



# **Disciplinary Procedure**

**Annexure B to the Conditions of Service**

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## **Disciplinary Procedure**

### **1. OBJECTIVE**

- 1.1 The University's Disciplinary Procedure is aimed at establishing a fair and uniform procedure for the management of discipline at the University of Johannesburg. Given the complex nature of Employment Relations, the disciplinary code and procedure serves as guide to evaluate cases on its merit, yet ensuring fairness and consistent application.
- 1.2 This Procedure is also aimed at rectifying unacceptable conduct with a view to establishing, maintaining and developing sound employment relations at the University.
- 1.3 This Procedure is implemented in accordance with the principles of natural justice, substantive fairness and procedural fairness.
- 1.4 The provisions of Schedule 8 of the Labour Relations Act (LRA) form the point of departure for this Procedure. Although there is a separate Policy dealing with matters of incapacity the same procedural informal and formal corrective measures apply in incapacity cases as guided by Schedule 8 of the Act.

### **2. DEFINITIONS AND INTERPRETATION**

- 2.1 In this Procedure, all words have the same meaning as those defined in the consolidated conditions of service unless the context indicates otherwise.
- 2.2 **Procedure:** means this Disciplinary Procedure, which forms part of all employees' conditions of service.
- 2.3 Whenever a number of days is prescribed in this Procedure, such number shall be calculated by excluding the first day, but including the last day, unless the last day falls on a Saturday, Sunday or an official Public Holiday, in which case the last day shall be the next day that is not a Saturday, Sunday or an official Public Holiday.
- 2.4 Paragraph headings are inserted for convenience only and cannot be used in the interpretation of this Procedure.
- 2.5 If any provision confers any right or imposes any obligation on any party, then notwithstanding that it is only in the interpretation clause, effect must be given to it as if it were a substantive provision.

- 2.6 **Employee:** means – (a) Any person, excluding an independent contractor, who works for the University and who receives, or is entitled to receive, remuneration; and (b) Any other person who in any manner assists in carrying on or conducting the business of the employer.
- 2.7 **Employer:** is The University of Johannesburg.
- 2.8 **Management:** means the person who directly or indirectly directs (oversees and regulates) the activities of the employee and who is duly authorised by the University of Johannesburg to act as a manager or management representative.
- 2.9 **Workplace:** means any place where employees work.
- 2.10 **Conditions of Service:** means the terms of on which an employee is employed and expressly apply to all employees in the employ of the University of Johannesburg, irrespective of their membership of trade unions or otherwise.
- 2.11 **Remuneration:** means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for the University and ‘remunerate’ has a corresponding meaning.
- 2.12 **Misconduct:** is one of the grounds recognised by the law that may give reason for the dismissal of an employee. It means improper or unacceptable behaviour by the employee which implies that an employee knows or should know the rule, and yet does not comply with the rule.
- 2.13 **Incapacity:** refers to an employee’s temporary or permanent lack of ability to perform effectively due to ill health or injury, or poor work performance or incompatibility.
- 2.14 **Trade union:** means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers’ organisations.
- 2.15 **Trade union representative:** means a member of a trade union who is elected to represent employees in a workplace.
- 2.16 **Legal practitioner:** means any person admitted to practice as an advocate or an attorney in the Republic.

- 2.17 **Schedule 8 of the Labour Relations Act (LRA):** means the Code of Good Practice: Dismissal that deals with the Substantive and Procedural fairness for a dismissal for reasons of misconduct.
- 2.18 **The Labour Relations Act (LRA), Act 66 of 1995:** aims to promote economic development, social justice, labour peace and democracy in the workplace.
- 2.19 **CCMA:** means the Commission for Conciliation, Mediation and Arbitration established in terms of Section 112 of the Labour Relations Act, 1995. (CCMA) is an independent organization that resolves labour disputes.
- 2.20 **Code of good practice:** means a code of good practice issued by NEDLAC in terms of Section 203 (1) of the LRA.
- 2.21 **NEDLAC:** means the National Economic Development and Labour Council established by Section 2 of the National Economic, Development and Labour Council Act, 1994 (Act 35 of 1994).

