LABOUR LEGISLATION GUIDELINE

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1 INTRODUCTION

1.1 The purpose of this document is help training officers ensure that they act fairly and in line with the provisions of applicable labour legislation in their relationship with trainee accountants at all times.

1.2 The relationship between employers and employees is regulated by the *Labour Relations Act*, 1995, as amended (Act 66 of 1995) and the *Basic Conditions of Employment Act*, 1997, as amended (Act 75 of 1997). In terms of various labour related legislation (such as, for example, the Employment Equity Act and the Basic Conditions of Employment Act), an employer is required to display a summary of these acts in the workplace. Such summaries may be obtained from the local Departments of Labour or the Government Printer in Pretoria.

1.3 Although the enclosed guidelines were prepared in line with the above legislation, they are not intended to take the place of professional legal advice. Therefore the employer/employee must use the document as a guideline only, and when in doubt consult with an appropriate expert.

1.4 While the main purpose of the guidelines and templates in this document is its application to trainee accountants, it could with minimal editorial changes be applied to other employees as well.

2 GOLDEN RULES FOR GOOD WORKING RELATIONSHIPS

- Set a good personal example.
- Ensure that your rules are reasonable and kept up to date.
- Check that everyone knows the rules and what is expected of them.
- Create a work climate in which your subordinates feel free to approach you.
- Do not take action until you have all the facts.
- Never rely on hearsay – stick to the facts.
- Ask for and be prepared to take into account the other person's side of the story.
- Take time to find the real problem and the cause of the problem.
- Listen actively
    - do not interrupt
    - give your full attention
    - check your understanding of the facts/situation.
- Focus on the problem, not the individual.
- Be consistent and follow up on any commitments made.
- Make sure your subordinates have sufficient training, tools and support to perform their duties.
- Keep your cool.

3 THE TEN COMMANDMENTS OF INDUSTRIAL RELATIONS[1]

3.1 THE EMPLOYER

1. You may not dismiss an employee without just cause or reason, nor may you dismiss or treat an employee unfairly i.e. in a manner at variance with the standard of fairness and equity laid down by the Labour Court.

2. You may not dismiss an employee without having given him a fair warning or a final written warning, except for certain serious offences such as theft, dishonesty or violence. No employee may be dismissed because of misconduct without the benefit of a disciplinary hearing.

3. You may not, as a general rule, in cases of misconduct dismiss or mete out punishment to an employee without first having afforded him a proper opportunity to explain his conduct at a fair disciplinary hearing.

4. You may not impose a severe penalty upon an employee without first having considered such employee's work record as well as other relevant factors in mitigation, nor may you impose a penalty that is out of proportion to the alleged offence.

5. You may not retrench an employee except in accordance with the guidelines set out in the decisions of the Labour Court from time to time.

6. You may not prevent an employee from joining any trade union of his choice, nor may you victimise an employee because he is a member of a trade union, whether it registered or not.

7. You may not make any unauthorised deductions from the remuneration of an employee, nor may you compel an employee to do overtime work or commit a breach of the Basic Conditions of Employment Act to the employee's detriment.

8. You may not make derogatory remarks about an employee, nor insult or humiliate him in the workplace.

9. You may not refuse to honestly attempt to settle all labour disputes through conciliatory procedures in order to avoid industrial unrest.

10. You may not disobey or frustrate any order or judgment obtained against you by an employee in the Labour Court.

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[1] Bulbulia, Member of the Industrial Court. (These “Ten commandments of industrial relations” were handed down by a senior member of the then Industrial Court, today known as the Labour Court. They are still very relevant.

3.2 THE EMPLOYEE

a. You may not breach the terms of your employment relationship except for just cause.

b. You may not be disloyal to your employer or betray him or give away his trade or business secrets.

c. You may not be disobedient or disrespectful to your employer nor indulge in unbecoming or unruly conduct in the workplace.

d. You may not engage in work stoppages or strikes, except in accordance with the provisions of the Labour Relations Act.

e. You may not intimidate any co-employee who refuses to join a trade union or who is unwilling to participate in industrial action against your employer.

f. You may not remain absent from work or be late for work without good reason and without notifying your employer at the earliest possible opportunity.

g. You may not gossip or spread false rumours at work, as this may impair sound employment relationships.

h. You may not be careless or do anything to endanger the lives and safety of persons during the course and scope of your duties.

i. You may not quit your employment without first having given your employer the requisite notice.

j. You may not sleep on your rights or be slow in instituting action against your employer within the time limits prescribed by section 43 of the Labour Relations Act. (In terms of the old Labour Relations Act, time limits were dealt with in section 43. The point, however, is entirely apposite today.)

4 GUIDELINES FOR RELEVANT POLICIES AND PROCEDURES

The policies below represent the most important policies and procedures that employers should have in place.

4.1 GUIDELINES ON AIDS AT THE WORKPLACE

4.1.1 Why single out AIDS for special treatment as a company/firm policy?

AIDS is only one of many life-threatening diseases (e.g. cancer and pneumoconiosis) and should be thought of and handled as such with regard to individual employees. However, AIDS is frequently singled out with regard to guidelines on how to deal with it, because:

- the projected numbers of infected persons are large;
- the person infected with the HIV also faces possible rejection because of the highly stigmatised, usually sexually transmitted, fatal nature of the disease;
- people who are infected may remain in the asymptomatic carrier stage for some years and be fully productive. If not sensibly and factually handled, this could give rise to hysteria and rejection at the workplace;
- unlike many other life threatening illnesses, AIDS is surrounded by a great deal of rumour, conjecture, myth and supposition.

These factors lead to the belief that while the correct context for AIDS is the umbrella of life threatening diseases, certain aspects of its management require special attention.

4.1.2 Whose responsibility is AIDS?

Generally, everyone has a responsibility regarding AIDS. General responsibilities include minimising the risk of infection, assisting those who have become infected and being willing to be educated and informed on the subject.

(a) Management

Management has a major role in –

- developing a proactive approach to dealing with HIV infection and AIDS, including fair and consistent treatment of HIV positive employees;
- educating employees;
- introducing employees who request testing to organisations with reputable testing and counselling facilities;

- managing colleagues of employees who are HIV positive (based on scientific and factually correct information);

- committing to the principle of confidentiality of medical information;

- minimising the risk of infection to first aid and occupational health practitioners by supplying appropriate training and equipment;

- promoting industry-wide commitment and placing AIDS on the human resource/industrial relations agenda; and

- paying attention to broader issues that promote transmission of the virus, such as the migrant labour system and poverty.

(b) Individual employees

Individual employees should be encouraged to play a role by –

- assisting infected colleagues in a fair and humane way based on factual information;
- minimising the risk of infection; and
- attending education programmes on the disease.

4.1.3 **Legal aspects of the disease**

(a) South African health legislation

In South Africa AIDS is not a notifiable disease in terms of section 32 of the *Health Act,* 1977 (Act 63 of 1977). The reason given is that such a step might be counter-productive, as possible sufferers may be more reluctant to come forward, thus driving the disease "underground".

There are also no legal provisions for employers to compel employees to submit to random medical examinations unless a case can be brought within the ambit of the regulations referred to above. Thus, where the employer considers testing desirable and wishes to conduct testing, the employee's "informed consent" would have to be obtained beforehand. This means that a test cannot be carried out without specifically informing the employee that its objective is to identify AIDS or the HIV virus.

(b) Labour law

Because employers are covered by the Labour Relations Act and hence the unfair labour practice jurisdiction, the principle of fairness as it affects AIDS sufferers both in terms of claims of discrimination and dismissal will be paramount. Some legal practitioners are in favour of testing the total employee population for epidemiological purposes, as long as the results are confidential and there is no patient specific testing.

Employees cannot be dismissed simply because they are HIV positive or have AIDS. If the employee becomes incapacitated or disabled, an employer would generally be able to terminate the contract, but in doing so must counsel and

notify the employee fairly that the termination is as a result of the employee's incapacity.

