#

|  |  |
| --- | --- |
| Version: |  1 |
| Date Created: | 01st February 2024 |
| Author: |  Timothy Van Zyl |
| Ratified by: |   |
| Date Ratified: |   |
| Review Date: |   |
|  |  |  |  |  |
| Revision History: |
|  |  |  |  |  |
| Version | Date Created | Date Ratified | Author | Summary of Changes |
| 1.0 |   |   |   |   |
| 2.0 |   |   |   |   |
| 3.0 |   |   |   |   |
| 4.0 |   |   |   |   |
| 5.0 |   |   |   |   |

**Introduction**

The aims of this Disciplinary Procedure are to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

The procedure applies to all employees regardless of length of service. It does not apply to agency workers, self-employed contractors and workers.

**Purpose**

 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure.

Minor conduct issues can often be resolved informally between you and your Line Manager. These discussions should be held in private, where possible, and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary meetings. In some cases, a letter of concern may be sent to you confirming the discussions with your Line Manager, the reasons for the course of action and advising of the consequences should your conduct/capability not improve. This will not form part of your disciplinary records but may be referred to should disciplinary action be required. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under this Procedure (this list is intended as a guide and is not exhaustive):

* Minor breaches of our policies and procedures
* Minor breaches of your contract
* Damage to, or unauthorised use of, our property
* Poor timekeeping
* Time wasting
* Unauthorised absence from work
* Refusal to follow instructions
* Excessive use of our telephones for personal calls
* Excessive personal e-mail, internet or telephone usage
* Obscene language or other offensive behaviour
* Negligence in the performance of your duties
* Smoking in no-smoking areas
* Persistent breaches of the Uniform and Personal Hygiene Policy

You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period. If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your Line Manager as soon as possible.

**Confidentiality**

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or meetings conducted under this procedure unless consent is obtained prior to the meeting by all parties. You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

**Investigations**

The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary meeting. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. If an investigative interview is necessary, it will be solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary meeting has been held. You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English. Any employee that brings a companion must make the organisation aware before any meeting commences. Should the organisation deem that the person accompanying you is inappropriate; the organisation reserves the right to forbid the companion in taking part and reschedule the meeting at an alternative time. You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

**Criminal charges**

Where your conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action. We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary meeting or say anything about a pending criminal matter, we may have to take a decision based on the available evidence. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

**Suspension**

In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing.

 Whilst suspended you should not visit our premises or contact any of our clients, customers, suppliers, contractors or staff, unless you have been authorised to do so by your Line Manager.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

**Meeting notification**

Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary meeting. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences will be if we decide after the meeting that the allegations are true. We will also include the following where appropriate:

* a summary of relevant information gathered during the investigation
* a copy of any relevant documents which will be used at the disciplinary meeting; and
* a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality

We will give you written notice of the date, time and place of the disciplinary meeting. The meeting will be held as soon as reasonably practicable, but you will be given a reasonable amount of time to prepare your case based on the information we have given you.

**The right to be accompanied**

You may bring a companion to any disciplinary meeting or appeal meeting under this procedure. The companion may be either a trade union representative or a colleague. You must tell the person chairing the disciplinary meeting of your chosen companion at least one day prior to the meeting.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. If your choice of companion is unreasonable, we may ask you to choose someone else, for example:

* if in our opinion your companion may have a conflict of interest or may prejudice the meeting
* if your companion works at another site and someone reasonably suitable is available at the site at which you work
* if your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards

**Procedure at disciplinary meetings**

If you or your companion cannot attend the meeting you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the meeting, and repeated failure to attend may result in the organisation conducting the meeting in your absence and making a decision based on the available evidence available.

The meeting will be chaired by an appropriate manager. You will be advised if anybody else will be present. You may bring a companion with you to the disciplinary meeting.

At the disciplinary meeting we will go through the allegations against you and the evidence that has been gathered.

You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the meeting.

You may ask relevant witnesses to appear at the meeting, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.

We may adjourn the disciplinary meeting if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

We will inform you in writing of our decision and our reasons for it, usually within one week of the disciplinary meeting.

**Disciplinary penalties**

The usual penalties for misconduct are set out below. No penalty should be imposed without a meeting. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. The organisation will take into account any active warnings that may apply to you at the time of the misconduct and each case will be assessed on its own merits.