### **3. GENERAL PRINCIPLES**

- 3.1 The University's Management is responsible for maintaining discipline in the workplace, and this responsibility is enforced through this Procedure.
- 3.2 This Procedure applies to all University employees.
- 3.3 This Procedure is implemented for matters related to misconduct enquiries. This procedure must also take into consideration other related Policies such as those dealing with Incapacity.
- 3.4 This Procedure has no bearing on the termination of employees' services for operational reasons (retrenchments).
- 3.5 This Procedure forms part of the conditions of service of the affected employees of the University.
- 3.6 Records of disciplinary action taken are filed in employees' personal files for safekeeping and future references and employees are entitled to a copy of such warnings.
- 3.7 Written warnings are valid for a period of six months and final written warnings for a period of twelve months from the date of issue after which it will expire. All expired documents must be removed from the personal files.

- 3.8 Disciplinary action against employees is taken within a reasonable period after the University has become aware of and evaluated the need for such action.
- 3.9 This Procedure acknowledges that employees are entitled to choose one representative who is a colleague, a trade union representative, a trade union official or a legal representative to assist them during the implementation of any formal level of discipline for which provision is made in paragraphs 5.1, 5.2 and 5.3.
- 3.10 The Vice-Chancellor may suspend employees for reasons permitted and recognized in law for a maximum period of 30 days with full remuneration subject to:
- (a) Giving the employee/s precautionary notice of the University's intention to implement suspension; and
  - (b) Giving the employee/s opportunity to make representation prior to the implementation of the intended suspension.
  - (c) The Vice Chancellor will in particular consider suspension when:
    - i) It is believed that the continuous presence of the employee/s may hamper investigations.
    - ii) There is a perceived and reasonable possibility that employees charged with misconduct may intimidate witnesses or attempt to destroy evidence.
- 3.11 The Vice-Chancellor may at any time rescind the suspension of employees, but despite such rescission the proceedings in respect of the charge of misconduct may continue.
- 3.12 The acquittal or conviction of employee on a criminal charge by a court of law shall not prevent steps being instituted against him/her on a charge of misconduct, notwithstanding the fact that the facts set out in the charge of misconduct, should they be proven, would constitute the misconduct set out in the criminal charge on which he has been so acquitted or convicted or any other offence of which he might have been found guilty at his trial for the said criminal charge. Internal disciplinary proceedings may thus take place concurrently or before or after and totally independently of any external criminal proceedings.

#### **4. NATURE OF DISCIPLINARY MEASURES**

There is one informal level and three formal levels of disciplinary action that may be taken against employees.

#### 4.1 ***Informal discipline***

4.1.1 Informal discipline is implemented by means of a verbal reprimand that is not placed on record.

4.1.2 A verbal reprimand makes provision for daily operational matters rather than specifically unacceptable conduct, for which provision is made in the University's Disciplinary Code and other conditions of service.

#### 4.2 ***Formal discipline***

4.2.1 Formal disciplinary action may be taken against employees at any of three levels (see subparagraph 4.5) when the disciplinary code is breached or conditions of service are not complied with.

4.2.2 The following three levels of disciplinary action are followed (in order of less serious to more serious):

(a) Written warning.

(b) Final written warning.

(c) Disciplinary inquiry, which could lead to employees' dismissal.

4.3 Warnings are cumulative and progressive with the purpose to correct conduct.

4.4 Where applicable and depending on the totality of circumstances, corrective action, may be instituted as listed in 4.2.2 above by following the levels as described in (a) – (c) for related offences.

4.5 The various levels of disciplinary action for which provision is made in 4.2.2 do not always follow a fixed sequence. Discipline may be implemented directly at the level that is deemed to be appropriate taking into consideration all circumstances in terms of the objectives of this procedure and the nature and seriousness of the case.

### **5. PROCEDURE**

Formal disciplinary action is taken as follows.

#### 5.1 ***Level 1: Written warning***

5.1.1 If an employee's immediate Head (or a more senior employee if it is preferable and so advised by the Employment Relations Department, that a more senior employee deals with the matter) believes that a written warning is in order for the offence, the procedure set out below is followed.



