

## CHAPTER 15

### DISCIPLINE

#### EXPLANATORY NOTE:

- In this chapter authority regarding disciplinary matter is seated in the Municipal Manager.
- However, if the Municipal Manager is the accused employee any reference to the “Municipal Manager” must be substituted by the “Mayor”
- Likewise any reference to a “head of department” must be substituted by the “Mayor”
- Reference to the male gender also means reference to the female gender, i.e. “he” also means ‘she’.

#### MISCONDUCT:

1. An employee shall be guilty misconduct if he:
  - 1.1. willfully contravenes or fails to comply with any provisions of these regulations **whether such regulation is described hereunder or not; or**
  - 1.2. wilfully does, allows or causes to be done anything detrimental to the municipality, its discipline or efficiency: or
  - 1.3. disobeys or disregards or willfully disobeys a lawful order given to him by a **person having the authority** to do so, or by word or conduct displays insubordination; or
  - 1.4. is negligent or indolent in the discharge of his duties; or
  - 1.5. conducts himself in a disgraceful, improper , unbecoming or dishonest manner:  
or
  - 1.6. partakes of intoxicating liquor or drugs to such an extent that he is unable to perform his duties properly: or
  - 1.7. **discloses or uses otherwise than in the discharge** of his duties information acquired in the course thereof without the required prior consent; or
  - 1.8. commits corruption or accepts a bribe; or
  - 1.9. misappropriates or willfully or negligently endangers or damages the
  - 1.10. municipality’s property, uses it or causes it to be used in an improper or unauthorized manner; or
  - 1.11. willfully and deliberately makes an inaccurate or false statement in order to be benefit himself in his office or to cause injury or prejudice to the municipality’s service or any person in the municipality’s service; or

- 1.12. engages in remunerative work outside the municipality's service, commits himself thereto without first requesting and receiving the Municipal Manager's or his nominee's permission or contravenes any conditions upon which such permission is granted by Municipal Manager or his nominee; or
- 1.13. assault a fellow employee or tries to assault him or
- 1.14. commits a criminal offence and is found guilty in a court of law; or
- 1.15. is or becomes inefficient or incompetent in the discharge of his duties; or
- 1.16. undertakes any private agency work or connected with the work in any matter connected with the performance of his official duties; or
- 1.17. fails, during work hours, to discharge his duties, or engages his attention on private affairs while on duty, or
- 1.18. develops habits of unpunctuality or irregularity in connection with his duties; or
- 1.19. being a person carrying out on behalf of the municipality any statutory power or duty, whether for him any other person corruptly solicits or receives or agrees to receive from any person any fee, advantage or reward (whether pecuniary or otherwise as an inducement to or in consideration of or otherwise on account of his going or forbearing to do anything in respect of any matter or transaction whatsoever( actual or proposed) in which the municipality is connected; or
- 1.20. willfully or maliciously damages any municipal property which includes tools, fixtures, any device or protective clothing; or
- 1.21. wilfully damages any property not belonging to the municipality ; or
- 1.22. fights on the premises of the municipality whilst on duty; or
- 1.23. use abusive words towards any member of management , employee and member of the public; or
- 1.24. is, without permission, in possession of dangerous weapons or liquor during working hours; or
- 1.25. is in possession of someone else's equipment or belongings without their consent; or
- 1.26. when requested for information gives false personal information either in writing or verbally; or
- 1.27. uses threats or violence against a person or person to force a certain action; or
- 1.28. steals from municipality, a fellow employee or a member of the public.

2. In terms of the Local Government: Municipal Finance Management Act an employee shall be guilty of act of financial misconduct if, in the case of the accounting officer, he deliberately or negligently:
  - 2.1. Contravenes a provision of the said Act;
  - 2.2. Fails to comply with a duty imposed by a provision of the Act on the accounting officer;
  - 2.3. Make or permits, or instructs another officer of the municipality to make unauthorized, irregular or fruitless and wasteful expenditure: or
  - 2.4. Provides incorrect or misleading information in any document which in term of a requirement of the aforesaid Act must be-
    - 2.4.1 Submitted to the mayor or the council of the municipality, or to the Auditor-General the National treasury or other organ of state; or
    - 2.4.2 Made public.
  