Stage 1 - First written warning.

A first written warning (which will remain live on your file for twelve months) will usually be appropriate for a serious act of misconduct. The organisation at its discretion may opt to award you with a Verbal Warning in cases of minor conduct (which will remain live on your file for a period of six months).

Stage 2 - Final written warning.

A final written warning (which will remain live on your file for a period of twelve months) will usually be appropriate for misconduct where there is already an active written warning on your record or misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

Stage 3 - Dismissal.

Dismissal will usually only be appropriate for:

* any misconduct during your probationary period;
* further misconduct where there is an active final written warning on your record; or
* any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

Alternatives to dismissal.

In some cases, we may at our discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

* Transfer to another department or job
* A period of suspension without pay
* Loss of seniority
* Reduction in pay
* Loss of future pay increment or bonus
* Loss of overtime
* Any other appropriate action to prevent the repetition of the misconduct.

**The length and implications of a warning**

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

A first written warning and final written warning will remain active for 12 months and your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently, we may decide to extend the active period. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

**Gross Misconduct**

In exceptional circumstances you may be dismissed without notice (summary dismissal) if it has been established, after investigation and after hearing your explanation that there has been an act which constitutes gross misconduct. The following circumstances are considered to be examples of acts of gross misconduct which, if proven to the organisation’s satisfaction, will lead to summary dismissal.

These examples are not exhaustive or exclusive and the organisation reserves the right to amend the list from time to time:

* Dishonesty
* Theft, or unauthorised possession, of property belonging to the Organisation, another Employee, or a third party (e.g., supplier, contractor or a customer)
* Damage to or misuse of Organisation property including deliberate acts of vandalism, including misuse for personal reasons
* Taking organisation property off the premises without prior approval that is tantamount to theft
* Abusive or offensive behaviour or language
* Drunkenness or the unauthorised consumption of alcohol on the premises
* The use, possession, or evidence of the same, of any controlled drug
* Attempting assault or bodily injury to another person and/or fighting including possession of a weapon
* Any act that is illegal, could endanger the health or safety of other Employees or customers, or damage Organisation property
* Sale of own goods on Organisation premises or operating or being involved in the operation of a business from the Organisation's premises
* Falsification of time or other records or documents
* Continued absence without leave (AWOL) / unauthorised absence
* Sleeping at work
* Abuse of cash handling procedures
* Abuse of attendance recording procedures
* Disclosure of confidential Organisation information without approval
* An act which contravenes the organisation’s policy on discrimination (e.g., racial, religious, sexual, disability, age etc)
* Conduct likely to endanger or damage the reputation of the Organisation, its interests, objectives or its business
* Committing a criminal offence inside or outside of employment which makes you unsuitable for your type of work or unacceptable to fellow Employees or which could impact negatively or cause adverse publicity on you or the Organisation
* Other serious breach of Conditions of Employment or other duties
* Serious breaches of Health and Safety rules which endanger the safety of others or the Organisation’s operation
* Gross insubordination
* Refusal to obey reasonable instructions
* The failure to report a pending prosecution, other than minor motoring offences
* Failure to report clinical conditions that could endanger the health of others

**Appeals against disciplinary action**

If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the specified point of appeal within one week of the date on which you were informed of the decision.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful, you may be reinstated or reengaged with the organisation. If you raise any new matters in your appeal, we may need to carry out further investigation.

 If any new information comes to light, we will provide you with a summary including where appropriate, copies of additional relevant documents and witness statements.

You will have a reasonable opportunity to consider this information before the meeting.

We will give you written notice of the date, time and place of the appeal meeting. This will normally be two to seven days after you receive the written notice. The appeal meeting may be a complete re-meeting of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal meeting will be conducted impartially by a more senior manager who has not been previously involved in the case. As previously stated, you have the right to be accompanied at the appeal meeting.

We may adjourn the appeal meeting if we need to carry out any further investigations in the light of any new points you have raised at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

Following the appeal meeting we may:

* uphold the original decision
* revoke the original decision; or
* substitute for a lesser sanction

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal meeting. Where possible we will also explain this to you in person. There will be no further right of appeal.