

Guideline: Notice of a Disciplinary Hearing

- Allegations against the employee should as far as possible be drafted to align with offences outlined in the employee's contract or if applicable, the employer's Disciplinary Code.
- If an allegation involves gross misconduct, the allegation should commence with the words "Gross Misconduct: Item xxx of Disciplinary Code: ..." or "Gross Misconduct in that you ..." this will alert the employee to the fact that the offence is seen as a serious one.
- **Note**, subject to an existing collective agreement or disciplinary procedure, that employers do not need to hold a disciplinary hearing for every offence; if you are satisfied that the offence will result in no more serious sanction than a final written warning, an informal disciplinary interview or meeting can be used to allow the employee an opportunity to respond to the allegations, and if you are satisfied that the employee committed the misconduct, an appropriate warning can be issued.
- When an alleged offence is seen as dismissible, a slightly more formal hearing should be held, although even then the level of formality is limited.
- The key requirements for procedural fairness are that:
 - ✓ the employee must be notified of the allegations in a form and language that he/she can reasonably understand;
 - ✓ the employee must be allowed a reasonable time to prepare (usually 48 hours is considered sufficient, but this should be extended in complex matters);
 - ✓ the employee is entitled to be assisted by a fellow employee (including a shop steward, if any registered trade union has been granted organisational rights to have elected shop stewards for this purpose);
 - ✓ the employee must be given a reasonable opportunity to state a case in response to the allegations;
 - ✓ if the allegations against the employee are proved on the balance of probabilities, the employer may present mitigating factors;
 - ✓ the employee must be advised of the outcome (preferably in writing);
 - ✓ the employee must, in the outcome, be advised of his/her recourse if dissatisfied with the outcome, being to lodge an appeal if there is such policy at the workplace or refer his/her dispute to the relevant bargaining council or the CCMA within 30 days of his/her dismissal.
- Being given a "reasonable opportunity to state a case" would include the right to call relevant witnesses and the right to an interpreter if the employee is not reasonably proficient in the language to be used in the hearing. The interpreter does not need to be a qualified translator and can be simply a fellow employee who is proficient in both languages.
- Assistance by a trade union representative (shop steward) only applies if a registered trade union has been granted organisational rights to have elected shop stewards for this purpose. A trade union representative who does not satisfy this criterion may only assist you if s/he is a fellow employee.
- If the employee is a shop steward, an employer should notify the trade union of the impending allegations prior to issuing the notice of disciplinary hearing and consult with the union. The purpose of consultation includes to discuss the possibility of representation of the shop steward by a union official (not compulsory, but often allowed) and the timing of the hearing. A further object of the consultation is

to attempt to satisfy the trade union that the disciplinary action is not motivated by a desire to victimize the employee because he/she is a shop steward.

- The employee should be requested to sign a copy of the notice, purely as an acknowledgement of receipt. If s/he refuses, a witness should be requested to sign as confirmation that the notice was handed to the employee.