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 **DISCIPLINARY REPORT**

 **Section 1: Introduction**

1.1 The disciplinary report should serve as a guideline for the chairperson when conducting the enquiry. The chairperson must follow the steps as outlined below and tick the box when completed.

1.2 The chairperson must introduce everybody present, explain the nature of the proceedings and establish the designation and capacity of all the people present.

1.3 Record the date, names, designations and capacity of everyone present.

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| **Section 2: Confirming the accused’s rights**  |
| 2.1 | Confirm the right to representation and whether the representative qualifies to represent the employee. The representative qualifies to represent the accused if he/she is a colleague working for the company or is a shop steward. No outside representation is allowed. |  |
| 2.2 | Explain the rights of the representative. The representative can ask questions and speak on behalf of the accused, address the committee on the merits of the case and present arguments in mitigation. |  |
| 2.3 | If the employee concerned is a shop steward, ensure that the union was notified of the proceedings and invited to consult management about it prior to starting the proceedings. |  |
| 2.4 | Request the witnesses to wait outside the venue where the hearing is held. The witnesses should only be called when it is their turn to testify. |  |
| 2.5 | Confirm whether the accused was properly notified of the nature of the complaint brought against him/her and record confirmation. |  |
| 2.6 | Confirm whether the accused has had sufficient opportunity to prepare his/her case and record confirmation. |  |
| 2.7 | Confirm whether the accused understood the charge and record confirmation. |  |
| 2.8 | Confirm the accused’s rights, which are: |  |
| 2.8.1 | to be assisted at the disciplinary hearing by a fellow employee |  |
| 2.8.2 | to have an interpreter, if requested |  |
| 2.8.3 | to confer with his/her representative at reasonable times before, during and after the enquiry |  |
| 2.8.4 | to question personally, or through his/her representative, the complainant and witnesses during the enquiry |  |
| 2.8.5 | To furnish evidence and to argue on the question of whether the misconduct occurred. |  |
| **Section 3: Plea** |
| Ask the complainant to read the charge brought against the accused. Record the accused’s plea and request the accused to sign next to his/her plea on the record of the disciplinary enquiry. If guilty, go to Section 8: Sanction. If the plea is not guilty carry on with the following paragraphs. |  |

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| **Section 4: Hearing the arguments of the company** |
| 4.1 | Proceed with the disciplinary hearing by allowing the complainant to state the company’s case. |  |
| 4.2 | First allow the complainant to complete his/her own evidence. Then allow the accused and representative to question the complainant on the evidence. The chairperson and/or members of the committee have the right to ask questions in order to clarify any issue which may have arisen. |  |
| 4.3 | Call the witnesses of the complainant individually. Allow each witness to state the facts pertaining to the case, and allow questions as above. |  |

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| **Section 5: Hearing the arguments of the accused** |
| 5.1 | Proceed with the disciplinary hearing by allowing the accused and representative to state their case. |  |
| 5.2 | Allow the accused to complete his/her own evidence before allowing the complainant to question the accused on the evidence. |  |
| 5.3 | Allow the accused’s witnesses to state their facts and allow questions to be asked as above. |  |

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| **Section 6: Closing statements** |
| Give the parties the opportunity to submit closing statements. |  |

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| **Section 7: Finding of the hearing on the accused’s guilt or innocence** |
| 7.1 | Request the parties to leave the room while the question of guilt or innocence is being deliberated. |  |
| 7.2 | Consider all the facts which were brought before the hearing as well as the arguments of the parties before reaching a decision. |  |
| 7.3 | The accused’s guilt or innocence must be determined solely on the facts of the case and the arguments of the parties. |  |
| 7.4 | The accused’s past disciplinary record and other mitigating or aggravating circumstances must not be taken into consideration when determining the accused’s guilt or innocence. |  |
| 7.5 | Consider the reliability of the evidence presented. |  |
| 7.6 | Ensure that no hearsay evidence was entered and considered. |  |
| 7.7 | Did the act or omission take place? |  |
| 7.8 | Examine the evidence for each of three elements for each charge: |  |
| 7.8.1 | Was it prohibited or clearly unacceptable? |  |
| 7.8.2 | Was the accused aware of the prohibition or grossness of his/her behaviour? |  |
| 7.8.3 | Can the act or omission cause harm if repeated? |  |
| 7.9 | Assess the quality of the evidence by checking whether the evidence is: |  |
| 7.9.1 | corroborated |  |
| 7.9.2 | not denied |  |
| 7.9.3 | contradicted materially |  |
| 7.9.4 | from a reliable witness |  |
| 7.10 | Note any material gaps, inconsistencies or doubts. |  |
| 7.11 | Consider if each charge is sufficiently proved on a balance of probabilities. |  |
| 7.12 | Make a finding of guilty or not guilty for each charge. |  |
| 7.13 | Write down your finding under these headings: |  |
| 7.13.1 | Summary of evidence by each party |  |
| 7.13.2 | Credibility of witnesses |  |
| 7.13.3 | Conclusions from the evidence |  |
| 7.13.4 | Finding on each charge and supporting reason(s). |  |
| 7.14 | Make a copy for the accused. |  |

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| **Section 8: Sanction** |
| Should the accused be found guilty or pleads guilty, the chair-person must give the accused the opportunity to address the committee in mitigation prior to a decision being taken on what penalty to impose. Request the complainant to enter aggravating circumstances. |  |

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| **Section 9: Finding of the hearing on the appropriate penalty** |
| 9.1 | Again request both parties to leave the room before deliberating on an appropriate penalty. |  |
| 9.2 | Consider all the facts raised in mitigation such as the employee’s previous disciplinary record, length of service, the severity of the misconduct, as well as any future facts which may influence the decision on the appropriate penalty. |  |
| 9.3 | Recall the parties and inform them of the penalty and record the decision. |  |
| 9.4 | Inform the employee of his/her right of appeal as well as the grounds on which he/she can appeal. The employee may appeal on the following grounds: |  |
| 9.4.1 | incorrect procedures followed |  |
| 9.4.2 | new evidence |  |
| 9.4.3 | outcome of the hearing and the severity of the penalty. |  |
| 9.5 | Complete the hearing form and request the employee or representative to sign acknowledgment of the minutes and outcome of the hearing. Ensure that all pages including the annexures are signed. Refusal to acknowledge the outcome should be recorded. |  |

In the case of a dismissal, advise the employee of his/her right to refer the dispute to the CCMA within 30 days or the relevant bargaining council.

Signature of Chairperson: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Designation: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Additional notes or comments:

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