

GUIDELINES ON TERMINATION OF SERVICES: CONDUCT

Summary Termination: Without Notice

- Summary termination is a dismissal without notice.
- It is generally only applicable where an employee is dismissed on the grounds of gross misconduct.
- It will normally not apply where an employee is dismissed for repeated minor offences, or for incapacity.

Notice Period

- An employer is entitled either to require the employee to work out the notice period, or to require the employee to leave immediately, in which case the employer must pay the employee for the period he/she would have worked out the notice.
- The latter is often seen as more acceptable to both the employer and the employee, but the choice remains with the employer as to which option to pursue.
- If the employee requests to leave immediately, the employer may agree and is then not obliged to pay notice pay.

Decide / Recommend a Sanction

- An employer should appoint a person who has knowledge of the disciplinary process. The person does not have to be an external chairperson.
- An employer can determine whether the chairperson of a disciplinary enquiry/hearing has the power to **decide** the sanction, or only to **recommend** a sanction.
- In the latter case the employer must decide whether or not to accept the recommendation.
- Generally, the employer should not decide to impose a harsher sanction than that recommended by the chairperson, unless it is absolutely necessary, but may decide to exercise leniency and impose a lesser sanction.
- Where the employer does wish to impose a harsher sanction, this should be justified and conveyed to the employee, and the employee should be allowed an opportunity to make representations on that aspect.

Appeal/Review

- The employer is only required to grant a right of appeal if this is provided for in the employer's disciplinary procedure, in a contract of employment and/or in a collective agreement. If such a provision is applicable, the following wording should be added to the notice: "You may appeal against the outcome of the hearing within ____ days. If you wish to do so you must submit your appeal in writing setting out the grounds of appeal."
- If this is not the case, an appeal is not a requirement for procedural fairness and the paragraph providing for an appeal should be deleted.
- Whether or not the employee is entitled to **an** appeal, the employee must be reminded of the right to refer an unfair dismissal dispute to a bargaining council having jurisdiction or the CCMA, within 30 days of the date of dismissal (or within 30 days of the outcome of an appeal, if any). In terms of this, where an employee is dismissed and must work until the end of the notice period, the date of dismissal is the earlier of the date on which the notice ends, or the date on which the employee is paid all outstanding salary. For summary dismissals without notice, the date of dismissal would be the earlier of the date on which the contract of employment terminated, or the date on which the employee left service.
- Generally, an employer cannot appeal against its own decision if its policies provide that the chairperson makes a final decision on **the** sanction. If the decision of the chairperson is merely a recommendation, then the employer may exercise **a** discretion whether or not to accept it, provided that, if the employer wishes to impose a harsher sanction, there are fair reasons to do so.

Return of Property

- An employer should ensure that all property to be returned by the employee is specified in the termination letter.

The Template "Termination of Services–Conduct" can be used for dismissal for repeated misconduct of a nature that does not warrant dismissal without notice or warrants dismissal with notice.

See Template: Termination of Services - Conduct