4.1.4 Testing

The most common screening test is the ELISA (Enzyme Linked Immuno-Sorbent Assay). This test is relatively easy to perform and is inexpensive.

The cost of testing may increase slightly because of the identification of the two human immunodeficiency viruses – HIV1 and HIV2. In South Africa, the HIV1 is the most prevalent virus. At this stage it is thought that most people with the HIV2 will take longer to develop symptoms and the course of the disease will have a longer total duration. In future, a combined ELISA reacting with HIV1 and HIV2 antibodies will have to be used.

One of the problems with testing is the so-called "window" between infection and the development of antibodies, which means that the disease is only identifiable after six weeks. Furthermore, the "window period" could be up to three months and in rare cases even longer.

The ELISA test is sensitive but approximately two tests in a thousand will be false positives. Thus it is important that positive results are confirmed by a second test. The most common confirmatory test is the Western Blot. This test is highly specific but is relatively difficult to perform and interpret. If the Western Blot is indeterminate it will be repeated immediately and again after six months. Alternatively a third test may be used.

People can be tested by private doctors, but many may not be trained to do the required pre and post-test counselling. At designated AIDS testing centres, counselling forms an important and integral part of the testing procedure.

4.1.5 Defining in-company/firm roles and responsibilities

Before discussing the major choices in policy development it is important to consider who will be responsible for the AIDS policy within a company/firm. This will depend on resources available, including personnel. Some companies will be able to develop an effective strategy for dealing with AIDS on an in-house basis, while others will rely on outside assistance.

It is critical that functional roles/responsibilities are clearly defined. Some of the major tasks include –

• developing a policy or set of guidelines;

• setting up referral links for counselling (pre- and post-test, as well as ongoing tests for HIV positive employees who volunteered for testing in the first instance);
• setting up referral links for tests;

• planning and executing an education strategy;

• keeping abreast of latest developments in the field; and

- possibly undertaking interventions with work groups where an employee or employees have been identified as HIV positive.

4.1.6 **Major choices in policy development**

When considering a policy, there are three critical choices:

- Whether to develop a policy or not (in terms of the latest Employment Equity Act Code it is obligatory to do so);

- In developing a policy, whether it should be an AIDS specific policy or a more general life threatening disease policy; and

- whether to opt for a pre-employment HIV antibody test and reject applicants or a no pre-employment test policy. **This is no choice at all**. Pre-employment testing is illegal unless special permission has been obtained from the Labour Court; a laborious process with limited chance of success.

Developing a policy

When AIDS first appeared in South Africa in isolated incidents, cases were often inconsistently and unfairly handled. Examples included “golden handshakes”, dismissals after pressure from other employees, and isolation of workers. More recently a number of organisations have drafted policies to ensure fair and appropriate handling of cases.

The process involved in drafting an AIDS policy is important for an organisation because –

- issues must be sensitively considered, taking account of available information and circumstances. This allows the organisations to be pro-active and will assist in limiting emotional hysteria at some point in the future; and

- it forces the organisation to link up with experts and keep abreast of latest developments in the field.

These two points illustrate that the drafting of an AIDS policy will assist in educating management. There are two important advantages for companies embarking on this process:

- If AIDS is treated like any other life threatening illness, a perspective on how to handle it at the workplace is gained; and

- If an Employee Assistance Programme is in place, the principles of such a programme generally provide a constructive framework for dealing with AIDS.

AIDS-specific policy versus a more general policy on life threatening illnesses

Companies often have to choose between developing an AIDS-specific policy and a more general policy on life threatening diseases. The one approach suggests that AIDS is a life threatening disease, like cancer, so why treat it differently? If you do, you are placing it outside the norm and feeding people’s paranoia. Why highlight it?

The second suggests that AIDS deserves special attention, firstly because of the high projected figures and secondly because, unlike cancer, it has sensitive moral implications.
There is the potential hysteria and rejection of people who are HIV positive or who have AIDS. Managers/partners require guidelines on how to handle this problem. In contrast to other life threatening illnesses, AIDS is stigmatised.

Therefore it is recommended that AIDS and the HIV receive special treatment.

Testing prospective employees

The third critical choice in policy development concerns testing prospective employees for HIV antibodies. Employers expect employees to spend a reasonable amount of time in the company/firm, a requirement that HIV positive people may not be able to meet. In addition such persons may become a risk to the company/firm in terms of both problems with coworkers and high medical aid costs.

Many experts have rejected this out of hand, because as one doctor succinctly described it:

"Testing does not stop the spread of AIDS." Linked to this is the moral problem of creating a pool of unemployable people who are HIV positive. Not everyone who is HIV positive will develop AIDS and even if they do, this could take between two and 15 years – productive years – to develop. Finally, the overriding medical criterion of most companies/firms is the person's fitness to do the job.

NO EMPLOYEE OR APPLICANT FOR EMPLOYMENT MAY BE REQUIRED BY THEIR EMPLOYER TO UNDERGO AN HIV TEST TO ASCERTAIN HIS HIV STATUS. HIV TESTING BY OR ON BEHALF OF AN EMPLOYEE MAY ONLY TAKE PLACE WHERE THE LABOUR COURT HAS DECLARED SUCH TESTING TO BE JUSTIFIABLE IN ACCORDANCE WITH SECTION 7(2) OF THE EMPLOYMENT EQUITY ACT.

4.2 COMPUTER SECURITY AND INTERNET POLICY

The following policies and procedures must be adhered to with regard to Personal Computers (PCs) and related items and will be deemed to be part of the conditions of employment of any employee.

1. PCs and related items within the company/firm are the property of the company/firm and should therefore be treated in the same way as any other company/firm property.

2. The following points must be adhered to at all times:

   • Neither PCs nor parts of the PC may be taken home, unless prior permission has been received.

   • PCs may not be moved from their initial place of installation without prior arrangement. (This includes between offices and buildings.)

- When transporting laptop computers via a motor vehicle, it must be stored in the locked boot of the vehicle.

- Due care must be taken with laptop computers when taken out of the work environment.

- PCs may not be disconnected from the Local Area Network (LAN) without prior arrangement.

- Printers connected to any PC or LAN may not be moved or exchanged with other printers without the prior approval.

- **NO** private software and/or hardware may be loaded on, downloaded from the Internet or connected to, any company/firm PC without prior permission. Please note that the employee will be held responsible for the payment of any fines or other penalty if private software is loaded onto a PC without a valid license. Proof of private ownership must be available in the form of the original diskettes, manuals and any relevant licensing information.

- **NO** application software belonging to the company/firm on a company/firm PC or file server may be copied for private use.

- **NO** data files may be used for other than official work purposes or to be taken off the company/firm's premises other than for work purposes, without the necessary permission.

- Any discs being copied onto a company/firm PC or file server must be checked for viruses.

- **NO** third party is allowed to work on any PC or printer without prior approval. This includes, but is not limited to, loading of software, installation of cards, repairs and upgrades.

- **NO** e-mail messages or e-mail attachments that are offensive, derogatory, defamatory or demeaning may to be sent internally or externally via the Internet.

- Access to the Internet is primarily for official company/firm use. The company/firm reserves the right to monitor individual usage of the Internet, both with regard to email and World Wide Web access.

- **NO** pornographic, sexist, racist, illegal or improper information may be downloaded from the Internet or viewed using company/firm computing and communication equipment. This information or type of access may expose the company/firm to liability.

- **All** company/firm information is to be treated with the utmost confidentiality.

- **Authority** must be obtained prior to external e-mail messages being sent under the auspices of the company/firm.

- **E-mail** correspondence sent as a formal means of communication should be filed in the departmental filing system.

Violation of this policy may result in disciplinary action and possible dismissal.

