



NEWSLETTER



**TIPS FOR
PREPARING &
PRESENTING
YOUR CASE AT A
DISCIPLINARY
HEARING**

GEO officials are often tasked with the chairing of disciplinary hearings: however, the complainant/initiator - usually a manager, senior employee or business owner - is often not properly prepared.

Upon investigating the incident thoroughly, guidelines to be followed by the complainant before presenting a case against an employee include:

A. INVESTIGATION

1. Obtain a statement from the employee immediately after the incident;
2. Check the employee's explanation and confirm witnesses;
3. Interview and obtain statements from ALL witnesses involved;
4. Collect any supporting documentary and/or physical evidence.

B. PREPARATION

1. Structure and prepare the case flow, i.e. determine the manner and order of evidence presentation. (Hint: Lead with your most important witness followed by those less important). Direct witnesses to the documentary and physical evidence where appropriate.
2. Prepare leading questions for witnesses that will allow them to explain what happened.

Examples: What is your position? / What are your duties? / What are the employee's duties? / How long has he been employed for? / What did you see? / What happened on that day? / Who was there? / What was he holding?

3. Prepare cross-examination questions for the employee and the employee's witnesses with the intention of disproving the employee's evidence and that of his witnesses.

Examples: Do you agree that you were found in possession of a drill? / Do you agree that you are required to clock in every day? / Do you agree that you signed for the company rules? / Do you agree that is you on the video footage? / Can you explain why you did not have a pass out for the goods found in your possession? / Why did you not contact the company when you were unable to attend work? / You stated earlier that you are aware of the company procedures? / Do you agree that you received these three written warnings? / Do you agree that you received a final written warning? / Do you agree been counselled for such behaviour in the past?

4. Prepare aggravating factors to present at the end of the hearing.

Examples: The employee's disciplinary record / If the employment and trust relationship has been destroyed / Loss or damages suffered by the employer / Reputational damage to the employer.

C. PRESENTATION

1. The chairperson will guide the process.
2. After the chairperson has confirmed that the employee is aware of his/her rights and the employee has pleaded to the allegations, the complainant commences with the company's case, presenting as described in B above.
3. At the conclusion of the hearing, the chairperson will ask the employee for any mitigating factors and the complainant for any aggravating factors.

Make extra paginated bundles of your documentary evidence to give to the chairman and the employee at the disciplinary hearing.

Summary: It is vital for the complainant to prepare properly before presenting a case at a disciplinary hearing. This will go a long way in ensuring that you present a strong, credible case to the chairperson.

For assistance with
POPI compliance,



please contact Andre
Rabe via email:
andrerr@geo.org.za

GEO members are advised to subscribe to the CIRIS internet labour law advice site. It provides valuable information on all matters related to Labour Law. Contact Andre Rabe on 0824910708 or email him on andrerr@geo.org.za

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Summary

Be Prepared:

Investigate



Prepare

Structure of evidence
Witnesses
Prepared questions



Present your Case



The onus of proof lies with the employer and as such, the complainant must present a strong enough case on a balance of probabilities for a finding of guilt.

The chairperson is expected to be unbiased and must consider the facts as presented. The chairperson cannot 'assist' the complainant if he has not properly prepared.

To ensure you present a strong, credible case, contact us for expert advice.