

# **DISCIPLINARY POLICY AND PROCEDURE**

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DISCIPLINARY GUIDELINES AND FORMATS.

## **1. SCOPE OF AGREEMENT.**

The terms of this Policy shall be observed in the Local Government Undertaking and in specific the Municipality of The Elias Motsoaledi Local Municipality in the Republic of South Africa by all employers and by all employees who falls within the registered scope of the applicable Council.

## **2. DEFINITIONS.**

All expressions used in this Policy, which are defined in the Labour Relations Act, 1995 and as amended, shall bear the same meaning as in the Act and unless the contrary intention appears, words importing the masculine gender shall include the feminine.

All reference to days shall be a reference to working days.

## **3. INTENT OF POLICY**

The purpose of this policy is to establish a common and uniform procedure for the management of employee discipline and to replace all existing procedures and regulations.

The code is a product of collective bargaining and the application thereof is peremptory and is deemed to be a condition of service.

The policy is taken from the guidelines set in the Collective Agreement on Disciplinary measures.

## **4. DISCIPLINARY PROCEURE**

- 4.1 Discipline is to be effected fairly, consistent, progressively and promptly.
- 4.2 The maintenance of discipline is the responsibility of management and falls within the control function of any supervisory position.
- 4.3 The principles / ethics of natural justice and fair procedure must be adhered to notwithstanding any criminal and/ or civil action having been instituted.
- 4.4 Subject to the requirements of substantive and procedural fairness, the Tribunal has the right to determine the sanction to be applied, having regard to the

seriousness of the offence and provided that the sanction is consistent with the provisions set in this policy.

- 4.5 This policy and procedure must be published and made available to all employees so that they may be aware, explicitly, of the standard of conduct at the workplace.
- 4.6 This policy and procedure as amended from time to time, will define the disciplinary process and the rights and obligations of management and employees.
- 4.7 An accusation of misconduct against an employee shall be brought in writing before the Municipal Manager or his /her proxy for investigation. If the Municipal manager or his/ proxy is satisfied that there is a *prima facie* cause to believe an act of misconduct has been committed, he may institute disciplinary proceedings. The employer shall proceed forthwith or as soon as reasonably possible with a disciplinary enquiry.
- 4.8 Depending on the seriousness of the misconduct, the Municipal Manager or his/ her proxy may refer the matter before either a Departmental Enquiry or Disciplinary Tribunal. A Departmental Enquiry proceeding shall be reserved only for matters where the competent sanction is a verbal or final written warning. In proceedings before a Departmental Enquiry an employee shall enjoy the same rights, as he would have had before a Disciplinary Tribunal.
- 4.9 If in the opinion of the Municipal Manager or his / her proxy the misconduct is serious and may result in a sanction of suspension, demotion or dismissal, a Disciplinary Tribunal shall be established to conduct the enquiry.
- 4.10 In which event;
  - 4.10.1 The Municipal Manager or his/her proxy shall constitute a Disciplinary Tribunal by appointing a suitably qualified person to serve as the presiding Officer. In general a person appointed to serve as the Presiding Officer should be a senior employee in the employ of the Employer. However, if this is not possible or desirable, any other suitably qualified person may be appointed.
  - 4.10.2 The Municipal Manager or his / her proxy shall also appoint a person to be referred to as the Prosecutor to represent the employer and to serve

the function of prosecution. In general a person appointed to serve as the Prosecutor should be a person in the employ of the Employer. However if this not possible or desirable, any suitably qualified person may be appointed.

4.10.3 In all instances the Corporate Services Director or Manager Human Resources will assume full responsibility to ensure that disciplinary measures was followed in a fair, consistent manner and in line with the policy and procedure.