3. In term of the Local Government: Municipal Finance Management Act shall be guilty of an act of financial misconduct if, in the case of the chief financial officer, he deliberately or negligently-
  - 3.1. Fail to carry out a duty delegated to him in term of section 79 or 81 (1) (e) of the aforesaid Act;
  - 3.2. Contravenes or fail to comply with a condition of any delegation of a power duty in terms of section 79 or 81 (1) (e) of the aforesaid Act;
  - 3.3. Make or permits, or instructs another official of the municipality to make an authorized, irregular or fruitless and wasteful expenditure; or
  - 3.4. Provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1) (d) of the aforesaid Act.
  
4. In terms of the Local Government: Municipal Finance Management Act an employee shall be guilty of an act of financial misconduct if , in the case of a senior manager or other official of the municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 of the aforesaid Act, he deliberately or negligently-
  - 4.1. Fails to carry out a delegated duty;
  - 4.2. Contravenes or fails to comply with a comply with a condition of the delegated power or duty;
  - 4.3. Make an unauthorized, irregular or fruitless and wasteful expenditure; or
  - 4.4. Provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

5. In terms of the Local Government: Municipal Finance Management Act an employee shall be guilty of an act of financial misconduct if, in the case of the accounting officer of a municipal entity, he deliberately or negligently
  - 5.1. contravenes a provision of the said Act;
  - 5.2. fails to comply with a duty imposed by a provision of the Act on the Accounting officer
  - 5.3. makes or permits, or instructs another official of the municipality to make an unauthorized, irregular or fruitless and wasteful expenditure; or
  - 5.4 provides incorrect or misleading information in any document which in terms of a requirement of the aforesaid Act must be
    - 5.4.1. submitted to the mayor or the council of the municipality, or to the Auditor –General, the National treasury or other organ of state; or
    - 5.4.2 Made public
  
6. In terms of the Local Government: Municipal Finance Management Act shall be guilty of an act of financial misconduct if, in the case of the chief financial officer of a municipal entity, he deliberately or negligently-
  - 6.1 Fails to carry out a duty delegated him in terms of section 79 or 81 (1) (e) of the aforesaid Act;
  - 6.2 Contravenes or fails to comply with a condition of any delegation of a power duty in terms of section 79 or 81(1) (e) of the aforesaid Act;
  - 6.3 Makes or permits, or instructs another official of the municipality to make an unauthorized, irregular or fruitless and wasteful expenditure; or
  - 6.4 Provides incorrect or misleading information to the accounting office for the purpose of a document referred to in subsection (1) (d) of the aforesaid act.
  
7. In terms of the Local Government: Municipal Finance Management Act an employee shall be guilty of an act of financial misconduct if, in the case of a senior manager or other official of a municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 of the aforesaid act, he deliberately or negligently –
  - 7.1 Fails to carry out a delegated duty;
  - 7.2 Contravenes or fails to comply with a condition of the delegated power or duty;
  - 7.3 Make an unauthorized, irregular or fruitless and wasteful expenditure; or
  - 7.4 Provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1) (d).

## **THE ESSENCE OF DISCIPLINE**

8. Discipline is personal matter and the smallest possible number of people should be involved in disciplinary actions therefore protecting the employee 's privacy as far as possible.
9. Discipline comprises two main actions:
  - 9.1. An investigation during which fact and evidence are collected relative to the alleged offence

- 9.2. A hearing during which fact and evidence are evaluated and disciplinary action is decided upon.
10. Disciplinary action should only be taken if sufficient substantive evidence exist that a transgression of the disciplinary code has indeed been committed.
  11. The main objective of disciplinary action is the correction of the employee's behavior. Disciplinary action must be procedurally fair to ensure consistency and compliance with the law.
  12. The disciplinary code is not always applicable in case of physical incapability or incompetence. such case could often be dealt with satisfactorily in terms of the section titled incapacity/ non-performance counseling procedure.
  13. Comprehensive and accurate record keeping of disciplinary/ counseling action are essential. it is crucial that complete and accurate records be kept of all relevant documentation.
  14. Records should be kept for each employee specifying the nature of any disciplinary transgressions, the action taken by management and the reason for such action