- 5.1.2 The person identified in 5.1.1 must give notice to the employee/s in writing of a meeting to take place as well as the purpose of the meeting. The employees' rights must be listed in the notification.
- 5.1.3 At the meeting the nature of the identified issues of misconduct are discussed with the employee in the presence of the employee's representative (if the employee/s so required), as well as a management observer and or Human Resources representative who's role is to advise everyone on related processes and procedures, including conditions of service.
- 5.1.4 Employees are also given ample opportunity to state their case. Should an employee notwithstanding timeous notice to make him/herself available for this procedure, not attend the process without a reasonable explanation communicated to the management observer, the process may continue in his/her absence as a default procedure.
- 5.1.5 An interpreter appointed by the Head may also be present at the employee's request.
- 5.1.6 If the person dealing with the matter still decides to issue the warning after the employee has stated his/her case and the process as described in 5.1.2 is concluded a warning in writing is issued (see Annexure A as a guide) .
- 5.1.7 The person issuing the warning ensures that the employee understands the nature of the warning as well as the possible consequences of a recurrence of the same or similar offence during the period of the duration of the warning.
- 5.1.8 The employee and his/her representative must sign the warning form to acknowledge receipt of the warning even if the employee does not agree with the disciplinary action being taken.
- 5.1.9 If the employee or the representative refuses to sign the warning form, the management observer and/or the Human Resources representative will confirm that the warning was issued in the presence of the employee by endorsing the form to this effect.
- 5.1.10 The employee's refusal to sign this form does not render a warning invalid and a warning that is endorsed accordingly will have the same validity as a warning that is signed by an employee.
- 5.1.11 A copy of the completed warning form must be made available to the employee, and the original will be kept in the employee's personal file.

5.1.12 The duration of the validity of the warning will be in accordance with paragraphs 3.7.

5.1.13 If an employee does not agree with the action being taken, he/she may refer an appeal within 3 working days to the next level of management (i.e. the person who issued the warning reports) for a final decision. The substantive and procedural grounds for leave to record an appeal must be clearly defined in the application. This level of management will follow an appropriate process and procedure in consultation with the Employment Relations Department prior to communicating the final outcome. Should an employee persist to dispute the decision taken, he/she may refer the matter to the Commission for Conciliation Mediation and Arbitration as per related legislation.

## 5.2 ***Level 2: Final written warning***

5.2.1 If an employee's immediate Head (or a more senior employee as mentioned in paragraph 5.1.1) feels that a final written warning may be the appropriate disciplinary measure, the employee can elect that the procedure as outlined with level 1 be followed or alternatively the procedure as described in 5.3. Should an employee elect the former, the same process steps as listed in above (in level 1) will be followed. The outcome of the meeting will determine an outcome short of dismissal which may include a final written warning.

5.2.2 The person issuing the warning must ensure that the employee understands that a recurrence of the same or similar offence during the period of validity of the final written warning may lead to a disciplinary inquiry, which could in turn lead to the dismissal of the employee.

5.2.3 If an employee does not agree with the action being taken, he/she may refer an appeal within 3 working days to the next level of management (i.e. the person who issued the warning report) for a final decision. The substantive and procedural grounds for leave to record an appeal must be clearly defined in the application. This level of management will follow an appropriate process and procedure in consultation with the Employment Relations Department prior to communicating the final outcome. Should an employee persist to dispute the decision taken, he/she may refer the matter to the Commission for Conciliation Mediation and Arbitration as per related legislation. This will apply in cases where the employee elects not to follow the procedure as outlined in 5.3.

## 5.3 ***Level 3: Disciplinary inquiry***

5.3.1 A disciplinary inquiry is conducted in the event of any serious offence that would warrant dismissal as a possible measure or in the event of the recurrence of the same or similar offence or where progressive corrective

measures have been instituted which justifies the formalization of a disciplinary inquiry.

5.3.2 Disciplinary enquiries are instituted upon the approval by the Director Employment Relations whose role is to ensure that fairness prevails and that adequate corrective measures and procedures followed justifies the institution of a disciplinary inquiry.

