

Short notes on:

THINK YOUR COMPANY IS CONDUCTING DISCIPLINARY ENQUIRIES IN LINE WITH LEGISLATION? HERE IS HOW YOU MAKE SURE!

Introduction

In workplace discipline, employers bear the onus to ensure that the company acts procedurally fair and substantively fair towards its employees. The correct procedure should be followed in any disciplinary process, and it is essential for employees to know their rights and what they would be entitled to in such a process.

What are the necessary steps for a disciplinary hearing? When is it considered fair by a commissioner or a judge?- are the questions I aim to answer and outline in this article.

Before a ruling on the sanction for a breach is made; a disciplinary hearing must be conducted. The hearing allows for the employer to properly investigate the merits of the charges levelled against the employee.

This process is prescribed by Schedule 8 of the Labour Relations Act 66 of 1995. When the employer fails to abide by the requirements, they risk paying penalties by order of an arbitration award or may even have to reinstate the employee in its employment roll subsequent to dismissal.

What Should Be Included In The Notice To Attend A Disciplinary Hearing?

An employee needs to be informed of the disciplinary complaint laid against them. Accordingly, the employee should receive a notice to attend the disciplinary hearing. In such a notice, the following information should be provided by the employer to ensure procedural fairness:

- Date, time and place where the hearing will take place;
- The charges laid against the employee;
- Notification to the employee of the option to be represented;
- Notification to the employee of the right to an interpreter; and
- Notification to the employee of the right to call witnesses to prove its case and innocence in the case levelled against them.

Requirements For The Hearing

The chairperson holding the disciplinary enquiry should be impartial and fair. The chairperson is required to outline the breach or misconduct and explain the process of the hearing to the parties.

The parties may call witnesses to testify to prove their cases, and the chairperson will be allowed to ask questions to clarify certain aspects.

After hearing submissions by the employer and employee, evidence and witnesses, the chairperson will decide on the guilt or innocence of the employee. This decision will be based on a balance of probabilities and will include an appropriate sanction or outcome should the employee be found guilty.

If the employee is found guilty, they should be allowed to mitigate the final sentence and may show remorse to save the trust relationship between them and the employer.

The employer should inform the employee of the option of referring the matter to the CCMA for further deliberations.

Types Of Sanctions That The Chairperson Can Issue

- A verbal warning;
- A written signed warning;
- A final written signed warning;
- Suspension without payment;
- Demotion from a higher position; and
- Dismissal.

The seriousness of the offence is linked to the appropriate disciplinary action taken against the employee, and the chairperson will have discretion in their recommendation as to what they feel would be the fair sanction.

Conclusion

As set out above, the basic requirements for fairness are provided to the employee and employer as a guideline to comply with the Act. Therefore, it is essential to ensure your company is following the correct procedure to avoid further action at the CCMA, Bargaining Council, or even Labour Court.

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