4.3 GUIDELINES ON CRIMINAL OFFENCES COMMITTED BY EMPLOYEES

When an employee is alleged to have committed a criminal offence, either within or outside the working environment, problems frequently arise in considering whether management should take any disciplinary action. In this regard it is important to note the distinction between what the Court and management would be attempting to establish. The Court would be attempting to establish beyond all reasonable doubt whether the employee committed the alleged offence, whereas management would be attempting to establish on a balance of probabilities whether the employee has committed a serious breach of his terms of employment. Although each case would have to be treated on its merits, the guidelines set out below will assist management in these situations.

4.3.1 Criminal offences within the working environment

Where an employee is alleged to have committed a criminal offence within the working environment (e.g. during working hours, on company/firm premises) this would normally be investigated within the company/firm irrespective of whether any criminal action is instituted, to determine what effect the offence may have on the employee's continued employment. This determination should normally be made irrespective of the outcome of any criminal proceedings instituted against the employee and, if warranted, disciplinary action should be taken against him in accordance with the company/firm's normal disciplinary procedures.

Management should exercise its discretion in deciding whether to lay a complaint with the police in respect of the alleged offence, taking into account the nature and magnitude of the offence and other relevant factors. Management may decide that the employee would be sufficiently penalised by disciplinary action against him and that a criminal prosecution would be inappropriate in the circumstances, or alternatively management may decide that the circumstances of the case support a criminal charge being laid against the employee. Such action may also deter other employees from similar conduct in the future.

4.3.2 Criminal offences outside the working environment

Where an employee is alleged to have committed a criminal offence outside the working environment, a decision will have to be made as to whether, if proved, it would constitute sufficient grounds for taking disciplinary action. This will depend on the nature of the offence and the extent to which it affects the employment relationship, the job held by the employee and other material factors. (For example, the conviction of a bookkeeper for theft could constitute sufficient grounds, whereas his conviction for negligent driving would not; similarly the conviction of a labourer for theft may in the circumstances be far less significant than the conviction of the bookkeeper for that same offence.)

If management decides that the offence, if proven, would not constitute sufficient grounds for disciplinary action, then obviously no action should be taken against the employee irrespective of whether he is convicted or not.

If the offence could constitute sufficient grounds for disciplinary action, management would have to decide whether it is feasible to consider the matter independently of any criminal prosecution against the employee. If management has reasonable grounds for believing that the employee did commit the alleged offence, it may proceed against the employee independently of the criminal proceedings.

However, in cases where the alleged offence was committed outside the working environment, management will not normally have sufficient access to information to consider the matter properly, and would normally have to abide by the Court's decision. Only then would management be able to determine what disciplinary action should be taken. It may consider suspending the employee on full pay pending the outcome of the criminal case, and the nature of the alleged offence, the employee's position and other material factors should be taken into account in considering the question of suspension.

4.3.3 Criminal offences generally

If an employee is being held in custody pending his appearance in Court, a hearing should be held at the earliest opportunity that the employee is available for the hearing.

An employee's continued absence from work because of being held in jail either awaiting trial or in terms of his sentence (having been convicted of the offence) may however be sufficient on its own to justify his dismissal, but this would depend on the circumstances of the case.

If an employee has been dismissed and is subsequently found not guilty in a criminal court of the alleged misconduct, this will not as matter of courses render the initial dismissal unfair. The essential question remains whether the evidence and information known to the employer at the time of the dismissal was sufficient to justify it. The reasoning for this is that different standards of proof are required by the employer in the disciplinary inquiry and by the criminal trial.

4.4 DISCIPLINARY GUIDELINES FOR MANAGEMENT

4.4.1 Disciplinary procedure

The objective of the disciplinary procedure is to provide a fair and equitable process that could be applied when the work performance or behaviour of an employee is unacceptable.

All employees are expected to carry out their duties and conduct themselves in a reasonable manner. Any breach by an employee of conditions of employment will be dealt with in accordance with this procedure (the exception is industrial action, where it would not be appropriate).

This procedure is not intended as a substitute for good management and should not interfere with the informal corrective disciplinary measures applied by

management in the day to day running of the company/firm. Each case should be treated on its merits and discretion should be exercised to ensure that the disciplinary action is fair and is seen to be fair.

The accompanying disciplinary code (see par. 4.4.6) provides a framework and guide to management for applying the procedure. It lists the more common types of misconduct that may occur and aims at ensuring a just and consistent application of discipline.

Disciplinary action should only be taken after clear evidence of misconduct has been established. Thus the first step should be to prove that the employee has committed an offence, followed by consideration of the appropriate disciplinary action that should be taken.

Verbal warnings

In the event of minor misconduct on the part of an employee, the disciplinary action will take the form of a verbal reprimand coupled with an instruction from the employee's superior to correct the behaviour. Such verbal reprimands will be formally recorded in that employee's personnel file.

Written warnings

A written warning is issued if the work performance or behaviour of an employee has not improved following a verbal warning or warnings, or where the misconduct requires more severe disciplinary action than a verbal warning.

Any member of management may give an employee under his control a written warning.

The employee must have been informed beforehand that he is entitled to have an employee from his department present as his representative, who will be entitled to speak on his behalf.

The manager/partner must inform the employee and his representative of all the evidence of the misconduct, and give them an opportunity to respond. He must advise them that they are entitled to produce any evidence or call any witnesses in support of the employee’s case.

After having heard all the evidence, the manager/partner must decide whether or not to give the employee a written warning.

A warning must be issued on the appropriate form in the presence of the employee and his representative. The manager/partner issuing the warning as well as the employee and his representative must sign the form. The warning form must be filed with the employee's
personnel record file and must be treated as confidential. The employee must also receive a copy.

The manager/partner must also advise the employee that he has the right to appeal against the warning within three working days. If an employee feels the written warning was unjust, he may complete the appropriate appeal section of his copy within three working days and hand it to his supervisor.

The supervisor must refer the appeal to the manager/partner who is the immediate superior to the manager/partner who issued the warning, for consideration. The manager/partner considering the appeal must personally advise the employee of his decision in the presence of the supervisor within five working days of the employee having referred the matter to the supervisor. The employee may elect to have his representative present.

The manager/partner considering the appeal must record its outcome on the appropriate section of the original warning form as well as on the employee's copy and return the copy to the employee. The forms must be signed by the manager/partner, the employee concerned and his representative.

Disciplinary enquiries

The manager/partner conducting an enquiry must ensure that all persons who are required to be present are indeed present.

The enquiry must be held as soon as possible after the alleged offence, but the following conditions must be adhered to. The employee who allegedly committed the offence must be informed of all the facts of the case to be brought against him, be given a reasonable time to prepare and must be present at all times during the enquiry when evidence is being led. If the employee and/or his representative unreasonably refuse to attend the enquiry, management may hold it in their absence and may use whatever evidence is available to come to a decision.

The following people may be present:

- General manager/ senior partner (or his equivalent)
- Employee's supervisor
- Employee concerned
- Employee representative (if requested)
- An interpreter (where necessary)
- Witnesses (only while giving evidence).

The employee is entitled to present his case and must be given an opportunity to do so. Both the employee and his representative may question any witnesses called, and may themselves call any other employees as witnesses.

After having heard all the evidence, the general manager/senior partner (or his equivalent)
must make a decision on what disciplinary action, if any, will be taken. This decision may be taken immediately at the enquiry or proceedings may be adjourned to consider the matter before making a decision.

Disciplinary action can only be taken after clear evidence of guilt has been established. If there is reasonable doubt, the employee should be given the benefit of that doubt.

Having decided that the employee is guilty of misconduct, the manager/partner conducting the enquiry must take the following factors into account in considering the appropriate disciplinary action:

- The seriousness of the offence;
- The consequences of the offence, both actual and potential;
- The extent to which the offence was caused by a lack of training or any duty or responsibility of management which was not fulfilled;
- The level of responsibility and authority of the employee;
- The previous disciplinary and service record of the employee; and
- Any other abnormal, aggravating or extenuating circumstances which may apply.

The disciplinary action could include one of the following:

- Written warning;
- Final written warning;
- Demotion;
- Dismissal with notice or payment in lieu of notice; and
- Dismissal without notice.

