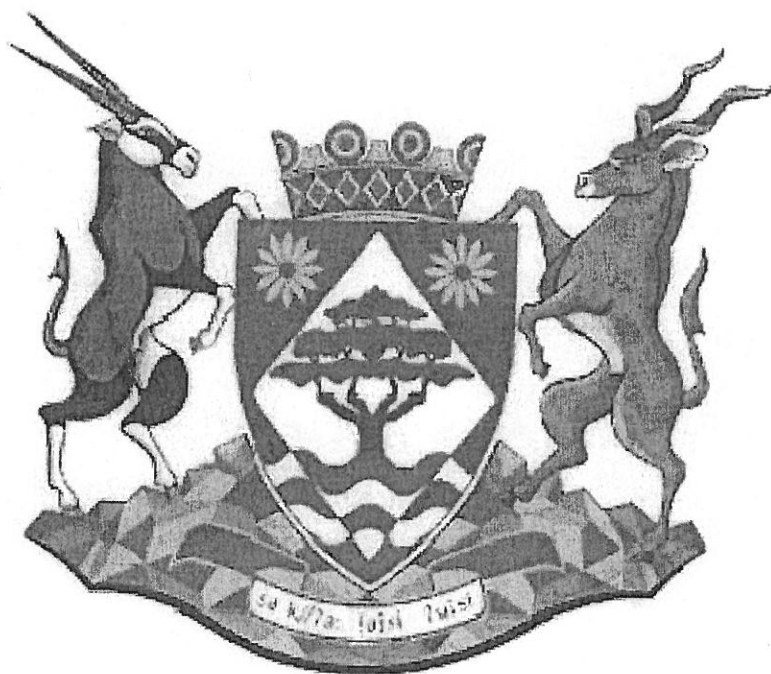


2013/2014

**DEPARTMENT SPORT
ARTS AND CULTURE**



[DSAC POLICY ON DISCIPLINARY CODE AND PROCEDURE]

[PURPOSE OF THE POLICY: Serves to provide the necessary mechanisms to enable management to keep employee conduct in line with the department's objectives and requirements.]

"DSAC Policy on Disciplinary Code and Procedure"

Page 1 of 16

Contents

1. Purpose	3
2. Principles	3
3. Definitions.....	4
4. Scope Of Application.....	4
5. Codes, Rules And Standards	4
6. Procedures: Disciplinary Actions	5
8. Serious Misconduct	7
9. Disciplinary Enquiry	7
10. Appeal.....	9
11. Annexures A - E	11

1. PURPOSE

The purpose of this Code and Procedures is:

- i. To support constructive labour relations in the Department;
- ii. To promote mutual respect between employees and the Department as Employer;
- iii. To ensure that managers and employees share a common understanding of misconduct and discipline;
- iv. To promote acceptable conduct within the Department;
- v. To provide employees and the employer with a quick and easy reference for the application of discipline;
- vi. To prevent, avert and correct unacceptable conduct; and
- vii. To prevent arbitrary or discriminatory actions by managers and supervisors towards employees.

2. PRINCIPLES

The following principles inform the Code and Procedures and must inform any decision to discipline an employee.

- i. Discipline is a corrective measure and not a punitive one;
- ii. Discipline must be applied in a prompt, fair, consistent and progressive manner;
- iii. Discipline is a management function.

2.1 The disciplinary code is necessary for the efficient delivery of service and the fair treatment of Department employees, and ensures that employees:

- i. Have a fair hearing in a formal or informal setting;
- ii. Are timeously informed of allegations of misconduct made against them;
- iii. Receive written reasons for a decision taken; and
- iv. Have the right to appeal against any decision.

2.2 Disciplinary procedures shall first take place internally and be understandable and accessible to all employees.

- 2.3 Where an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings;
- 2.4 In this regard disciplinary proceedings shall not replace or seek to imitate or influence court proceedings.

3. DEFINITIONS

- i. **Acceptable Conduct:** For the purposes of this policy Acceptable Conduct refers to behavior and or demeanor that is harmonious with the Departmental Code of Conduct;
- ii. **Legal Practitioner:** For the purposes of this policy a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.
- iii. **Employee: employee** means—
- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer, and “employed” and “employment” have a corresponding meaning.

4. SCOPE OF APPLICATION

This Code and Procedures is applicable to all employees of the department both permanent and contract who are registered under the scope of the Public Service Coordinating Bargaining Council.

5. CODES, RULES AND STANDARDS

The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995 Public Finance Management Act, insofar as it relates to discipline, constitutes part of this Departmental Code and Procedure. (“See Annexure D”)

- i. Employee conduct that may warrant a disciplinary action is listed in code attached as **“Annexure A”**. This list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or ought to have known, that the conduct constituted grounds for disciplinary action;

In applying Annexure A, management must assess the seriousness of the alleged misconduct by considering:

- i. The actual or potential impact of the alleged misconduct on the work of the Department, the employee’s component and colleagues, and the public;

- ii. The nature of the employee's work and responsibilities; and
- iii. The circumstances in which the alleged misconduct took place.

