



## SCHEDULE 8: THE CODE OF GOOD PRACTICE DISMISSALS

*In part 1 of this 8 part series of articles, we dealt with the onus of proof in disciplinary hearings.*

*Part 2 informs employers of the process required regarding the use of discipline in the workplace.*

### PART 2: SCHEDULE 8: THE CODE OF GOOD PRACTICE - DISMISSALS

The Code of Good Practice, Schedule 8 of the Labour Relations Act provides employers with an important guideline on how discipline should be applied in the workplace. ([Click here to view Schedule 8](#)).

#### Schedule 8:

- States that it is not generally appropriate to dismiss employees for committing an offence unless it is of such gravity that a continued employment relationship is not possible.
- Encourages employers to first consider **progressive discipline** before dismissing an employee.

**Progressive discipline** involves counselling an employee and issuing written and final written warnings before dismissal. Certain offences are however regarded as serious enough to justify the dismissal of an employee for a first offence. Examples of such offences include: assault / gross insubordination / dishonesty / desertion / gross negligence, etc.

#### Schedule 8 states that before an employee can be dismissed, the following needs to be considered:

- *Is there a rule?*

It is advisable for all employers to have a set of disciplinary rules in place.

The list of rules is essentially a **guideline** of what the employer regards as unacceptable conduct. It also provides for recommended sanctions should an employee be found guilty of such misconduct. The company rules should state that the rules are merely a guideline and a harsher or more lenient penalty may be imposed depending on the employee's personal circumstances and the facts of the case. [Click here for an example of disciplinary rules](#)

- *Is the employee aware of the rule?*

It is important to ensure that every employee is made aware of the company rules. This should be done during the **induction phase** before the employee actually starts working. Current and long serving employees should also be reminded regularly of the company rules through the holding of a short meeting at the start of each year, for example.

The company rules should also be placed on company notice boards and copies given to each employee. Employees should have signed contracts of employment where the employee has agreed that he is aware of the company rules and will comply with such.

All new employees must be inducted into the company policies, procedures and rules.

- *Is the rule reasonable?*

An employer has the right to draft its own rules and regulations. These rules must however, be reasonable and fair. An employer cannot ask an employee to comply with rules that are unlawful and/or unreasonable, such as: "An employee may not belong to a union"; "An employee may not discuss internal matters with labour inspectors/trade union officials"; and "An employee may go to the toilet only during lunch breaks".

- *Did the employee break the rule?*

Obviously, an employee cannot be disciplined unless the employee has actually broken a rule.

The employer (company) bears the onus to prove that an employee has broken a rule.

An initiator would be required to investigate the incident and obtain sufficient evidence to prove on a balance of probabilities that the employee committed the offence.

- *Has the rule been applied consistently?*

An employer is expected to apply discipline consistently across all employees. It is unfair to dismiss one employee for being under the influence of alcohol and then issue another employee with a first written warning for having done the same thing.

It is important to check which penalties have been imposed on employees for having committed the same offence in the past.



#### Is dismissal an appropriate penalty for breaking this rule?

*Deciding on a dismissal will depend on:*

- The company rules
- Aggravating factors such as the seriousness of the offence, damage caused or losses sustained by the employer and previous warnings
- Mitigating factors such as the employee's personal circumstances, length of service, dependants, remorse
- Whether the employment or trust relationship has been irreparably broken.

#### Regards

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### E-LEARNING – INITIATING DISCIPLINARY HEARINGS

We have designed an E-Learning course covering how to initiate professional disciplinary hearings. The online course is designed for any manager or supervisor that may be required to act as an initiator in disciplinary hearings.

- The benefits of this online course are:
- Cost effective – no venue, food or travelling costs;
- Learner paced – delegates work through the material at their own speed;
- No work disruption – delegates at work;
- Convenient – delegates can pause or continue the course at any stage;
- Multiple devices – the course can be paused and continued on other devices e.g. home PC or smart phone;
- Content can be downloaded;
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To see a demo of the course select the following link:

[E-Course Initiating Disciplinary Hearings - Power Point](#)

To access the course contact Andre Rabe on 082 491

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#### In This Issue

*The code of good practice - dismissals.*

**SCHEDULE 8**

#### PART 2:

Informing the employers of the process required regarding the use of discipline in the workplace.

#### E-learning

Initiating Disciplinary Hearings



VIEW OUR DEMO

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

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#### Summary

**1. An employer should apply a process of corrective action for minor offences.**

**2. Dismissal should be reserved for serious forms of misconduct.**

**3. An employee should be made aware of the company rules which must be lawful and reasonable.**

**4. An employee should be dismissed only if he is found guilty of a serious offence that justifies dismissal.**

**5. Rules must be applied consistently.**

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