An employee can only be demoted if it has been clearly established that he is not capable of performing his work to the required standard.

An employee may only be dismissed if he had previously received a final written warning that is still operative. Such a final written warning will normally only be given if the employee has previously received a written warning, which in turn is normally given only after the employee has previously received a verbal warning. The misconduct of an employee may, however, by itself be sufficient to warrant a written warning or a final written warning or a dismissal, as the case may be.

The general manager/senior partner (or his equivalent) must in all cases advise the employee personally of his decision as soon as possible and the manager/partner, the employee concerned and his representative must all sign the disciplinary form.

It is important that the employee understands the reasons for the disciplinary action. If the employee thus receives a final written warning it should be made clear to him that any further misconduct on his part, whilst the final written

warning is operative, may result in his dismissal. The general manager/senior partner (or his equivalent) must also advise the employee that he has the right to appeal against the outcome of the enquiry within three working days.

The disciplinary form must be filed on the employee's personnel record file and must be treated as confidential. He must also receive a copy of the completed form.

Review

Notwithstanding the right of appeal set out in the disciplinary procedure above, every disciplinary case which results in the dismissal of an employee will be automatically reviewed at the next level of management above the manager/partner who conducted the enquiry.

The manager/partner who conducted the enquiry and took the decision to dismiss the employee must within five working days provide his manager/partner with a written statement on the circumstances of the case and reasons for his decision.

The senior manager/partner must review the dismissal and may change the decision if he is dissatisfied. He may reconvene the disciplinary enquiry and order the matter to be re-heard by the manager/partner who conducted the original enquiry.

The review function set out in this paragraph does not mean that the decision to dismiss an employee is taken by the senior manager/partner, and it is confirmed that this decision is taken by the manager/partner who conducted the original disciplinary enquiry.

Suspension

In circumstances where serious misconduct appears to have occurred, the manager/partner who will be conducting the enquiry may suspend the employee concerned from work pending the enquiry. An employee may also be suspended if his presence would obstruct the investigation of the offence or if his presence would constitute a danger at the workplace.

Suspension is not to be used as a form of disciplinary action, and should be seen as a precautionary measure to temporarily remove the parties involved.

An employee who is suspended by management will be paid basic earnings for the period of suspension.

4.4.2 **Dismissals**

The development of labour law in South African industrial relations in recent years has resulted in a significant shift in emphasis from legality to fairness. For a dismissal to be valid, it must be both lawful and fair. For a dismissal to be fair, it must comply with the requirements of both procedural fairness and substantive fairness. In other words, not only must the decision to dismiss be fair, but it must also be carried out in accordance with a fair procedure.

Procedural fairness

In order to consider whether or not to dismiss an employee, management must investigate the alleged breach of the company/firm's rules. This takes the form of an enquiry in which the manager/partner in charge must comply with the following procedure:

- Examine the company/firm's disciplinary code and procedure and ensure that it is adhered to at all times.
- Hold the enquiry within a reasonable period of having discovered the alleged breach of company/firm rules.
- Give the employee and his representative adequate prior warning of the complaint against him and the time and date of the enquiry, to give them a reasonable time to prepare for the enquiry.
- Allow the employee to be represented by a fellow employee of his choice at the enquiry and ensure that the employee and his representative are present throughout the enquiry.
- The manager/partner in charge of the enquiry must be unbiased and impartial.
- On convening the enquiry, explain to the employee and his representative the alleged breach of the company/firm's rules. They must be informed of the facts of the case made out against the employee and witnesses must be called to give evidence on any issues in dispute.
- The employee and his representative must be allowed to cross-examine any witnesses called against him.
- The employee, with the assistance of his representative, must then be allowed to state his case and call any witnesses in support of his case. The manager/partner in charge of the enquiry may question the employee or any of his witnesses.
- Having heard all the evidence, decide whether the employee is guilty. The employee can only be found guilty after clear evidence has been established. If there is significant doubt the employee must be given the benefit of that doubt.
- If necessary, the enquiry can be adjourned to consider the evidence before making a decision.
- The employee's guilt and the penalty to be imposed must be considered separately. If there is significant doubt concerning the employee's guilt, it will not be valid to merely impose a lesser penalty on the employee (e.g. a final written warning rather than dismissal) and the employee must be found not guilty of having breached the company/firm's rules.

- If it is decided that the employee is guilty, consider what disciplinary action would be appropriate in the circumstances. Take into account –

    - the employee's service
    - his past behaviour and performance
    - the seriousness of the offence
    - any legal requirements
    - how similar offences have been treated in the past
    - the extent to which the problem was caused by mismanagement
    - all other relevant factors.

- Ensure that the outcome of the enquiry, the disciplinary action to be imposed and the reasons are explained to the employee and his representative. If the enquiry had been adjourned to consider these matters, it should be re-convened for purposes of the explanation.

- The employee should be allowed a right of appeal in terms of the appropriate procedures.

- The enquiry must be correctly documented and where necessary an interpreter must be used.

Substantive fairness

Management must have a valid reason to dismiss an employee, and the onus of proving this lies with management. A "valid reason" may be considered under three main headings, namely misconduct, incapacity and operational requirements. Management must ensure that any decision to dismiss an employee complies with the guidelines laid down in the Disciplinary Code in paragraph 4.4.6.

Grounds for dismissal

Misconduct

This is the heading under which most dismissals take place, and common examples are theft, intoxication and assaults. In cases of misconduct the employee should usually have received previous warnings for the dismissal to be fair, unless the misconduct on its own justifies summary dismissal. Each case of misconduct has to be treated on its merits.

Incapacity

Under this heading, management would be required to show that the employee is not capable of performing his job. Management should have some objective criteria in terms of which it can be measured, and the absence of such criteria has frequently become a problem in cases where accusations of incapacity have

been made against employees. Generally, it must also be shown that an employee has received guidance, instruction, evaluation training and an opportunity to correct the situation before being dismissed.

Operational requirements

The common description of dismissals under this heading is retrenchment, and it is dealt with in a separate manner compared to any other dismissals. The Labour Court has established comprehensive guidelines for the manner in which retrenchments are to be carried out. These must be scrupulously adhered to, to obviate being taken to the Labour Court by an employee.

4.4.3 **Appeals**

An employee may appeal against the outcome of a disciplinary enquiry by completing the appropriate section of his copy of the disciplinary form within three working days of being disciplined and handing it to the general manager/senior partner (or his equivalent) who must refer the matter to the next level of management.

The manager/partner considering the appeal must reconvene the disciplinary enquiry within ten working days of the general manager/senior partner (or his equivalent) having received the notice of appeal. He must conduct the appeal hearing and same the rules applying at the original enquiry must apply at the appeal hearing. All persons who were present at the original enquiry may again be present.

The manager/partner considering the appeal may give his decision at the hearing or may adjourn the proceedings to consider the matter. He must, however, in all cases advise the employee personally of his decision as soon as possible, and the employee is entitled to have his representative present at the time.

If the manager/partner considering the appeal decides that the original enquiry was not held in accordance with the procedures detailed in this procedure, he must invalidate the outcome of the original enquiry and order it to be reconvened within five working days. The enquiry must be reconvened accordingly, and the rules applicable at the disciplinary enquiries as set out above be followed. If the employee subsequently appeals against the outcome of the reconvened enquiry and the manager/partner considering the appeal decides that the proper procedures had still not been followed, he must invalidate the outcome of the enquiry and no further action will be taken against the employee.

The manager/partner considering the appeal must record the outcome in the appropriate section of the original disciplinary form and the employee's copy, and must return the copy to the employee. The appeal forms must be signed by the manager/partner considering the appeal, the employee and his representative.

If the employee still wishes to pursue the matter, he may utilise whatever means are available to him in law for the protection of his rights.

4.4.4 General

Disciplinary action must always be recorded in writing. An employee's signature on any form is not an admission of guilt and is merely an acknowledgement that he has received the form. If an employee or his representative refuses to sign a form it will not prevent the disciplinary action from being taken.