4.11 The Prosecutor shall, with in (5) five days of his appointment formulate and present the charges to be brought against the employee. The charge(s) is (are) to be set out in a Notice of Misconduct detailing:

4.11.1 The alleged misconduct as is contemplated in annexure "A" hereto;

4.11.2 The time date and venue at which the enquiry will be conducted.

4.11.3 The name of the presiding officer and the prosecutor and the address at which notices and correspondence may be served on the Disciplinary Tribunal.

4.11.4 The fact that the employee may appoint a representative of choice who may be a fellow employee, shop steward, union official and if this is not possible or desirable, any suitably qualified person: and

4.11.5 The fact that if the employee or his representative fails to attend the enquiry it may be conducted *in absentia*.

4.11.6 The employee should, whenever possible, acknowledge receipt of the notice.

4.11.7 The disciplinary enquiry should commence on a date not less than five (5) days or more than fifteen (15) days calculated from the date of service of the Notice of Misconduct on the employee.

4.11.8 The period referred to in 4.11.7 above may be varied by agreement and failing agreement; either party may apply to the Tribunal for an extension of the period.

4.11.9 The Tribunal, on good cause shown, may extend any period of time fixed by or under this clause provided a return date is fixed and made certain.

## **5. CONDUCT OF THE ENQUIRY**

- 5.1 The hearing shall be conducted by the Presiding Officer who may determine the procedure to be followed subject to the following:
  - 5.1.1 The rules of natural justice must be observed in the conduct of the proceedings.
  - 5.1.2 Unless otherwise agreed to by the parties, the hearing must be adversarial in nature and character; and
  - 5.1.3 The presiding officer in discharging this obligation is to exercise care, proceed diligently and act impartially.
- 5.3 The Prosecutor shall bear the duty to commence and the burden to prove each and every allegation(s) on a balance of probability set out in the Notice of Misconduct.
- 5.4 In discharging these duties, the prosecutor shall be entitled to call before the Disciplinary Tribunal any witnesses and produce any books, documents or things; and:
  - 5.4.1 Subject to legal objection cross-examine any witness called to testify on behalf of the employer and inspect any books, documents or things produced; and
  - 5.4.2 Present argument based on the evidence in support of any submission.
- 5.5 The employee summoned before the Disciplinary Tribunal shall have the right to be heard in person or through a representative and to call before the Disciplinary Tribunal any witnesses and produce any books, documents or things; and
  - 5.5.1 Cross-examine any witness subject to legal objection called to testify on behalf of the employer and to also inspect any books, documents or things produced; and
  - 5.5.2 Present argument based on evidence in support of any submission.

- 5.6 The presiding officer shall have the power to:
- 5.6.1 Determine the procedure to be followed for the conduct of the enquiry that he deems appropriate with the minimum of legal formalities provided that the rules of natural justice shall be observed;
  - 5.6.2 Put questions, without cross-examining, to the parties or their witnesses on any matter relevant to the issues;
  - 5.6.3 Proceed with the enquiry in the absence of a party who is in willful default or fails to attend any meeting despite the expiry of a notice to attend.
  - 5.6.4 Make such interim determinations or rulings as he deems necessary;
  - 5.6.5 Propose to the parties compromise settlements in disposal of the whole or portion of the issues;
  - 5.6.6 Make a finding of fact after having considered the evidence;
  - 5.6.7 Invite and hear plea in mitigation, aggravation or extenuation prior to deciding on the sanction to impose; and
  - 5.6.8 The following are examples of possible sanctions, which may be imposed by the chairperson, or recommendations made by the chairperson and considered or approved by the Council.
    - 5.6.8.1 Written warning
    - 5.6.8.2 Final written warning;
    - 5.6.8.3 Transfer to another position either with or without financial loss;
    - 5.6.8.4 Suspension without pay for a maximum of 10(ten) days and in the event of a suspension in excess of five (5) days, the suspension without pay shall be spread over three (3) monthly pay periods.
    - 5.6.8.5 The withholding of any salary increment for a period not exceeding twelve months;
    - 5.6.8.6 Demotion to another / lower post with or without financial loss; or
    - 5.6.8.7 Dismissal
- 5.7 The presiding officer shall have the power to: The Presiding officer shall within ten (10) days of the last day of the hearing confirm in writing the findings of fact, sanction imposed and the reason in support thereof and provide a copy of the

determination to the Municipal Manager or his/her proxy and to the employee or his representative.