#### **COMMITTEE FOR DISCIPLINARY INVESTIGATION :**

15. A disciplinary committee must consist of the following :
  - 15.1. A chairperson namely any employee of equal or higher post level than the accused employee or a suitably qualified private person, designated by the Municipal Manager. In the case of alleged offence by Municipal manager, the mayor shall appoint the chairperson.
  - 15.2. A representative of the department of the accused employee. if this is not possible a suitably ranked employee from another department must be nominated. in the case of the Municipal Manager there will be no such representative.
  - 15.3. The Human Resource Officer who shall also act as the secretary of the committee. if this person is of a lower post level than the accused employee he shall not have any vote.
  - 15.4. If chairperson deem it necessary any other person of an equal or higher post level than the accused employee, co-opted by the chairperson . This person may also be a private person.
  - 15.5. Union representative(if any) such representative shall not have any vote but only be observers.

#### **APPEAL COMMITTEE**

16. An appeal committee must consist of the following
  - 16.1. A chairperson namely any employee of equal or higher post level than the appellant or a suitably qualified private person , designated by the municipal Manager. in the case of the Municipal Manager being the appellant the mayor shall appoint the chairperson.
  - 16.2. A representative of the department of the appellant but not the same person as mentioned in 15.2. such representative must be of equal or higher post level than the appellant. if this is not possible a suitably ranked employee from another department

must be nominated. in the case of municipal manager there shall be no such representative.

- 16.3. The Human Resource Officer who shall also act as the secretary of the committee and who shall not have a vote in this committee.
- 16.4. If the chairperson deems it necessary any other person of an equal or higher post level than the appellant, co-opted by the chairperson. This may also be a private person.
- 16.5. Union representative as observer without any vote.

## **INCAPACITY/ NON-PERFORMANCE COUNSELLING PROCEDURE:**

### **1.7. INTRODUCTION:**

17.1. The counseling procedure is designed to assist management in handling cases where employees are not performing to the standards of work required of the or are not behaving as is expected of them in terms of their contract of employment

17.2. The purpose of the procedure is to identify the reason for the non- performance and misconduct and to provide a structured system of assisting the employee to improve his performance to the required standards within a reasonable period of time.

### **1.8. REASONS FOR INCAPACITY/ NON- PERFORMANCE**

18.1. There are three main reason why an employee may be incapable of doing his job or of performing to the required standards of work or behavior. They are:

- 18.1.1. Physical incapability due to ill health or injury, and
- 18.1.2. Incompetence due to lack of skills training natural ability or the ability to work with fellow employees.
- 18.1.3. The inability, for a variety of reason , to behave correctly.

18.2. In all the case the counseling procedure should be used to address the reasons for the employee inability to perform or behave himself.

### **19. THE COUNSELLING PROCEDURE:**

19.1. When it is considered that an employee's performance or conduct is not measured up to the standard required the supervisor concerned shall engage in a process of counseling his physical inability or perceived incompetence or inability to behave properly.

19.1.1. Review of standard : the employee job content and standards must be reviewed . The reasonableness of those standards must be confirmed and , if possible, agreed with the employee. If the employee does not agreed that they are reasonable, the supervisor may require performance to those standards if he or she believes they are reasonable.

19.1.2. **Identify sub-standard performance or behavior** : The supervisor must identify shortfalls in the performance and behavior using the most objective measurement criteria available. These shall be discussed with the employee.

19.1.3. A record must be kept to which the parties may refer to at a later stage, if necessary. The memorandum could also provide proof of counseling **identify reason for sub- standards performance and misconduct** reason why the employee has fallen below the standards must be discussed and identified.

19.1.4. **Action plan** : if the reason for the non performance/ misconduct lies with the employee the supervisor must counsel the employee on how to achieve the standards and agreed on an action plan. Agreement must also be sought from the employee that the action plan is acceptable and that he is capable of achieving the required standards if the action plan is complied with. if the action plan is reasonable but the employee does not agree with it, for no good reason it may nonetheless be implemented.

19.1.5 **Assistance** : Thereafter, the supervisor shall provide all reasonable assistance, which may include suitable training of the employee to achieve the required standard. In the case of physical incapability, the assistance may include reasonable time off for medical treatment or temporary or permanent transfer to a less onerous job.