A final written warning or a written warning for any offence, will apply to all offences. An employee on a final written warning will, however, not normally be dismissed if he commits a further offence of a minor nature, unless he received the final written warning for repeatedly committing minor offences. An employee on a final written warning may have the final warning extended for an additional three months if he commits a further offence of a minor nature.

Written warnings remain operative for a period of nine months from their date of issue, and must then be cancelled.

An employee involved in any disciplinary procedures held in terms of this procedure must be paid at basic earnings for the time so spent. An employee will however not be paid for any time subsequent to his dismissal, provided his dismissal is not overruled on appeal or at a later stage.

If the employee concerned does not desire the presence or participation of an employee representative in cases where this procedure requires it, it is not necessary to have one. The manager/partner conducting an enquiry or appeal may take into account a written statement, where he reasonably decides that oral evidence is not available. The employee accused of the offence will be given a copy of the statement and be allowed to make any representations on the issues contained in that statement. These will be taken into account by the manager/partner conducting the enquiry.

4.4.5 Disciplinary code – Guide to disciplinary action

The penalties listed below are guidelines only, are not exhaustive and should not in any way detract from management's responsibility to use discretion in the handling of discipline.

Please also note that a disciplinary hearing is a prerequisite for dismissal.

NATURE OF OFFENCE	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE	4TH OFFENCE
Absence				
1 Late for work, leaving workplace without permission, or general timekeeping offences	W	W	FW	D
2 Failure to arrive at work without acceptable reason, for one day	W	FW	D	
3 Continued absence from work without acceptable reason, for two days or more	FW	D		
4 Continued absence from work without acceptable reason, for five days or more	D			
Instructions				
5 Failure to carry out lawful and reasonable instructions of a superior	W	FW	D	
6 Refusal to carry out lawful and reasonable instructions of a superior	D			
Work performance				
7 Lack of application or poor performance, without acceptable reason	W	W	FW	D
8 Sleeping on duty	FW	D		
9 Doing unauthorised private work whilst on duty	FW	D		
Company/firm property				
10 Neglect, loss or misuse of company/firm equipment	W	FW	D	
11 Gross negligence, or willful damage to company/firm equipment	D			
12 Driving a company/firm vehicle without a valid driver's licence	D			
13 Theft or unauthorised possession of company/firm property	D			

NATURE OF OFFENCE	1ST OFFENCE	2ND OFFENCE	3RD OFFENCE	4TH OFFENCE
Behaviour towards other employees				
14 Swearing at or being abusive towards another employee	FW	D		
15 Fighting on company/firm property (off-duty)	FW	D		
16 Fighting on-duty, or fighting on company/firm property (off-duty) resulting in serious injury to another person	D			
17 Theft or unauthorised possession of another employee's property, on company/firm property	D			
General offences				
18 Fraud or dishonesty committed against the company/firm	D			
19 Unauthorised possession, consumption or being under the influence of alcohol or drugs on company/firm property, or arriving at work under the influence of alcohol or drugs	FW	D		
20 Unauthorised possession of dangerous weapons on company/firm property	D			
21 General criminal offences not specified above, committed on company/firm property	D			

KEY

W Warning

FW Final warning

D Dismissal

4.5 LEAVE POLICY

4.5.1 Annual leave

"Annual leave cycle" means the period of 12 months' employment with the company/firm immediately following –

- an employee's commencement of employment; or
- the completion of that employee's prior leave cycle.

The company/firm must grant an employee at least –

- 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle; or
- by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid; or
- by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.

The employee is entitled to take leave accumulated in an annual leave cycle on consecutive days.

The company/firm must grant annual leave not later than six months after the end of the annual leave cycle.

The company/firm may not require or permit an employee to take annual leave during

- any other period of leave to which the employee is entitled e.g. sick leave, family responsibility leave or maternity leave; or
- any period of notice of termination of employment.

However, the company/firm must permit an employee, at the employee's written request, to take leave during a period of unpaid leave.

The company/firm may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the employee at the employee's request in that leave cycle.

The company/firm must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.

The company/firm may not require or permit an employee to work for the company/firm during any period of annual leave.

Annual leave must be taken –

- in accordance with an agreement between the company/firm and an employee; or

- if there is not agreement in terms of the above clause, at a time determined by the company/firm. At least 75% of an employee's annual leave entitlement will be taken over the seasonal Christmas shutdown period.

The company/firm may not pay an employee instead of granting paid leave except on termination of employment.

The company/firm must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated at the employee's rate of remuneration immediately before the beginning of the period of annual leave.

The company/firm must pay an employee leave pay –

- before the beginning of the period of leave; or

- by agreement, on the employee's usual pay day.

Optional

Paid leave may be accrued up to a maximum of the equivalent of two year's leave entitlement providing that not more than one week's paid leave (five working days or six working days as the case may be) is accrued each year until the maximum accrual is reached.

Optional

After attaining 55 years of age, employees may accrue up to a maximum of 12 weeks paid leave which may be paid out on retirement, provided that the accrual does not exceed one week's leave per annum. This accrual is to enable an employee who is retiring to take advantage of any superannuation provisions that the Income Tax Act might contain.

4.5.2 **Study leave**

The *Basic Conditions of Employment Act*, 1997 (Act 75 of 1997) makes no stipulation on employers concerning the granting of study leave.

Employees whose study leave is relevant to the needs and requirements of an employer may, at the discretion of the employer, be granted one day of study leave to sit for the examination. However, it is recommended that employers grant at least the time off to sit for an examination, as failure to do so could create the perception of employer unfairness. However, an employer could argue, plausibly, that there is no legal obligation to grant study leave and the employer is not standing in an employee's way in taking a half day's leave to write an examination. Generous employers could even consider granting an employee a day off before the examination as well as on the day of the examination itself. Such employers could thereby retain the loyalty of those who wish to improve their skills and qualifications.

Employees must both apply for and be granted study leave before taking it. Employers could institute a policy limiting study leave to a maximum of ten days per annum.

Overtime provisions should not be confused with study leave and the two should ideally be treated as separate entities.

Study leave granted in lieu of overtime worked

Two aspects should be borne in mind: Firstly an employer may not require or permit an
employee to work overtime except in accordance with an agreement and secondly that, in terms of the Basic Conditions of Employment Act, an agreement may provide for an
employer to grant an employee at least 90 minutes paid time off for each hour of overtime worked. While such paid time off should ordinarily be granted within one month of an employee becoming entitled to it, an agreement in writing may increase the period to 12 months.

4.5.3 **Maternity leave**

The employer must grant permanent female employees at least four consecutive months of unpaid maternity leave and the right to return to work after such a period of leave.

The following general conditions are proposed with regard to maternity leave:

- All maternity leave will be regarded as authorised unpaid leave.
- In terms of the Basic Conditions of Employment Act, maternity leave will be for a maximum period of four months. *(Although this Act makes provision for four months' unpaid maternity leave, a fair company/firm should actually regard this as the "basic" or "minimum" leave, especially as such leave is unpaid. A company/firm could therefore, at its own discretion, consider anything from four to 12 month's unpaid maternity leave.)*
- An employee wishing to take maternity leave should give the company/firm one calendar month's notice in writing, both of her intention to do so and her intention to return to work after the four months have lapsed.
- Benefits such as annual leave, sick leave and annual bonus will not accumulate during the maternity leave period.
- Where maternity leave covers the period when the annual bonus is normally payable in December, she will be paid a pro rata bonus before taking the leave. If an employee takes maternity leave during the course of the year and returns to work before the annual bonus is paid in December, she will receive a pro rata bonus calculated on the number of months worked during the course of the year.

- For the purposes of pension and medical benefits, maternity leave will not be deemed to constitute a break in service.

- An employee who is a member of the company/firm's medical aid society and who takes maternity leave, should be given the opportunity to continue contributing the employee's portion of the medical aid contributions. Should she elect to do so, the company/firm will continue to contribute the company/firm's portion of the contributions to the medical aid society. Members who opt not to pay the medical contributions will cease to qualify for benefits from this scheme for the period of maternity leave.