5.3.3 The procedure below is followed if a disciplinary inquiry is conducted:

- (a) The employee receives a five (5) working days' written notice to attend the inquiry.
- (b) The written notice (see Annexure B as guide) is issued to the employee and handed to the employee by a member of the Employment Relations Department.
- (c) An employee notified of a disciplinary enquiry has the right to request further particulars and documents concerning the charges to be submitted to her/him no less than three (3) working days before the date of the hearing, subject to such information being reasonably required for purposes of preparing a defense and further subject to the limitations of section 16 of the LRA.
- (d) The Chairperson of an inquiry may at her/his sole discretion, but only on good cause shown, postpone the disciplinary inquiry.
- (e) Applications for postponement must reach the chairperson no less than three working days before the scheduled date of the inquiry in order to have any status.
- (f) The Chairperson may also grant a postponement in cases of serious illness or death in the employee's immediate family.
- (g) The inquiry is attended by:
  - (i) the *Chairperson*, who:
    - is appointed by the Management Executive Committee;
    - must not directly or indirectly be involved in the allegations against the employee;
    - must not have any direct or indirect interest in the case;
    - is appointed from outside the University;

- may, at the sole discretion of the Management Executive Committee, be a legal expert, especially if the Management Executive Committee is of the opinion that the seriousness of the offence makes it necessary to appoint a Chairperson with legal expertise;
  - is vested with the delegated power of the Council to make a finding of Guilty or Not Guilty and make a recommendation about the sanction to the Vice Chancellor;
  - As authorized by Council the Vice Chancellor may ratify the Chairpersons recommendation or refer it back if further clarification is needed wherein the Chairperson must follow the appropriate process to enable him/her to respond in terms of the issues raised.
- (ii) the University representative is appointed by the Executive Director: Human Resources in consultation with the Employment Relations Director. The University representative officially represents the University and serves the function as initiator and leads the proceedings on behalf of the University;
  - (iii) the *employee* against whom the allegations are being made, who, if he/she refuses or fails to attend a hearing may be tried *in absentia*;
  - (iv) the *employee's representative* as he/she elected and /or nominated;
  - (v) an interpreter approved by the Chairperson if the employee wishes to have one present; and
  - (vi) a representative from the Human Resources Division/ Employment Relations Department, who ensures that the proper administrative procedures and processes are being followed.
- (h) The University representative and the employee have the right to call witnesses and to cross examine any other witnesses called by the opposite party.
  - (i) The witnesses must enter the venue of the inquiry one at a time and must leave as soon as they have completed testifying and cross-examination has been completed. Witnesses are not allowed

to communicate with possible other witnesses before the procedure had been finalized on any aspect regarding this particular procedure.

- (i) The Chairperson announces the outcome of guilty/non-guilty after the University representative and the employee or his/her representative have concluded their respective cases and after the Chairperson has taken a recess to consider the cases.
- (j) The Chairperson's finding needs be made on a balance of probability and as prescribed by the relevant legislation applicable
- (k) If the Chairperson finds the employee guilty, the employee or his/her representative is given the opportunity to bring mitigating circumstances or other relevant information to the Chairperson's attention, and the University representative of the allegations will also be given the opportunity to bring aggravating circumstances or other relevant factors to the Chairperson's attention.
- (l) After hearing the mitigating and/or aggravating circumstances, the Chairperson will have the employee's personal file fetched, from which the Chairperson will determine the employee's period of service, whether there is a record of any valid and related warnings, as well as any other relevant information, such as the employee's personal circumstances, and take these into consideration when in recommending a sanction.
- (m) In recommending a sanction, the Chairperson must take account of:
  - (i) the measures being proportionate to the misconduct of which the employee has been found guilty;
  - (ii) the circumstances of the employer and the employee, and the impact of the transgression on workplace relationships;
  - (iii) aggravating factors which may include the employee's position, seniority and previous disciplinary offences and warnings;
  - (iv) mitigating factors that may include the employee's length of service, a clean disciplinary record or extenuating personal circumstances.
- (n) The sanction as recommended by the Chairperson will be communicated to the office of the Vice Chancellor for decision as delegated by Council and as described in 5.3.3 (g) (i). The decision

taken by the Vice Chancellor will be communicated to the employee by the Employment Relations Director or his/her designate.

