

## How to manage the employment relationship when an employee has a grievance

Various mechanisms have been developed in our labour relations system to deal with inherent conflict at workplaces between employers and employees and the disputes that may arise as a result of the conflict.

The ultimate goal should be to get to a position where there are sound workplace relationships which contribute to productive and high performing workplaces. Employees should be protected from unfair and arbitrary action by employers and employers are entitled to satisfactory conduct and work performance from their employees.

Grievance and disciplinary procedures provide a mechanism for managing workplace conflict:

- A grievance concerns unhappiness on the part of an employee in connection with that employee's work environment, the work an employee performs, or relationships with others (colleagues or management) in the workplace.
- Discipline concerns unhappiness on the side of management with an employee's conduct.

The aim of disciplinary and grievance procedures is to prevent and resolve conflict, settle disputes, protect both the interests of management and employees and to provide an in-house system for resolving issues and communicating in order to deal effectively with workplace disputes.

An employer should not accept a grievance which is not related to the workplace as an employer would not have the power to resolve such a grievance. If the employee has personal problems that are not work-related they should be referred to the appropriate external body (or an internal Employee Assistance Program, if there is one) for assistance.

A grievance cannot be used as the reason to implement disciplinary action against an employee, although the finding of the chairperson of a grievance hearing may very well be to recommend the initiation of disciplinary action against another employee or the complainant him/herself, if it is considered to be necessary.

### Examples of valid grounds for grievances are:

- discrimination;
- victimisation;
- bullying;
- harassment of any kind e.g. sexual, physical, psychological, emotional, verbal; creating a toxic work environment; intimidation;
- provocation;
- abuse;
- lack of cooperation and support which impairs an employee's ability to perform his or her duties;
- poor management;
- inadequate safety measures or equipment;
- a toxic work environment.

Ideally, unfair labour practice and alleged discrimination disputes referred by employees to the CCMA should be preceded by an attempt to deal with the matter first at the workplace by lodging a grievance or reporting the discrimination through the correct channels.

A grievance procedure may not be used for appealing against disciplinary action taken. If an employee wishes to contest the disciplinary action short of dismissal that has been taken against him/her, the employee may

challenge the disciplinary action through an appeal process, if the employer has one, or refer an unfair labour practice dispute to the CCMA or a bargaining council in terms of Section 186 (2) of the Labour Relations Act 66 of 1995.

See Information Sheet: What is an Unfair Labour Practice [3.10A]

A formal grievance procedure should ideally be reduced to writing with clear time-limits and should specify the steps to be followed and the individuals that will be involved in dealing with and hearing the grievance lodged.

See Model Disciplinary Code and Grievance Procedure [1.2F]

However, where an employer does not have a formal grievance procedure, grievances may be dealt with informally provided that the process is fair, transparent, and impartial and the following guidelines are followed:

**Basic steps in dealing with a grievance:**

1. The aggrieved employee should lodge a grievance, preferably in writing, with an immediate supervisor. Should the employee be unfamiliar with the grievance process, employees should be advised to consult HR who should at least guide the employee or give direction with regard to this process.
2. Where the grievance is against the supervisor the procedure should make provision for the grievance to be lodged with the supervisor's manager; in all other cases the grievance should be lodged with the immediate supervisor.
3. A grievance should be heard and settled as close to the point of origin and as promptly as possible.
4. Once the grievance is lodged, management should appoint an individual to hear the grievance, preferably a neutral person who is not involved in the issue complained of.
5. A grievance hearing needs to be convened without delay, ideally within three to five days.
6. The person against whom the grievance is lodged should not necessarily be compelled to attend the meeting, but, in exceptional circumstances may be given the opportunity to be heard in a separate meeting, if necessary.
7. It is important to ensure that the process is seen to be fair, transparent and impartial. However, where the grievance is of a sensitive nature, such as in the case of sexual harassment, the privacy of the grievant will need to be protected.
8. The aggrieved employee must be allowed to express the grievance freely and openly and to verify his/her version of events and may call witnesses if required.
9. The complainant must be asked what resolution s/he believes would be appropriate.
10. After hearing all interested parties, the person who hears the grievance must make a decision as to the most appropriate manner to deal with the grievance and give reasons for the decision.
11. The decision needs to be realistic and achievable. Ideally the outcome of the grievance proceedings should be provided by no later than two days after the hearing.

See Template: Grievance Form [3.9B]