## **6. SUMMARY PROCEDURE.**

6.1 If the employer and the employee so agree in writing, the Summary Procedure as set out hereinafter may apply to the proceedings. The Presiding Officer shall, at such meeting(s) with the parties, as he deems necessary:

6.1.1 Confirm that the matter is ready for adjudication;

6.1.2 Ascertain and record in writing, signed by himself and the parties, the facts on which the parties agree and those on which they disagree herein called the "issues";

6.1.3 Receive from the parties such documents or copies thereof as they consider relevant to the determination of the issues;

6.1.4 Receive evidence or submissions, orally or in writing, or if the parties so agree, by the interchange of written statements or submissions, between the parties with copies to the presiding officer provided that each party shall be given reasonable opportunities of presenting evidence or submissions and of responding to those of the other;

6.1.5 Deliver a determination, in writing, within ten (ten) days of the last day of the hearing or submission of the last document to the presiding officer, if there was no hearing.

## **7. RIGHT OF RESIGNATION.**

7.1 An employee who receives a Notice of Misconduct shall be entitled to resign from employment or to retire, if eligible, in terms of the retirement fund rules, provided that:

7.1.1 The employee does so before the handing down of a determination;

7.1.2 The employee consent to in writing top the deductions of all and any amounts owing by him to the employer from any monies payable to him by the employer (including but not limited to retirement fund monies)

arising out of or in connection with his resignation or retirement. In such event the disciplinary enquiry shall not proceed.

**8. DISCIPLINARY TRIBUNAL.**

- 8.1 In general a person appointed to serve as the Presiding Officer should be a senior employee in the employ of the employer. However if this is not possible or desirable, any other suitably qualified person may be appointed.
- 8.2 During the conduct of the enquiry the employee may make application on good cause shown for the recusal of the Presiding Officer.
- 8.3 The Presiding Officer shall not consult, confer or have casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other party.
- 8.4 The determination of the Disciplinary Tribunal shall be final and binding on the employer save that the employee may lodge an appeal thereto.
- 8.5 In general a person appointed to serve, as Prosecutor should be a person in the employ of the employer. However, if this is not possible or desirable, any suitably qualified person may be appointed.

**9. RECORDING.**

- 9.1 The proceedings of the Tribunal will at all time be recorded by means of a mechanical device.
- 9.2 The record of the proceedings shall be kept in safe custody by the employer and upon request a copy thereof provided to the employee or his representative.

**10. NON-ATTENDANCE.**

- 10.1 In the event of the failure by the employee, or a duly authorized representative, to attend an enquiry or appeal without good cause and after proper service of the Notice of Misconduct was affected, the enquiry may be conducted *in absentia* and discipline affected.

**11. RIGHT OF REPRESENTATION.**



- 11.1 An employee shall be entitled to representation at any enquiry by an employee, a shop steward or union official who is willing and able to represent the employee and If this is not possible or desirable, any suitably qualified person.

## **12. SUSPENSION.**

- 12.1 The employer may at any time before or after an employee has been charged with misconduct, suspend the 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 employer if the employee remains in active service.
- 12.2 If the Municipal Manager intends to suspend the employee he shall given notice of such intention and afford the employee with an opportunity to make representation as to why he should not be suspended. The enquiry shall be done by means of the Summary Procedure as provided for in this policy.
- 12.3 The suspension or utilization in another capacity shall be for a fixed and pre-determined period and at any rate shall not exceed a period of (3) three months.
- 12.4 Any suspension affected shall be on full pay and inclusive of benefits.
- 12.5 Should an employee be suspended without a charge sheet, due to certain detail regarding the charge or charges not be available at the time of the suspension, then the letter of suspension will indicate on which date and time the suspended employee will have to report to receive the charge sheet. An employee on suspension without a charge sheet will receive the charge sheet within reasonable time after the suspension was affected.

