

How to end the employment relationship in a fair manner where the employee is unable to get on with fellow employees (incompatibility)

In the how to guide on “how to manage the employment relationship in a fair manner where the employee is unable to get on with fellow employees”, the following guidelines are recommended for managing an employee who is incompatible:

- The employer should assess the compatibility of the employee by gathering objective supporting evidence, which establishes incompatibility.
- Advise the employee that you wish to consult with him/her.
- Clearly identify the conduct of the employee causing problems and indicate the desired behaviours or conduct required.
- Provide sensible and practical advice where possible. Probe areas where the employee may benefit from counselling or coaching from an experienced senior, if available.
- Give the employee adequate support, means and time to remedy shortcomings and to adapt behaviour.

See how to guide: How to manage incompatibility

Should the employee not improve and the employer is satisfied that it has done everything reasonably possible to assist the employee, a final hearing may be convened to address the situation and to make a final decision as to the way forward.

Prior to convening a final hearing in order to decide whether or not to dismiss an employee for incompatibility, an employer should consider whether the incompatibility is ongoing, serious and potentially damaging to the business.

If this is the case, it is advisable for the employer convene a hearing.

See template: Notice to attend a hearing: Incompatibility

How to conduct a fair hearing in respect of an employee who is unable to get on with fellow employees:

- Initiate the process by serving the employee with a notice to attend an incompatibility hearing.
- Arrange a venue for the hearing and inform relevant persons of need to attend (for example a manager, supervisor or witness).
- Advise the employee that s/he may bring a representative to the consultation. This may be a fellow employee or a trade union representative (shop steward). Assistance by a trade union representative only applies if a trade union has been granted organizational rights to have elected shop stewards for this purpose. A trade union representative who does not satisfy this criterion may only assist an employee if s/he is a fellow employee.
- Should the employee require the assistance of an interpreter, advise the employee that s/he may bring a fellow employee to the counselling session to assist as an interpreter.
- Ensure that the employee is aware of and understands the reason for holding the incapacity hearing.

- Check whether the employee requires the assistance of an interpreter. This could be a fellow employee that is reasonably conversant in the applicable languages.
- State the purpose of the hearing and how it will run.
- Go through the behaviours / conduct required, previous consultation(s), commitments made and steps taken to improve behaviour.
- Relate the reports, incidents, issues which led to the hearing being convened and the ongoing impact those incidents and occurrences or behaviours demonstrated by the applicant has continued to have on colleagues and the business.
- Provide evidence (complaints, grievances, and examples) to back up the allegations – avoid general observations.
- Explain how the employee's conduct / behaviour / management style has upset people / caused disruption, disharmony, confusion, unhappiness creating a hostile or disharmonious work environment which has not improved despite earlier measures implemented.
- Explain the ongoing negative impact on productivity and other aspects in the workplace.
- If witnesses are called, allow the employee and his/her representative an opportunity to question the witnesses.
- Give the employee and his/her representative the opportunity to comment and to call witnesses if required.
- Adjourn the hearing and consider the following checklist which is based on the requirements for a fair dismissal for incompatibility.

CHECKLIST: DISMISSAL BASED ON INCAPACITY - INCOMPATIBILITY

1.	Were the behaviours / conduct complained of serious and extreme?	
2.	Were the behaviours / conduct entirely attributable to the employee?	
3.	Is there independent and corroborated evidence of the incompatibility?	
4.	Is there limited merit in the employee's defences raised?	
5.	Has the employee been given adequate support, means and time to remedy shortcomings and to adapt behaviour?	
6.	Are there no alternatives to dismissal (e.g. demotion)?	
7.	Is the impact on relationships irredeemable and irreparable?	

- If the answer to each of the above is "yes", the employee may be dismissed if no other alternatives are reasonably available in the circumstances.
- If the decision taken is to dismiss the employee, reconvene the hearing.
- Advise the employee of your decision to dismiss and state the reason why, as per the above checklist.
- Advise the employee if his/her right to refer the dispute to the CCMA or a bargaining council.
- Provide the decision in writing.

See template: Notice of termination: Incompatibility