19.1.6.**Review dates**: The employee must be given sufficient time to improve and review dates must be established to monitor progress.

19.1.7. Record of counseling : The contents of the counseling and the agreed action plan must recorded in a written memorandum to the employee in the form of the counseling record form. it must be signed by the head of department concerned , as confirmation of the action plan.

19.1.8. **Further counseling and warnings** : If the employee does not reach the required standards within the time period set, the head of department required shall engage in further counseling if it is believed that the employee may still be capable of improving given further assistance and time. The head of department must also warn the employee that he may be required standards by the end of the said period.

19.1.9. Inquiry and termination : if even after further counseling or a warning and a reasonable time period the employee still does not perform to the required standards or prove to the satisfaction of the head of department . department must recommend to the Municipal Manager that formal inquiry be convened to consider the case.

#### **DISCIPLINARY PROCEDURE :**

Once the stage referred to in 19.1.9. has been reached with an employee or in other case where an employee has allegedly contravened any part of these regulations the disciplinary steps described below must be followed.

21. When an accusation of misconduct is brought against an employee by any person the following procedure shall be followed by municipality and the employee concerned so as to protect the interest of municipality and of the employee: provided that there were the employee being accused is a head of department, the actions to be performed by the head of

department, or Municipal Manager in terms of this clause, shall be performed by the Municipal Manager and the Mayor of the municipality or their respective authorized representatives:

21.1. Any accusation against an employee shall be brought before the head of department concerned or his authorized representative or, in the case of a head of department or an employee in the Municipal Manager's department to the Municipal Manager by the person making the accusation in writing, per form HR 007.

21.2. Any such accusation against an employee brought before the head of department, shall be investigated by an employee appointed by the Head of Department. Such employee (the "investigator"), shall, within 5 working days institute and complete a thorough investigation into the allegation. Such investigation, which shall contain the information described below, shall be submitted to the head of department within 5 working days of receipt of the instruction to investigate the complaint;

21.2.1 Comprehensive statements from all witnesses to the alleged contravention

21.2.2 A report containing the following information:

21.2.2.1 A description of the alleged offence.

21.2.2.2 A summary of the statements of witnesses, alleged contravention.

21.2.2.3. A recommendation by the investigator regarding further action in respect of Complaint.

21.3 The head of department shall, within five (5) working days of the date on which he receives the investigation report from the investigator or, where the employee is accused of a criminal offence, the date on which the outcome of such investigation or trial becomes known, decide whether the accusation warrants a disciplinary hearing or not, and shall inform the person making the accusation accordingly in writing.

21.4 Should the person bringing the accusation against an employee not be satisfied with the finding of the head of department as set out in clause 21.3 such person may, within 5 (five) working days of the date on which he was informed of the decision of the head of department, bring the accusation before the Municipal Manager in writing. The Municipal Manager shall consider the matter and take a decision within 5 working days. Such decision of the Municipal Manager shall be final.

21.5. Any accusation brought before the Municipal Manager by a head of department or an employee in the Municipal Manager's department against an employee shall be investigated by an employee appointed by the Municipal Manager. Such employee (the "investigator"), shall within 5 working days institute and complete a thorough investigation into the allegation. Such investigation, which shall contain the information described below, shall be submitted to the Municipal Manager within 5 working days of receipt of the instruction to investigate the complaint:

21.5.1 Comprehensive statements from all witnesses to the alleged contravention.

21.5.2. A report containing the following information:

21.5.2.1 A description of the alleged offence.

21.5.2.2 A summary of the statements of witnesses.

21.5.2.3 A recommendation by the investigator regarding further action in respect of complaint.



21.6. Within 5 working days of the receipt of the investigation from the investigator the Municipal Manager shall decide whether the accusation warrants a disciplinary hearing and inform the head of department concerned and the person making the accusation accordingly in writing.

21.7. Should the Municipal Manager decide, in terms of clauses 21.4 and 21.6 that an accusation does not warrant a disciplinary hearing, the case against the accused employee shall be deemed closed. This clause should not be construed to preclude the Municipal Manager from cautioning the accused employee either verbally or in writing. Any written caution must be filed on the employee's personal file.