## **13. APPEAL.**

- 13.1 The Employee has the right to appeal against any disciplinary sanction, which has been given at the Disciplinary Enquiry.
- 13.2 An appeal must be lodged on the prescribed form within five (5) working days of receipt of written notification of the disciplinary decision and the grounds of the appeal must be clearly set out provided that the failure by a party to raise a ground of appeal shall not preclude that party from subsequently raising it before the Disciplinary Appeal Tribunal.

- 13.3 Appeals will be heard by a management level above that of the Presiding Officer of the enquiry in the case of final written warnings and by a higher level of management who does not exercise direct management control over the affected employee in the case of a dismissal and suspensions without pay.
- 13.4 By agreement the appeal may be heard by an impartial arbitrator appointed by the parties to the appeal from a panel or list.
- 13.5 The appeal will only be heard on the grounds of a appeal submitted by the employee and any amendment thereto and by having regard to the record of the proceedings and submissions and arguments based thereon, The appeal should not entail the rehearing of the matter *de novo*.
- 13.6 The presiding officer of the Disciplinary Appeal Tribunal shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed.
- 13.7 The presiding officer of the Disciplinary Appeal Tribunal shall fix the time and date of the hearing which will take place within ten (10) days of the date of appointment. In consultation with the parties, the presiding officer may vary the time and date and order a mutually convenient time, date and venue.
- 13.8 The parties shall deliver to the other and to the Presiding Officer a brief statement of case at least 2 (two) working days prior to the hearing and no further pleadings shall be exchanged unless otherwise agreed.
- 13.9 The statement of case shall concisely set out the facts upon which the party relies, the conclusions of law upon which the party relies and the relief the party seeks.
- 13.10 The hearing will be conducted by the Presiding Officer in whatever manner and procedure, including the Summary Procedure as set out in the policy that will produce the most expeditious hearing of the matter.
- 13.11 The Appeal Tribunal is to consider if the disciplinary enquiry and sanction was fair. The Presiding Officer in his sole discretion shall be entitled to make whatever order he deems reasonable in the circumstances.
- 13.12 The Appeal Tribunal shall make its determination, in writing, within ten (10) days from the last day of the hearing and provide a copy of the determination to the Municipal Manager or his/her proxy and to the employee or his representative.

**14. PRE-DISMISSAL ARBITRATION.**

An employer may, with the consent of the Employee request the Bargaining Council, an accredited agency or the CCMA to conduct an arbitration into allegations about the conduct or capacity of an employee as provided for under section 188 A of the Labour Relations Act 66 of 1996.

The provisions of Section 138 of the Labour Relations Act, to be read together with the changes required by the context, applies to any pre-dismissal arbitration. The employee must be made aware of the implications of agreeing to a pre-arbitration dismissal. Agreement and consent must be obtained in writing from the employee and representative if any.

**15. RIGHT TO REFER A DISMISSAL AS A DISPUTE.**

In the event of the employee being dismissed through the normal disciplinary process, excluding a pre-arbitration dismissal the employee will remain the right to refer such dismissal to the applicable legislative institution within the prescribed time for conciliation followed by the arbitration process should conciliation have failed, alternatively for the con/arb process.

## **CONDUCT AND SANCTIONS.**

### **1. STANDARD OF CONDUCT.**

Employees are expected to comply in every respect with the conditions of employment and collective agreements in force and any related regulations, orders, policies and practices and to refrain from any conduct which would give just cause for discipline.

