

RESOLUTION NO. 2 OF 1999

DISCIPLINARY CODE AND PROCEDURES

1 Adoption of Disciplinary Code and Procedures

Parties to the PSCBC adopt the attached Disciplinary Code and Procedures for the Public Service.

2 Date of Implementation

This agreement comes into effect on the date on which the Public Service Laws Amendment Act 1998 (Act No 86 of 1998), which deem as an agreement the clauses that establish a disciplinary code for the public service, comes into effect.

DISCIPLINARY CODE AND PROCEDURES FOR THE PUBLIC SERVICE

1 PURPOSE AND SCOPE

1 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 and discipline;
- 1.4 to promote acceptable conduct;
- 1.5 to provide employees and the employer with a quick and easy reference for the application of discipline;
- 1.6 to avert and correct unacceptable conduct; and
- 1.7 to prevent arbitrary or discriminatory actions by managers toward employees.

2 PRINCIPLES

2 The following principles inform the Code and Procedure and must inform any decision to discipline an employee.

- 2.1 Discipline is a corrective measure and not a punitive one.
- 2.2 Discipline must be applied in a prompt, fair, consistent and progressive manner.
- 2.3 Discipline is a management function.
- 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;
 - c. receive written reasons for a decision taken; and
 - d. have the right to appeal against any decision.
- 2.5 As far as possible, disciplinary procedures shall take place in the place of work and 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 Code and Procedures are guidelines and may be departed from in appropriate circumstances.

3 SCOPE OF APPLICATION

3 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 in 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 CODE, RULES AND STANDARDS

- 4.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar 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 constituted grounds for disciplinary action.
- 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

- 5.1 **Corrective counselling.** In cases where the seriousness of the misconduct warrants counselling, the 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. seek to get agreement on how to remedy the conduct; and
 - d. take steps to implement the agreed course of action.
- 5.2 **Verbal warnings.** In cases where the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning. The manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning.
- 5.3 **Written warnings.** In cases where the seriousness of the misconduct warrants a written warning, the 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 manager must give a copy of the 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 written warning was conveyed to the employee.
 - c. The written warning must be filed in the employee's personal file.
 - d. A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and destroyed.
 - e. If during the six-month period, the employee is subject to disciplinary action, the written warning may be taken into account in deciding an appropriate sanction.

- 5.4 **Final written warnings.** In cases where the seriousness of the misconduct warrants 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.
 - d. A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.
 - e. If during the six-month period, the employee is subject to disciplinary action, the final written warning may be taken into account in deciding an appropriate sanction.
- 5.5 For less serious forms of misconduct, no formal enquiry shall be held.
- 5.6 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

6 SERIOUS MISCONDUCT

- 6 If the alleged 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 a representative, who as far as possible should be the manager for the employee, to initiate the enquiry.

7 DISCIPLINARY ENQUIRY

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 sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee.
- 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 of the hearing; and
 - iii. information on the rights of the employee to representation by a fellow employee or a recognised trade union, and to bring witnesses to the hearing.

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 a serious offence; and
 - ii. the employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the well being or safety of any person or state property.
- b. A suspension of this kind is a precautionary measure that does not constitute a judgement, 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 a month. The chair of the hearing must then decide on any further postponement.

7.3 Conducting the disciplinary hearing

- a. The disciplinary must be held within ten working days after the notice referred to in paragraph 7.1(a) is delivered to the employee.
- b. The chair of the hearing must be an employee on a higher grade than the representative of the employer. If the employee charged with misconduct is a head of department, the presiding officer must be an executing authority or another person with appropriate knowledge designated by the Cabinet or the Provincial Executive Committee.
- c. 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.
- d. If necessary, an interpreter may attend the hearing.
- e. In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless the employee is a legal practitioner. For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practise as an advocate or an attorney in South Africa.
- f. 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.
- g. The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.
- h. The chair will read the notice for the record and start the hearing.
- i. 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 witness introduced by the representative of the employer.
- j. The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses.
- k. The chair may ask any witness questions for clarification.
- l. If the chair decides the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.
- m. 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.
- n. The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file.

7.4 Sanctions

- a. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction, 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;
 - iii. a final written warning;
 - iv. suspension without pay, for no longer than three months;
 - v. demotion;
 - vi. a combination of the above; or
 - vii. dismissal.
- b. With the agreement of the employee, the chair may only impose the sanction of suspension without pay or demotion as an alternative to dismissal. If an employee is demoted, after a year she or he may apply for promotion 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 completing Annexure E.
- 8.2 The employee must, within five working days of the 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 manager, who shall then forward it to the appeal authority.
- 8.3 The appeal authority, who shall consider the appeal, shall be:
 - a. the executing authority of the employee, or
 - b. an employee 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 disciplinary hearing.
- 8.4 If the employee is a head of department, the relevant Premier or the President will consider the appeal.
- 8.5 If the person referred to in paragraph 8.3 requires a hearing, she or he shall notify the employee of the date and place.
- 8.6 The appeal authority may
 - a. uphold the appeal, and/or
 - b. reduce the sanction, or
 - c. confirm the outcome of the disciplinary proceeding.
- 8.7 The employer shall immediately implement the decision of the appeal authority.

Note: *The employee retains the right to utilise dispute-settlement mechanisms provided under the Labour Relations Act.*

ANNEXURE A

ACTS OF MISCONDUCT

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

Fails to comply with, or contravenes an Act, regulation or legal obligation.

Wilfully or negligently mismanages the finances of the State.

Without permission possesses or wrongfully uses the property of the State, another employee's and/or a visitor.

Wilfully, intentionally or negligently damages and or causes loss of state property.

Endangers the lives of self or others by disregarding safety rules or regulations.

Prejudices the administration, discipline or efficiency of a department, office or institution of the State.

Misuses his or her position in the public service to promote or to prejudice the interest of any political party.

Steals, bribes or commits fraud.

Accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the department.

Fails to carry out a lawful order or routine instruction without just or reasonable cause.

Absents or repeatedly absents him/herself from work without reason or permission.

Commits an act of sexual harassment.

Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.

Performs poorly or inadequately for reasons other than incapacity.

Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.

Without authorisation, sleeps on duty.

While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol.

While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.

Contravenes any prescribed Code of Conduct for the public service.

Assaults, or attempts or threatens to assault, another employee or person while on duty.

Incites other personnel to unprocedural and unlawful conduct.

Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.

Intimidates or victimises fellow employees.

Prevents other employees from belonging to any trade union or body.

Operates any money lending scheme for employees for own benefit during working hours or from the premises of the public service.

Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.

Refuses to obey security regulations.

Gives false statements or evidence in the execution of his or her duties.

Falsifies records or any other documentation.

Participates in unprocedural, unprotected and/or unlawful industrial action.

Commits a common law or statutory offence while on state premises.

ANNEXURE B

WRITTEN WARNING

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [NAME] within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF MANAGER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE

ANNEXURE C**FINAL WRITTEN WARNING**

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [NAME] within five working days.

The nature of the misconduct is

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE

ANNEXURE D

NOTICE OF DISCIPLINARY MEETING

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence is:

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED].

The meeting will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME].
If you do not attend and cannot give reasonable grounds for failing to attend, the meeting will be held in your absence.

A fellow employee or a representative of a recognised union may represent you.

You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the department.

If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE

ANNEXURE E

NOTICE OF APPEAL

[DATE]
[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE] am hereby appealing against a disciplinary action imposed on _____ [DATE] at _____ [PLACE].

I attach a copy of the notice of the disciplinary enquiry and/or the written warning.
[THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE
DATE

[PERSONAL DETAILS OF THE EMPLOYEE]