

Chairperson's Checklist for a Formal Disciplinary Hearing

1. Before the hearing

- 1.1 Check: are you sufficiently objective to chair the hearing?
- 1.2 Has the employee been given sufficient notice of the hearing?
- 1.3 Does the notice clearly describe the alleged misconduct?
- 1.4 Is the proposed date, time, and venue suitable for all parties, including witnesses?
- 1.5 Is an interpreter / fellow employee conversant in the languages available, if required?
- 1.6 Is the employee a shop steward, and if so, has the trade union been consulted?

2. During the hearing

- 2.1 Open the hearing and introduce yourself (if necessary).
- 2.2 Check that the employee is present.
- 2.3 Request parties to sign an attendance register. Introduce the parties if necessary.
- 2.4 Advise parties if you are recording proceedings. (If employee requests permission to also record proceedings, this would normally be granted.)
- 2.5 If employee is not present, determine why and whether a postponement is required or whether the hearing will proceed in the employee's absence.
- 2.6 If employee is present:
 - 2.6.1 Check if employee has or requires a representative.
 - 2.6.2 Check whether the employee requires an interpreter / fellow employee conversant in the required languages.
 - 2.6.3 Check that the employee received the notice of the hearing.
 - 2.6.4 Check that the employee understands the allegations.
 - 2.6.5 Check that the employee had sufficient time to prepare.
- 2.7 Briefly outline the procedure to be followed in the first stage of the hearing, as follows:
 - 2.7.1 Read the allegations and ask the employee to state separately whether or not s/he has committed the misconduct as alleged.
 - 2.7.2 If the employee acknowledges having committed the misconduct, ask for background from both parties and then move to point 2.11.
 - 2.7.3 If the employee denies having committed the misconduct, ask for opening statements from both parties.
 - 2.7.4 Employer leads evidence of its witnesses.
 - 2.7.5 Cross-examination of each witness by the employee / representative.
 - 2.7.6 Re-examination of the witness by the company.
 - 2.7.7 Employee leads evidence.
 - 2.7.8 Cross-examination by employer representative of employee's witnesses (if any).



- 2.7.9 Re-examination of employee's witnesses by employee's representative.
- 2.7.10 Delivery of closing argument.
- 2.8 Follow procedure as outlined, then adjourn in order to consider the evidence and make a finding. Determine how long the adjournment should be, based on complexity of issues, and advise parties.
- 2.9 Make a finding whether or not to uphold one or more of the allegations (separate finding on each separate allegation). Parties to be advised of finding on resumption of proceedings.
- 2.10 If none of the allegations have been proved by the employer, the hearing ends.
- 2.11 If one or more allegations have been proved, set out the procedure to be followed in the second stage of the hearing:
 - 2.11.1 Evidence in mitigation (lessen) of sanction (e.g. personal circumstances, clean disciplinary record, long service, provocation, etc.).
 - 2.11.2 Evidence in aggravation of sanction (e.g. cost to company, loss of trust (especially in cases involving dishonesty), previous warnings, etc.).
- 2.12 Adjourn to consider the sanction. Determine how long the adjournment should be, based on complexity, and advise parties.
- 2.13 Decide on the sanction / recommendation of sanction (depending on your mandate from the employer).
- 2.14 If the sanction is dismissal, determine whether summary dismissal or on notice.
- 2.15 If a recommendation is required, advise the employer of the recommendation and allow the employer to take a final decision on this.
- 2.16 Where the employer wishes to impose a more serious sanction than that recommended by the chairperson of the enquiry, the employer should notify the employee of this.
- 2.17 Advise the employee in writing of the outcome of the hearing. Note: the law does not require that an appeal process should follow, but if the employer provides for a right of appeal in the employer's disciplinary policy / procedure, then this should be communicated to the employee.
- 2.18 If the employee is dismissed, ensure that s/he is advised in writing of his/her right to refer an unfair dismissal dispute to the CCMA / bargaining council within thirty (30) days of the date of dismissal (or 30 days of the date of outcome of an appeal, if any).

3. After the hearing

- 3.1 It is advisable to ensure preparation of minutes of the hearing as soon as possible (preferably typed, not handwritten). Minutes should be a summary of the evidence and argument, findings, mitigation and aggravation, and sanction. They do not need to be recorded word for word.
- 3.2 Check minutes for accuracy.
- 3.3 Where minutes are available ensure that a copy of the minutes is given to the employee. The employee should be asked to sign a copy of the minutes to confirm receipt and accuracy (but, cannot be forced to do so). Where s/he refuses to sign for receipt of the minutes, a witness may sign to confirm that the minutes were given to the employee.

- 3.4 Ensure that all documentation relating to the enquiry is kept safely, in the event of the outcome of the enquiry being challenged. (This would include the notice of the enquiry, documentary evidence, chairperson's notes, minutes of the enquiry, outcome of the enquiry, and appeal documentation if any).

See also:

See Template: Notice of Disciplinary Hearing [4.3C]

See Guideline to Template: Notice of Disciplinary Hearing [4.3D]

See Template: Termination of Services – Conduct [3.4F]

See Guideline: Termination of Services – Conduct [3.4I]