21.8. Should the Municipal Manager in terms of clause 21.6. or the head of department in terms of clause 21.3. as the case may be, decide that the accusation against an employee warrants a disciplinary hearing, the head of department concerned shall bring a charge of misconduct against such employee in terms of clause 22.

22. Where the head of department or the Municipal Manager is of the opinion that the charge warrants further action , he may institute a charge of misconduct against such employee according to the following procedure:

22.1. The head of department or the Municipal Manager shall, in writing, refer the accusation of misconduct to a disciplinary committee appointed by the Municipal Manager within 5 (five) working days of the date of his decision as contemplated in clauses 21.3 and 21.6.

22.2 Any written reference to a Disciplinary Committee as contemplated in clause 22.1 shall be addressed to the chairman of the relevant disciplinary committee: provided where the chairman of the relevant disciplinary committee is not an employee of the Council, the reference shall be addressed to the Municipal Manager.

22.3. The chairman of the disciplinary committee or the Municipal Manager, as the case may be, shall refer the accusation of misconduct within 5 (five) working days of the receipt thereof, to a person (hereinafter referred to as "the prosecutor" appointed by such chairman or the Municipal Manager and shall instruct him to charge the accused employee. If the prosecutor is a municipal employee he shall be of equal or higher post level than the accused employee.

22.4. The prosecutor shall within 10 (ten) working days of the date of the directive mentioned draw up a charge setting out the alleged misconduct and shall supply the employee charged and his trade union or representative, as the case may be, with a copy of such charge together with a written notice, form HR 008, affirming the date, time and place of the disciplinary hearing, which shall take place a minimum of 6 (six) and a maximum of 21 (twenty-one) working days from the date of such notice: provided that such period of notice may be shorter if the employee concerned agrees thereto.

23. At the disciplinary hearing:

23.1 no person making the accusation or investigating it or who is acting as prosecutor in connection with the alleged misconduct or giving evidence or connected with the same charge during a previous disciplinary hearing shall be a member of the disciplinary committee or the appeals committee , as the case may be;

23.2. evidence of the alleged misconduct may be adduced and arguments in support thereof may be advanced by the prosecutor who shall have the right to cross-examine the accused

employee, should he give evidence, or any person called as witness by or on behalf of the the accused employee and to peruse all documents submitted as evidence by or on behalf of the accused;

- 23.3. the employee charged shall have the right to be present and to be heard, either in person and/ or through an official of his trade union or legal representative shall have the right to cross-examine any person called as a witness in support of the charge, to peruse all documents provided or submitted as evidence, to call persons as witnesses, and the accused employee shall have the right to give evidence himself;
- 23.4. the municipal employer's organization shall be entitled to be present should the Council so request; likewise the trade union if so requested by the local branch of the trade union or by the employee charged;
- 23.5. the disciplinary committee shall have the right to cross-examine any witness called in support of the charge or for the defense and to peruse all documents provided or submitted as evidence;
- 23.6 the disciplinary committee, through its secretary, shall keep a record of the proceedings at the hearing and of all the evidence given. In this regard a tape record may be used and the recording so obtained be transcribed later.
24. Failure by the accused employee to attend the hearing, either in person or through a representative, shall in no way invalidate the proceedings provided that acceptable proof is presented to the disciplinary committee that the accused employee was timeously informed of the hearing.
25. The acquittal or conviction of an employee on a criminal charge by a court of law shall not prevent steps being instituted against him on a charge of misconduct in terms of this clause, notwithstanding the fact the facts set out in the charge of misconduct, should they be proven, would constitute the offence set out in the criminal charge on which he is so acquitted or convicted or any other offence of which he might be found guilty at his trial for the said criminal charge.
26. If the misconduct with which the employee is charged is tantamount to an offence of which he has been found guilty by a court of law, a certified copy of the record of his hearing and conviction by that court, after he said employee has been identified as the person referred to in such record, shall be sufficient proof that he is guilty of the said misconduct, unless the conviction has been set aside by a higher court or an appeal against such conviction to higher court is pending.
27. Should the disciplinary committee, after hearing the witness, please and arguments in support of the charge and in defence of the employee guilty of the misconduct with which he is charged , the committee may impose one of the punishment listed in the part titled sanctions below.
28. The chairperson of disciplinary committee shall , within 5 (five) working days of the date on which the hearing is completed, inform the employee charged, the heads of department concerned and the Municipal Manager of the committee finding in writing.
29. The head of department or his authorized representative shall as soon as possible after the date on which the period of appeal of the employee concerned has expired as contemplated in clause 28 without the employee having lodge an appeal, notify the Municipal Manager shall have such notification placed on the employee's personal file.