- The same provisions hold with regard to the pension fund. However, if the employee elects not to continue contributing to the fund, she will still to be considered as a member and be entitled to all the benefits of the fund during the period of maternity leave, but the period will not constitute pensionable service.

- The company/firm will guarantee re-employment after the expiry of the maternity leave period at the same rate of pay and job grade that was applicable immediately prior to commencement of maternity leave.

- Any temporary employee engaged to fill the position of an employee on maternity leave will be advised, on commencement of employment, of the period he will be employed and will be given one week's notice of termination of such employment. *(NB: Any temporary employee must be employed on a "Temporary contract of service".)*

- Any employee promoted to fill the position of an employee on maternity leave will be advised of the period he will be employed in that position and thereafter will have to return to his previous position. Such employee will be paid the minimum rate for the job to which he is temporarily promoted.

- Should an employee not return to work after the agreed maternity leave period, her services will be terminated as if the employee had resigned (but only after a proper disciplinary enquiry has been convened) and she will be paid all the monies owing to her as at the last day of her maternity leave period.

4.6 GUIDELINES ON NOTICE PERIODS

4.6.1 Introduction

There is a great deal of confusion about the period of notice from an employee who wishes to resign. Briefly, most letters of employment state whether he is required to give a month's notice or whether he is required to give 30 days' notice. The difference is quite significant.

4.6.2 What the law states

For our purposes, a month is defined as a calendar month in labour law. If an employee is required to give a month's notice and he, for example, resigns on 17 January, he would therefore be required to work right until the end of February before leaving the company/firm.

An employee who is required to give a month's notice can also for example resign on 1 January and only be expected to work until 31 January. (This is considered a calendar month's notice because it was given on the first day of the month.)

Section 37 of The Basic Conditions of Employment Act (if it applies) requires that any notice period contained in a written contract of employment must at least equal the minimum notice period set out in the Act, being –

- one week's notice, if the employee has been employed for six months or less;
- two weeks, if the employee has been employed for more than six months but not more than one year; or
- four weeks, if the employee has been employed for one year or more.

If an employee who is covered by the Act terminates his employment without complying with his notice periods, he can (legally) be required to repay the company/firm an amount equivalent to his wages during the notice period. Before such action is taken, however, please obtain expert opinion.

4.7 GUIDELINES ON PROLONGED ABSENCE FROM WORK

4.7.1 Introduction

Where an employee does not perform his duties as a result of being absent from work, management has to decide what action to take in these circumstances.

A certain size work force is needed to achieve the production required and management will need to assess what the future circumstances of the absent employee are likely to be in order to plan its manpower requirements. Management will also need to assess whether the employee's absence from work may warrant disciplinary action, aside from any expectation of the employee's anticipated return to work. This will depend on the circumstances of each employee.

The reason for the employee's absence may or may not be known to management at the time, and this will obviously influence the action to be taken.

4.7.2 **Policy**

Where an employee does not perform his duties as a result of being absent from work on a continuous basis, management will take steps, in terms of the guidelines set out below, to consider that employee's future relationship with the company/firm. Management must ensure that the employee is treated fairly and reasonably, depending on the circumstances of the case, and consider the running and manning requirements of the company/firm's operations in deciding on the appropriate action. A proper enquiry must be held in all cases, prior to any action being taken.

4.7.3 **Guidelines**

Where management has knowledge of the employee's whereabouts Management should contact the employee and ascertain the reasons for his continued absence from work. These reasons should be evaluated against any other company/firm policies that may be appropriate in the circumstances (e.g. employees being absent as a result of detention before trial, prolonged illness, etc.). It is stressed that it is normally the responsibility of the employee to inform his supervisor as soon as possible of the reasons and circumstances of any absence from work.

If management is not satisfied with the outcome of its investigations or feels that further action is necessary, a disciplinary enquiry may be convened and the normal disciplinary procedures followed. The employee must be given reasonable notice of the enquiry, and the date should as far as possible be mutually agreed with him.

Where an employee unreasonably refuses to attend or is unable to attend the enquiry in the foreseeable future (e.g. imprisonment for a substantial period), the enquiry should be held in his absence in terms of the guidelines set out below. If however, he is only temporarily unavailable, management may postpone the enquiry for a reasonable period to enable him to be present.

<u>Where management is not aware of the employee's whereabouts</u>

Management must endeavour to contact the absent employee and establish the reason for his absence. The assistance of other employees and employee representatives may be sought in the process, and telegrams or registered letters must be sent to the employee's last known address, asking him to return to work or contact management within a specified period of time (at least five days).

If as a result of its investigations management becomes aware of the employee's whereabouts, the reasons for his absence and the steps taken by him to inform management of his situation, these factors should be considered. If management is not satisfied with these issues a disciplinary enquiry may be convened.

If management is unable to establish the employee's whereabouts or ascertain the reason for his absence within a reasonable period, management may

convene a disciplinary enquiry in the absence of the employee. This enquiry must take place within a reasonable period, but after the expiry of the notice period applicable to the absent employee, calculated from the date he last worked. If management has still not been able to establish his whereabouts or the reason for his absence and in the absence of any evidence to the contrary at the enquiry, management may then confirm his dismissal and remove him from the pay-roll.

Enquiries held in the absence of the employee

In terms of the principle of fairness, every employee against whom disciplinary action is contemplated should have an opportunity to respond to the case against him and have an opportunity to state his views on the matter. ACCORDINGLY, EVERY ENDEAVOUR SHOULD BE MADE TO HOLD A DISCIPLINARY ENQUIRY IN THE PRESENCE OF THE EMPLOYEE CONCERNED. It is, however, accepted that this is not always possible.

If an employee unreasonably refuses to attend an enquiry, a letter should be addressed to him confirming the time, date and venue of the enquiry and inviting him to attend or alternatively, advise management of another date on which he would attend, if he is unable to be present on the specified date for a particular reason. The employee's employee representative should receive a copy of this letter. If he fails to respond, management should proceed with the enquiry in the absence of the employee, and every endeavour should be made to ensure that an employee representative is present. Refusal to attend should also not prevent the disciplinary enquiry from being conducted. At the enquiry management should as far as possible consider the matter in full and take appropriate action in the circumstances. The fact that the employee unreasonably refused to attend the enquiry would normally on its own be sufficient to justify his dismissal, irrespective of the initial reasons for the enquiry.

If an employee is unable to attend the enquiry because of his particular circumstances, or if management is unable to ascertain the whereabouts of the employee, every endeavour should be made to ensure that an employee representative is present. Refusal to attend should not prevent the disciplinary enquiry from being conducted. At the enquiry management should as far as possible consider the matter in full and take appropriate action in the circumstances.

Every effort should be made to communicate the outcome of the enquiry to the employee. If the employee has been dismissed and subsequently contacts management seeking his job back, management must consider the reasons for his absence and what steps he took to inform management of his whereabouts during this period. Depending on the outcome of these investigations and the company/firm's manning requirements at that time, management may elect to re-employ him or offer him the prospect of re-employment when a suitable vacancy arises.

An alternatively course of action would be that management waits until the employee eventually returns to work and then holding an enquiry at which he is present. Should the employee have no reasonable explanation for his prolonged absence, management can dismiss him. He would only be paid him until his last

day actually worked at the company/firm (i.e. immediately prior to his prolonged absence).