In particular, employees should:

- Attend work regularly and punctual
- Conform to the reasonable dress and uniform requirements of the employer.
- Perform their tasks and job responsibilities diligently, carefully and to the best of their ability.
- Obey all lawful and reasonable instructions given by a person having the authority to do so.
- Conduct themselves with honesty and integrity.
- Request permission in advance for any leave of absence whenever possible.
- Refrain from being absent from duty without leave or permission, except on good cause.
- Refrain from accepting any other employment commonly referred to as “moonlight” outside of normal working hours, shift work or rotation work without the prior permission of the Department Head or Municipality Manager.
- Refrain from rude, abusive, insolent, provocative, intimidatory or aggressive behaviour to a fellow employee or member of the public.
- Refrain from willful or negligent behaviour, which may result in the damage of property.
- Refrain from participating, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the employer, other than actions contemplated by the Labour Relations Act.
- Refrain from wrongfully disclosing privileged information; and
- Refrain from consuming alcohol or using intoxicating drugs whilst on duty.

This policy must be read together with **EMPLOYEE CODE OF CONDUCT (RULES & REGULATIONS)**

## **2. SANCTIONS FOR MISCONDUCT.**

- 2.1 In accordance with the Disciplinary Policy, any sanction that is imposed for misconduct will be intended to deter future repetition of that behaviour. The sanction imposed must be based on the seriousness of the offence and considering the employees disciplinary record.
- 2.2 The imposition of discipline is progressive in that sanctions are to be applied with increasing severity with the repetition of the offence. Sanctions will generally be applied by first issuing a written warning and then a final written warning, except in cases of misconduct or suspension without pay or the immediate imposition of a final warning.
- 2.3 All written warnings and suspensions are to be recorded in the employee's personal file.
- 2.4 A written warning will remain valid and on the record of the employee for a period of six (6) months from the date of imposition.
- 2.5 The employer may impose as a sanction a suspension without pay having regard either to the serious nature of the misconduct or the fact that there has been a previous warning or warnings for the same behaviour in which event;
  - 2.5.1 The maximum period will be ten (10) days
  - 2.5.2 The period of suspension will run consecutively.
  - 2.5.3 In the event of a suspension in excess of five (5) days, the suspension without pay shall be spread over three (3) monthly pay periods.
- 2.6 A suspension without pay shall be regarded as a sanction more serious than a final written warning.
- 2.6 As a guideline, an employee may be dismissed on the first occasion for, inter alia:-
  - 2.6.1 Intimidation, fighting and /or assault.
  - 2.6.2 Theft, unauthorized possession of or malicious damage to the employer's property.

- 2.6.3 Being under the influence of alcohol or intoxicating drugs whilst on duty if the nature of work, to be performed is such that intoxication endangers the safety of the employee or that of others.
- 2.6.4 Any act of gross dishonesty.
- 2.6.5 Any act of gross negligence
- 2.6.6 Gross insubordination
- 2.6.7 Wrongfully disclosure of privileged information
- 2.6.8 Any act of bribery or corruption; and
- 2.6.9 Any other act of misconduct which would constitute just cause for dismissal.

**NOTICE TO ATTEND A DISCIPLINARY INQUIRY**

**TO:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**FROM:** \_\_\_\_\_

You are hereby instructed to attend a Disciplinary Inquiry on \_\_\_\_\_ (day) the \_\_\_\_\_ (date) at \_\_\_\_\_ (time) at \_\_\_\_\_ (place). At the Disciplinary Inquiry the alleged misconducts as detailed in Annexure "A" attached hereto, will be investigated.

We wish to remind you that you have the following rights at the Disciplinary Inquiry:

1. To be represented by a fellow employee of your choice.
2. To the assistance of an interpreter if you require one.
3. To call any witnesses in your defence.
4. To question the Municipality witnesses.
5. To be heard and to put your defence/version to the chairperson.

Kindly advise Management prior to the Disciplinary Inquiry of the identity of your chosen representatives and of any witnesses that you may wish to call.

