desirable any suitable qualified person may be appointed.

11. Recording

11.1 The proceedings of the Disciplinary Tribunal shall be recorded by means of a mechanical device.

11.2 The record of the proceedings shall be kept in safe custody by the employer and upon request a copy thereof provided to the employee or his representative.

12. Non-Attendance

In the event of the failure by the employee, or a duly appointed representative to attend an enquiry or appeal without good cause and after proper service of the Notice of Misconduct was effected the enquiry may be conducted in absentia and discipline effected.

13. Right of Representation

An employee shall be entitled to representation at any enquiry by an employee, a shop steward or union official who is willing and able to represent the employee and if this is not possible or desirable any suitably qualified person.

14. Suspension

13.1 The employer may at any time before or after an employee has been charged with misconduct suspend the employee or utilise temporarily in another capacity should the Municipal Manager be of the opinion that it would be detrimental to the interests of the employer if the employee remains in active service.

13.2 If the Municipal Manager intends to suspend an employee he shall give notice of such an intention and afford the employee with an opportunity to make representation as to why he should not be suspended. The enquiry shall be done by means of the Summary Procedure as provided for herein.

13.3 The suspension or utilisation in another capacity shall be for a fixed and pre-determined period and at any rate shall not exceed a period of three (3) months. Any suspension effected shall be on full remuneration.

15. Appeal

15.1 The employee has the right to appeal against any disciplinary sanction which has been given at a disciplinary Enquiry.

15.2 An appeal must be lodged on the prescribed form within five (5) days of receipt of written notification of the disciplinary decision and the grounds of appeal must be clearly set out provided that the failure by a party to raise a ground of appeal shall not preclude that

party from subsequently raising it before the Disciplinary Appeal Tribunal.

- 15.3 Appeals will be heard by a management level above that of the Presiding Officer of the enquiry in the case of final written warnings and by a higher level of management who does not exercise direct management control over the affected employee in the case of dismissal and suspension without pay.
- 15.4 By agreement an appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.
- 15.5 The appeal will only be heard on the grounds of an appeal submitted by the employee and any amendment thereto and by having regard to the record of the proceedings and submissions and arguments based thereon. The appeal should not entail the rehearing of the matter *de novo*.
- 15.6 The Presiding Officer of the Disciplinary Appeal Tribunal shall have the power to confirm or set aside any decision determination or finding and to confirm, set aside or reduce any sanction imposed.
- 15.7 The Presiding Officer of the Disciplinary Appeal Tribunal shall fix the time and date of the hearing which will take place within ten (10) days of the date of appointment in consultation with the parties, the Presiding Officer may vary the time and date and order a mutually convenient time, date and place.
- 15.8 The parties shall deliver to the other and to the Presiding Officer a brief statement of the case at least two (2) days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.
- 15.9 The statement of case shall concisely set out the facts upon which the party refers the conclusions of law upon which the party relies and the relief which the party seeks.
- 15.10 The hearing will be conducted by the Presiding Officer in whatever manner and procedure, including the Summary Procedure as set out in clause 8.9 above that will produce the most expeditious hearing of the matter.
- 15.11 The Disciplinary Appeal Tribunal is to consider whether the disciplinary enquiry and sanction was fair. The Presiding Officer in his sole discretion shall be entitled to make whatever order he deems reasonable in the circumstance.

15.12 The Disciplinary Appeal Tribunal shall make its determination, in writing within ten (10) days form the last day of the hearing.

16. Pre-Dismissal Arbitration

16.1 An employer may, with the consent of the employee, request the Bargaining Council, an accredited agency or the Commission for Conciliation Mediation and Arbitration, to conduct arbitration into allegations about the conduct or capacity of an employee as provided for under section 188 A of the Labour Relations Act 66 of 1995.

16.2 The provisions of section 138 of the Labour Relations Act read with the changes required by the context applied to any pre-dismissal arbitration.

17. Interpretation and Application

In the event that there is a dispute as to the application and interpretation of this code, such dispute shall be dealt with in terms of the dispute provisions of the Constitution of the South African Local Government Bargaining Council.

18. Definitions

18.1 All references to **days** shall be a reference to working days.

18.2 All other terms contained in this agreement are as defined n the Constitution of the South African Local Government Bargaining Council and the Organisational rights Agreement.