NB: ANY ENQUIRY HELD WITH THE EMPLOYEE PRESENT IS ALWAYS SAFER THAN ONE HELD IN HIS ABSENCE

4.7.4 Summarised checklist for dealing with an employee's prolonged absence

It sometimes happens that employees absent themselves from work for prolonged periods without informing the company/firm of their reason or whereabouts. It has also happened that such employees have been dismissed, only to be re-instated by the CCMA because the procedural requirements for such a dismissal were not adhered to. It is recommended that in such instances the following procedure be followed:

- If the employee subsequently arrives for work, give him three days' or more notice of a disciplinary hearing.
- If he does not return to work, attempt to ascertain from fellow employees where he might be.
- Send him a registered letter or telegram, to the effect that he should return to work as soon as possible, and if unable to do so, to contact the manager/partner as soon as possible.
- If he still does not respond, send him a registered letter confirming the date, time and venue of a disciplinary hearing. Ask him to give an alternative date if for some reason your date is impossible for him. Give a copy of this letter to his representative.
- If he still does not return to work, hold a disciplinary enquiry in his absence.
- Allow him a representative in his absence, take minutes of the hearing, and if no suitable reason for his absenteeism is given, dismiss him in his absence.

Should you anticipate that the matter will be taken to the CCMA by the employee, a far safer alternative would be to wait until the employee does eventually return to work, and then hold the enquiry in his presence. If he has no reasonable explanation for his prolonged absence, then dismiss him. Payment will only be until his actual last workday in your employ.

4.8 SEXUAL HARASSMENT – GUIDELINE POLICY

4.8.1 Definition

Sexual harassment should not be confused with gender/sex discrimination. Sexual harassment is the infringement of the "victim's" dignity and respect by an alleged "perpetrator".

Sexual harassment is **unwanted** conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual.

Sexual attention becomes sexual harassment if –

- the behaviour is persisted in nature, although a single incident of harassment can constitute sexual harassment; and/or
- the recipient has made it clear that the behaviour is considered offensive; and/or
- the perpetrator should have known that the behaviour would be regarded as unacceptable.

4.8.2 Forms of sexual harassment

Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the following examples:

- Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
- Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling at a person or group of persons.
- Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects. *Quid pro quo* harassment occurs where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.

4.8.3 Procedure for the handling of sexual complaints

Any employee, applicant or former employee who feels they have been sexually harassed may raise this as a grievance, as follows:

- By discussing his/her complaint with the supervisor, department head, human resources department or equity development director.
- Any employee may bring the possibility of discrimination, in the form of sexual harassment, to the attention of management.
- Colleagues/co-workers who know of a person who feels sexually harassed may bring this to the attention of a supervisor or department head.

Employees should discuss their concerns with their immediate supervisors, or any other member of staff they feel is appropriate. This should be done in an attempt to mutually review and resolve the concerns of the individual. If no satisfactory solution is reached and the employee is not satisfied, the individual should contact the human resources director or equity development director.

The human resources director or equity development director must immediately report all complaints of unfair conduct to the relevant department head. The department head should conduct a thorough investigation. The aim of this investigation will be to establish all facts and find a fair and acceptable solution.

It is an accepted principle that due to the private nature of a complaint, all information will be treated in an appropriate manner and considered personal and confidential.

Supervisors, department heads and managers/partners are expected to assist in the investigation by making available all relevant documents, records and information. The human resources director should co-ordinate the investigation of all complaints and keep a register of all complaints and its nature, origin, outcome and solutions.

No employee who filed a bona fide complaint will be harassed, victimised or have their employment terminated.

4.8.4 **Remedy and reporting**

Because of the sensitive nature of sexual harassment, it has to be treated in a more sensitive manner than other disciplinary offences.

The disciplinary procedure

The disciplinary procedure may be invoked as an alternative to and/or following the conclusion of the grievance proceedings. The investigation and the disciplinary hearing should be handled with great sensitivity and held with as much privacy as possible so as not to place the "victim"/grievant" on trial.

Cautionary note

Great care must be taken when accusing an alleged perpetrator of sexual harassment. To accuse a person of sexual harassment is to accuse such a person of committing a criminal offence and knowledge of that accusation, whether proved or unproved, impinges upon such person’s name and status both in the workplace, community and domestic environment. For this reason, accusations of sexual harassment must be properly, and sensitively, investigated to determine its substance.

Unsubstantiated accusations of sexual harassment will be regarded as unacceptable and may in turn lead to disciplinary action against the “accuser”.

5 TEMPLATES

5.1 INTERNET USAGE – EMPLOYEE DECLARATION

As part of the company/firm's commitment to the utilisation of new technologies, many/all of our employees have access to the Internet/e-mail. To ensure compliance with copyright law and to protect the company/firm from the threat of viruses or hackers hacking into the company/firm's server, the following company/firm policy on Internet usage applies.

It is the company/firm's policy that access to and utilisation of the Internet and/or e-mail be limited to official company/firm business. As a special concession, however, employees who for legitimate business purposes have access to the Internet, may utilise these facilities for personal business after normal business hours, in strict compliance with the other terms of this policy. The introduction of viruses or malicious tampering with any computer system is expressly prohibited. Any such activity will immediately result in disciplinary action, which may result in termination of employment.

All employees using the Internet for official company/firm business are acting as representatives of the company/firm. All such employees should act accordingly so as not to damage the reputation of the company/firm. Improper conduct would include, but is not limited to –

- disclosure/sharing of accounts or passwords;
- unauthorised disclosure, sharing or distribution of confidential, proprietary or copyrighted information;
- deliberately circumventing any security on any Internet site;
- the use of abusive, threatening or objectionable language in public or private messages;
- the storage and/or dissemination of pornographic, sexist or racist material;
- actions that are likely to result in the loss of work or systems (e.g. sending unsolicited mail, chain letters, viruses);
- use of the Internet in connection with any known illegal, fraudulent or unethical activities;
- any use of the Internet which would be inconsistent with the general policies or standards of conduct of the company/firm; and
- actions which prove embarrassing to the company/firm or detrimental to the reputation and public image of the company/firm.

You are personally responsible for all activities originating from the use of your

account/password and/or system. This includes responsibility for all messages, commands, programs, software or files that you originate or willfully accept via the Internet.

Files that are downloaded from the Internet must be scanned with virus detection software before they are installed or executed. All appropriate precautions should be taken to detect viruses and to prevent its spread. If you wish to download software or programs, forward the download site to one of your company/firm directors or IT department and if they deem it necessary, they will download it and send it to you.

The truth or accuracy of information on the Internet and e-mail should be considered suspect until confirmed by a separate, reliable source. If you are not sure, please leave the site immediately and under no circumstances say “yes” to anything.

You may not place company/firm material (copyrighted software, internal correspondence, etc.) on any publicly accessible Internet computer without prior permission.

Alternate service provider connections to the company/firm’s internal network are not permitted. If such service becomes necessary it must first be approved by one of the company/firm’s directors.

The Internet does not guarantee the privacy and confidentiality of information. Sensitive material transferred over the Internet may be at risk of detection by a third party. Employees must exercise caution and care when transferring such material in any form.

Unless otherwise noted, all software on the Internet should be considered copyrighted work. Therefore employees are prohibited from downloading software and/or modifying any such files without permission from the copyright holder.

As the company/firm may be held liable for the actions of its employees, it reserves the right to hold the employees liable for their actions.

The company/firm reserves the right to inspect all of its computer systems for violations of this policy and the employee waives any right to privacy in respect of data held on the company/firm’s hardware.

Declaration

I have read the statement of the company/firm’s employee’s Internet use policy and agree to abide by it in consideration for my continued access to the internet/e-mail. I understand that violation of the above policy may result in disciplinary action, which may result in the termination of my employment.

_____	_____	_____
Name	Signature	Date

5.2 CONFIDENTIAL INFORMATION – EMPLOYEE DECLARATION

During your association with the company/firm it is likely that you will become aware of information that is, may be, or has been secret and confidential. All such information and material is the private and absolute property of the company/firm, and you must treat it as such. The following are the terms and conditions relating to such secret and confidential information. You may not, either during or after your association with the company/firm, divulge or utilise any confidential information regarding products, telegrams, letters, faxes, reports, drawings, specifications, forms, licenses, agreements and other proprietary or confidential information about the business affairs of the company/firm which comes to your knowledge during your associations with the company/firm, and you must, both during and after your association with the company/firm, take all reasonable precautions to ensure that such information is kept secret.