**NOTE: SHOULD YOU FAIL TO ATTEND THE DISCIPLINARY INQUIRY, IT WILL BE HELD IN YOUR ABSENCE**

Yours faithfully

\_\_\_\_\_  
**MANAGEMENT**

I confirm notification of the abovementioned Disciplinary Inquiry and Annexure "A",  
and further confirm that I will attend the Disciplinary Inquiry:

\_\_\_\_\_  
**SIGNATURE OF EMPLOYEE**

**DATE:** \_\_\_\_\_

**TIME :** \_\_\_\_\_.

I hereby confirm that the above named employee received this notification and  
Annexure "A", but refused to sign acknowledgement of it or confirm that he/she  
would attend his/her Disciplinary Inquiry:

\_\_\_\_\_  
**SIGNATURE OF WITNESS.**

**DATE:** \_\_\_\_\_

**TIME:** \_\_\_\_\_



# ANNEXURE A.

## CHARGE SHEET.

CHARGE 1: \_\_\_\_\_

DETAILS: \_\_\_\_\_

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CHARGE 2: \_\_\_\_\_

DETAILS: \_\_\_\_\_

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**CHARGE 3:** \_\_\_\_\_

**DETAILS :** \_\_\_\_\_  
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**CHARGE 4:** \_\_\_\_\_

**DETAILS :** \_\_\_\_\_  
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**OUTCOME OF DISCIPLINARY INQUIRY**

**DEAR:**\_\_\_\_\_

**DATE:** \_\_\_\_\_

As you are aware a Disciplinary Inquiry was held on the\_\_\_\_\_. At such Disciplinary Inquiry you were advised of your rights to a representative and an interpreter as well as your right to call and cross-question witnesses.

At the disciplinary inquiry evidence was lead by the complainant, being\_\_\_\_\_, and yourself. The evidence lead was, inter alia:

**CHARGE 1.**

COMPLAINANT.

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EMPLOYEE.

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**CHARGE 2.**

COMPLAINANT.

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EMPLOYEE.

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**CHARGE 3.**

COMPLAINANT.

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EMPLOYEE.

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**CHARGE 4.**

COMPLAINANT.

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EMPLOYEE.

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After carefully considering the evidence lead, my findings are as follows:

Charge 1 – \_\_\_\_\_ - **Guilty/ Not guilty**

Charge 2 – \_\_\_\_\_ - **Guilty/ Not guilty**

Charge 3 – \_\_\_\_\_ - **Guilty/ Not guilty**

Charge 4 – \_\_\_\_\_ - **Guilty/ Not guilty**

[illegible]

Evidence to be presented by the employee and employer in respect of mitigating and aggravating circumstances prior to a sanction can be given. These factors will be taken into account by the chairperson.

**MITIGATING :**

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**AGGRAVATING :**

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In light of this, I believe that the justifiable sanction is \_\_\_\_\_.

I strongly recommend that you seriously consider the consequences of your actions in the future.

I confirm that you have the right to appeal against my decision as well as the disciplinary procedure followed. Your grounds of Appeal must be submitted in writing within 5 (five) days of receipt of this written outcome.

I further confirm that you have the right to refer the matter to the Commission for Conciliation, Mediation and Arbitration or the relevant Bargaining Council in the event of a dismissal and such referral must be made within thirty (30) days from outcome.

**If this is a dismissal outcome the employee must be informed as to where he/she can collect his/her certificate of service/ UIF card/ pension fund details etc.**

Yours faithfully

**CHAIRMAN**

I confirm receipt of the above-mentioned Outcome and fully understand the contents thereof:

\_\_\_\_\_  
**(SIGNATURE OF EMPLOYEE)**

**DATE:**

I confirm that the above named employee received this Outcome, but refused to sign Acknowledgement of it.

\_\_\_\_\_  
**(SIGNATURE OF WITNESS)**

**DATE:**