- (o) The possibilities of demotion or suspension without pay may be put to the employee only as alternatives short of dismissal, and must be accepted by the employee in writing in order to be valid.
- (p) Once informed of the sanction and the employee wishes to challenge the decision, he/she has the right to exercise his /or her rights in terms of paragraph 6.
- (q) The Chairperson is responsible for ensuring that proper minutes of the inquiry are kept and the employee is entitled to a copy of the minutes.
- (r) An audio recorder must always be used to record disciplinary inquiries. The service of an employee and the employment relationship only comes to an end when the final decision taken in terms of the appeal procedure is communicated in writing to the employee where an appeal was lodged and considered.

## **6. APPEAL PROCEDURE**

- 6.1 An employee may apply in writing to the Vice Chancellor for leave to record an appeal after receiving the official verdict and/or sanction within three working days of the sanction being communicated. Should an employee not exercise his or her right as contemplated in par 6.1 and the sanction is termination of employment services, the termination date will only come into effect after the three day period has lapsed and as per the notice of termination received in writing.
- 6.2 The substantive and procedural grounds for leave to record an appeal must be clearly defined in the application.
- 6.3 The Vice Chancellor or his delegated authority grants or rejects such application within seven working days after receiving the application as prescribed above.
- 6.4 If the application is rejected and the sanction is that of termination of services, the date of termination will be as per the final outcome communicated in writing to the employee. The employee may thereafter refer the matter to the Commission for Conciliation, Mediation and Arbitration (the 'CCMA') for adjudication or any other relevant statutory body as prescribed by the related legislation.

- 6.5 If the application is granted, an appeal panel (which may consist of one person) will be appointed to evaluate the grounds as per the scope determined by the Vice Chancellor or his delegated authority in the ruling on the application for leave to appeal. The appeal panel may uphold, reject or amend the verdict and/or sanction. The final outcome will be communicated to the employee via the office of the Vice Chancellor or his delegated authority. This decision will be final as officially communicated and the employee may thereafter refer the matter as prescribed in paragraph 6.4.

## **7. RECORD KEEPING**

The Executive Director: Human Resources ensures that all records of disciplinary inquiries are kept for at least twelve months after the termination of the proceedings.

Approved by Council on 18 September 2014

**ANNEXURE A: DISCIPLINARY WARNING FORM - GUIDE**

**Employee's name:**.....

**Job title:**.....

**Department/Division:**.....

**Supervisor/Head:**.....

**Date of offence (where applicable):**.....

**Time of offence (where applicable):**.....

**Nature of misconduct in terms of the code guidelines:**.....

.....

.....

**Employee's statement for misconduct (in brief):**

.....

.....

**Reason accepted? Yes/No:**.....



If reason was not accepted, the following corrective action is necessary to avoid future misconduct:

.....  
.....  
.....

Action taken: Warning / Final warning (delete as appropriate).

In the event of a final warning being given, the employee was advised that should he/she be found guilty of a similar violation within the validity period of this warning, then dismissal may follow.

.....  
Employee's signature Date

.....  
Line Manager's / Head's Signature Date

.....  
Employee Representative's Signature Date

.....  
HR Representative Date

- NOTES:
1. One copy to employee and one copy for employee's file.
  2. Written warning stays valid for six months.
  3. Final warning stays valid for twelve months.

**ANNEXURE B: NOTICE TO ATTEND A DISCIPLINARY INQUIRY - GUIDE**

**Name of employee.....**

**Department/Division:.....**

**1. Alleged transgression (including date, time and place if appropriate):**  
.....  
.....

**2. Date of disciplinary inquiry: .....**

**Time:.....**

**Place:.....**

**Name of Chairperson of disciplinary inquiry:**  
.....

**3. Please inform the Chairperson within five working days before the date of the inquiry:**

- a) if an interpreter is required;
- b) the name of your representative;
- c) the name of any additional witnesses; and
- d) if any further particulars and documents are required for purposes of preparing a defense.

**4. During the inquiry you are entitled:**

- a) to state your case;
- b) to be represented by a fellow employee / recognised trade union representative, union official or legal practitioner;
- c) ask questions on any evidence produced or of statements by witnesses;
- d) to have an interpreter of the Chairperson’s choice;
- e) to call witnesses; and

5. If you do not attend and cannot give reasonable grounds for failing to attend, the inquiry will be held in your absence.

6. I acknowledge receipt of this notice and understand the contents thereof.

.....  
**Signature of Initiator**

.....  
**Date**

.....  
**Signature of employee**

.....  
**Date**