Except so far as may be necessary for the purpose of your duties, you may not, without the consent of the company/firm, retain any originals or make copies of any documents containing any confidential information or other documents of whatever nature belonging to the company/firm, or take notes on it, nor retain samples or specimens in which the company/firm may be or may have been interested and which come into your possession by reason of your association with the company/firm. If, on the termination of your association, you are in possession of any originals or copies of confidential information or any such samples or specimens, you must deliver it to the company/firm without being asked, except so far as you have received consent by the company/firm in writing.

You may not enter into any association of whatsoever nature with any business undertaking or enterprise that either does, or could enter into competition with the company/firm, or which does or could provide products and service similar to those of the company/firm.

Declaration

I hereby acknowledge that I have read and understand the full implications of the undertakings as set out and I accept the restrictions placed upon me in terms of it and that these restrictions are fair and reasonable in the protection of the company/firm's interests.

_____	_____	_____
Name	Signature	Date

5.3 DISCIPLINARY PROCEEDINGS

NOTIFICATION OF A DISCIPLINARY ENQUIRY

(To enable an employee to receive prior notice of and to adequately prepare for the disciplinary enquiry, it is recommended that he be given the following "letter" three days prior to the disciplinary enquiry.)

1 Dear Mr/Ms _____

This is to formally notify you that a disciplinary enquiry will be held at:

Time_____ Date_____ Venue_____

2 The purpose of this disciplinary enquiry is to investigate the charges against you, which are as follows:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

3 Person laying the charge

Name _____Designation_____

_____ _____
Signature Date

4 You are reminded that you have the following rights:

- The right to be told the nature of the offence.
- The right to have a timeous and fair enquiry.
- The right to be given adequate notice of the enquiry.
- The right to have representation from within the company/firm.
- The right to call witnesses at the enquiry.
- The right to an interpreter if required.
- The right to be informed of the chairperson's findings.
- The right to have your service and record with the company/firm taken into consideration.
- The right to be advised of any penalty to be imposed.
- The right to appeal against any disciplinary action taken.
- A copy of the minutes of the disciplinary hearing.

I acknowledge receipt of notification of the disciplinary enquiry to be held and I understand my rights.

_____ _____
Employee or employee representative signature Date

_____ _____
Manager/partner signature Date

_____ _____
Witness signature Date

RECORD OF A DISCIPLINARY ENQUIRY

(To be completed by the manager/partner conducting the enquiry)

1 Name of employee _____

2 Employee job title _____

3 Department _____

4 Date of disciplinary enquiry _____

5 Alleged misconduct

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

6 Persons present (including employee representative (if applicable))

Name _____Designation_____
Name _____Designation_____
Name _____Designation_____
Name _____Designation_____
Name _____Designation_____

7 Employee **does/ does not** wish to have an employee representative present (delete whichever does not apply)

8 Alleged misconduct explained to employee: response from employee and his Representative

_____
_____
_____
_____
_____

9 Brief summary of main points of evidence (state names and designations of witnesses giving this evidence):

_____
_____
_____

_____
_____

10 Manager/partner's comments and findings concerning the employee's alleged Misconduct

_____
_____
_____
_____
_____

11 Record of valid previous warnings (to be recorded only after completion of point 10 above)

_____
_____
_____
_____
_____

12 Other factors taken into account in deciding on the disciplinary action (i.e. any mitigating factors)

_____
_____
_____
_____
_____

13 Outcome of disciplinary enquiry

_____
_____
_____
_____
_____

_____ _____
Employee signature Date

_____ _____
Employee representative signature Date

_____ _____
Manager/partner signature Date

APPEAL AGAINST DISCIPLINARY FINDING

(To be completed within five working days of disciplinary action having been taken, by an employee who wishes to appeal)

1 I wish to appeal against the disciplinary action taken, for the following reasons:

_____
_____
_____
_____
_____

2 In terms of this appeal, I ask that the following action be taken:

_____
_____
_____
_____
_____

_____ _____
Employee signature Date

2 Date received by manager/partner _____

(To be completed by the manager/partner considering the appeal)

3 Date received _____

4 Date of appeal hearing _____

5 Manager/partner's comments and findings concerning the appeal

_____
_____
_____
_____
_____

_____ _____
Employee signature Date

_____ _____
Employee representative signature (if present) Date

_____ _____
Manager/partner signature Date

WRITTEN WARNING

(To be completed by the manager/partner conducting the enquiry)

1 Name of employee _____

2 Employee job title _____

3 Department _____

4 Employee **does /does not** wish to have an employee representative present (delete whichever does not apply)

5 Reason for written warning

_____
_____
_____
_____
_____

6 Manager/partner issuing the warning

Name _____Designation_____

_____ _____
Employee signature Date

_____ _____
Employee representative signature (if present) Date

_____ _____
Manager/partner signature Date

APPEAL AGAINST WRITTEN WARNING

(To be completed within three days of receiving a warning, by an employee who wishes to appeal)

1 I wish to appeal against this written warning for the following reasons

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Employee signature Date

2 Date received by supervisor _____

_____ _____
Signature Date

(To be completed by the manager/partner considering the appeal)

3 Date received _____

4 Outcome of appeal

_____
_____
_____
_____
_____

_____ _____
Employee signature Date

_____ _____
Employee representative signature (if present) Date

_____ _____
Manager/partner signature Date

5.4 REFERENCE CHECK FOR THE EMPLOYMENT OF NEW EMPLOYEES

How to avoid "buying trouble": If you are considering appointing an employee, ask for the names and telephone numbers of the last three employers and then contact them, using this questionnaire as a reference checklist.)

1 Applicant's name _____

2 Name of referee _____

Company/firm _____Position_____ Tel no._____

In brackets after each question are examples of the aspects you are checking

3 Did he report directly to you? **Yes/ No** *(Right person?)*

4 What were the dates of employment with your company/firm? *(Do dates check?)*

From _____to_____

5 What was his basic salary? R _____per month *(Did he falsify?)*

6 What was his annual bonus? R _____per month *(Did he exaggerate?)*

7 What was his attendance record? _____*(Conscientious/health?)*

8 What kind of work did he do? _____
_____*(Misrepresentation?)*

9 How did his work performance compare with others? _____
_____*(Competitive?*)

10 How closely was he supervised? _____
_____*(Industrious?)*

11 His relationship with colleagues? _____*(Troublemaker?)*

12 His relationship with clients? _____*(Company/firm image?)*

13 Did he have any health problems? _____*(Work affected?)*

14 Was he an excessive drinker or gambler? _____*(Reliability?*)

15 Did he experience financial difficulties or have any domestic problems? **Yes/ No** *(Work affected?)*

16 Was he an honest person? _____(*Misleading?)*

17 Was he accurate and reliable? _____*(Attention to detail?)*

18 Did he supervise staff? **Yes /No** How many? _____*(Does this check?)*

19 If yes, how well did he manage? _____*(Leader or driver?)*

20 What are his strengths? _____
_____

21 What are his weaknesses? _____
_____

22 What did you think of him? _____*(Hard to manage?)*

23 Why did he leave? _____*(Do reasons check?)*

24 Where was he working prior to joining your company/firm? _____

25 Who did he join when he left you? _____*(Does this check?)*

26 Would you re-employ him? **Yes/ No** If no, why not? _____

Should the applicant's previous employer become somewhat impatient in answering these questions, the single most important question is the final one.

Reference check conducted by:

_____ _____ _____
Name Signature Date

5.5 APPLICATION FOR MATERNITY LEAVE

COMPANY/FIRM LETTERHEAD

This is to confirm that you, Ms_____ acknowledge that you will be taking unpaid maternity leave for a period of _____ months

During the period as indicated above, your job will be kept open for you. Should you return to work after the stipulated date, the firm does not guarantee that your job will still be open for you.

_____ _____
Manager/partner signature Date

I hereby accept maternity leave on the abovementioned terms and conditions.

_____ _____
Employee name Signature Date

_____ _____
Witness signature Date