

01-08-2017



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Summary

Definition of Misconduct:

'Unacceptable or improper behavior, especially by an employee or professional person.'

Source: *The Oxford Living Dictionaries*

MISCONDUCT

Part 1: The overview

Subsequent to reviewing various CCMA matters and Labour Court judgments, it has become clear that there is no specific manual that defines when dismissal would be a warranted sanction for a specific type of misconduct.

Over the next few months we will be providing a series of articles on misconduct which will include examples of the various types of misconduct one would normally and generally face when at disciplinary enquiries.

However, please note that the list of examples of misconduct described in our articles is not at all an exhausted list, as many types of misconduct still exist and some new types of misconduct can be created. The examples serve as a guideline only, as in some cases it can be difficult to determine what the correct sanction would be with a specific set of circumstances.

Bringing a case to the CCMA and the Labour Court needs careful consideration

The CCMA and Labour Court do not tolerate any unfair treatment towards an employee, as an employee is viewed as the party which needs more protection. An employer has more resources and finances to secure sufficient evidence and representation, so is viewed as the party with an advantage over the employee.

It is therefore important that before dismissal is sanctioned, the decision to do so must be reached only after an in-depth consideration of the facts, including mitigating and aggravating circumstances. One must be able to determine that dismissal was a reasonable and fair sanction.

Misconduct can be placed in two main categories:
Minor and Severe.

Minor misconduct can be described as:

Poor time keeping; Absence; General swearing; and Horseplay.

Severe misconduct includes:

Gross Dishonesty or Dishonesty; Unauthorised possession of company/ employee/ client property, misappropriation of company/ employee/ client property, theft and fraud; Severe and minor assault, attempt to assault or fighting on employer premises; Uttering discriminatory or offensive words and swearing; Sexual harassment; Being under the influence of a substance or possession of illegal or unauthorised substances; Sleeping on duty; Gross Insubordination, gross insolence, failure to obey a reasonable instruction; Committing illegal conduct on employer premises or with employer property; Gross Negligence and negligence; Gross dereliction of duties; Malicious/ deliberate or negligent damage to employer or staff property; Participating in an unlawful strike; Threatening or inciting violence; and Derivative vs Team Misconduct.

Dismissal or written warning?

Making such a determination can be difficult. However, when applying logic and fairness to the findings, in most circumstances one will be able to determine which sanction is most fitting in any specific situation.

Hopefully our future newsletters, which will enlarge on all the examples listed above, will assist the employer in making the right decision.

Andre Rabe
Chairman