30. The record of the proceedings or a copy thereof shall be furnished to the accused employee, if he applies thereof, by the disciplinary committee within 10 (ten) working days of such application unless otherwise agreed to.

31. Should an employee voluntarily resign from the municipality's service before being found guilty or punished in terms of clause 27 for the misconduct with which he is charged, further disciplinary measure against him shall be suspended and any pay up to the date of the termination of his service shall be paid to him, subject to any right or recovery which the municipality may have.

32. An employee against whom action has been taken in terms of clause 22 may, within 10 (ten) working days working of the date of the notice mentioned in clause 27, appeal against the finding or sanctions, or both by notifying the Municipal Manager to that effect in writing. The Municipal Manager shall send a copy of such notice or appeal to the relevant head of department and the appeal committee within 5 (five) working days of the date of receipt thereof.

33. When an employee lodge an appeal in terms of clause 32, the following procedure shall be followed:

33.1. The appeal of an employee shall be heard by an appeal committee appointed by the Municipal Manager ( or the mayor whatever the case). Application for appeal is made in writing and the appeal is restricted to the reason as set out in the application for appeal, except where the chairman of the appeal committee decide otherwise.

33.2. Any written reference to an appeal committee shall be addressed to the chairman.

33.3. The chairman of an appeal committee shall appoint a person of equal or higher post level than the appellant who shall act as a prosecutor and present the municipality's case. The prosecutor shall inform in writing the appellant and his representative of the date, time and place of the hearing which shall take place within 10 (ten) working days of the date on which the Municipal Manager receives the appeal.

33.4. The provision of clause 22 shall apply mutatis mutandis to an appeal committee.

34. When a notice, statement or other document is required to be given or furnished to or served upon any person, or any matter is to be communicated to any such person in writing, in terms of the above mentioned procedure, , such notice statement, document or communication shall be forwarded to him by registered post / facsimile or delivered to him or left at the last address furnished by him.

35. The Municipal Manager may at any time before or after an employee has been charged with misconduct, suspend such employee or utilize him temporarily in another capacity should the Municipal Manager be of the opinion that it would be detrimental to the interest of the municipality if the employee should continue with his duties at that stage. In the event of the Municipal Manager being the accused employee the mayor shall perform such action.

36. An employee suspend in terms of clause 35 shall be entitled to full remuneration for the period of his suspension.

37. Should a charge against an employee be withdrawn or not proven, he shall be permitted to resume duty.

38. The Municipal Manager (or Mayor whatever the case) may at any time revoke the suspension and notwithstanding such revocation the proceeding in connection with the charge may be continued with

#### **SANCTIONS:**

39. An employee who is found guilty of misconduct may be subjected to any of the following sanction :

39.1. Verbal warning

39.2. 1<sup>st</sup> written warning

39.3 2<sup>nd</sup> written warning

39.4. Final written warning

39.5. Suspension from duty without pay for a period not exceeding three month on condition that the whole or part of the suspension period may be conditionally suspended for a period not exceeding three years.

39.6. Dismissal on condition that the execution of such dismissal ruling may be conditionally suspended for a period not exceeding three years.

40. It is not necessary that sanctions be applied in the above sequenced. Depending on the severity of the offence a disciplinary committee is entitled to apply any of the sanction at any time. However , dismissal without following the sequence must only be considered in very extreme case. A criminal offence or theft by the accused employee could be considered as such.

**TERMS OF VALIDITY OF WARNINGS:**

41. The warnings shall have the following maximum validity periods:

41.1. 1<sup>st</sup> written warning : 6 months

41.2. 2<sup>nd</sup> Written warning: 12 months

41.3. Final written warning : 12 months

41.4. Suspension without Pay: 3 years

41.5. Dismissal