6. PROCEDURES: DISCIPLINARY ACTIONS

6.1 Corrective Counseling:

In cases where the seriousness of the misconduct warrants counseling, the manager of the employee must:

- i. Bring the misconduct to the employee's attention;
- ii. Determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
- iii. Seek to get agreement on how to remedy the conduct; and
- iv. Take steps to implement the agreed course of action.

6.2 Procedure for Corrective Counseling

- i. The written warning shall be in the form of "**Annexure B**";
- ii. The manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the written warning was conveyed to the employee.
- iii. The written warning must be filed in the employee's personal file.
- iv. A written warning remains valid for six months. At the expiry of the six months, the written warning will no longer be valid and will be removed from the employee's SM (Staff Misconduct) file
- v. If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the written warning may be taken into account in deciding an appropriate sanction.
- vi. The final written warning shall be in the form of "**Annexure C**".

7. WARNINGS

7.1 Verbal warnings. In cases where the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning. The manager must inform the employee that further misconduct may result in more serious disciplinary action, and record the warning.

7.2 Written warnings. In cases where the seriousness of the misconduct warrants a written warning, the manager may give the employee a written warning. The following provisions apply to written warnings;

7.2.1 Final written warnings. In cases where the seriousness of the misconduct warrants a final written warning, the manager may give the employee a final written warning. The following provisions apply to final written warnings:

7.2.1.1 For less serious forms of misconduct, no formal enquiry shall be held.

7.2.1.2 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the employee shall be taken into account.

8. SERIOUS MISCONDUCT

If the alleged misconduct justifies a more serious form of disciplinary action than provided in section 6, the employer may initiate a disciplinary enquiry. The employer must appoint an employee as a representative, who as far as possible must be the manager for the employee, to initiate the enquiry.

9. DISCIPLINARY ENQUIRY

9.1 Notice of enquiry

- i. The employee must be given notice of five working days before the date of the hearing.
- ii. The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee.
- iii. *The written notice of the disciplinary meeting must use the form of "Annexure D", and provide:*
 - a. *A description of the allegations of misconduct and the main evidence on which the employer will rely;*
 - b. *details of the time, place and venue of the hearing; and*
 - c. *Information on the rights of the employee to representation by a fellow employee or a representative or official of a recognised trade union, and to bring witnesses to the hearing;*
 - d. *The employee is alleged to have committed a serious offence; and*
 - e. *The employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the well being or safety of any fellow employee or state property;*
- iv. *The employer may suspend an employee on full pay or transfer the employee if:*
 - a. *A suspension of this kind is a precautionary measure that does not constitute a judgment, and must be on full pay;*
 - b. *If any employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair of the hearing must then decide on any further postponement.*

9.2 Precautionary suspension

- a. The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 9.1(i) is delivered to the employee;
- b. The chair of the hearing must be appointed by the employer and be an employee on a higher grade than the representative of the employer.

9.3 Conducting the disciplinary hearing

- i. The Department and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an independent competent chairperson from any department within the Provincial Administration. The decision of the chairperson will be final and binding and only open to review in terms of the *Labour Relations Act, 1995*. All the provisions applicable to disciplinary hearings in terms of this departmental Code will apply for purposes of these hearings. Where necessary the department may carry the remuneration costs of the chairperson;
- ii. If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognised trade union;
- iii. Where necessary, an interpreter may attend the hearing at the request of the employee;
- iv. *In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –*
 - a. the employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or the disciplinary hearing is conducted in terms of paragraph 9.3 (ii);
- b. If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence,
- c. The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting,
- d. The chair will read the notice for the record and start the hearing,
- e. The representative of the employer will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the employer,
- f. The employee will be given an opportunity to lead evidence. The representative of the employer may question the witnesses,

- g. The chair may ask any witness questions for clarification only,
- h. If the chair decides the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it,
- i. Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances,
- j. The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file.

9.4 Sanctions

- a. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 9.3.j), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanctions consist of:
 - i. Counselling;
 - ii. A written warning valid for six months;
 - iii. A final written warning valid for six months;
 - iv. Suspension without pay, for no longer than three months;
 - v. Demotion¹;
 - vi. A combination of the above; or
 - vii. Dismissal.
- b. If an employee is demoted, she/he may only, after a year, apply for promotion to a higher advertised post without prejudice.
- c. The employer shall not implement the sanction during an appeal by the employee.

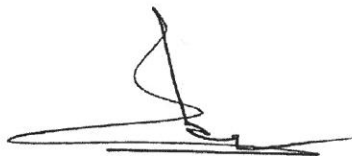
10. Appeal

- a. An employee may appeal a finding or sanction by completing **Annexure E**.
- b. The employee must, within five working days of the receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to her or his executing authority, or to her or his manager, who shall then forward it to the appeal authority.

¹ Demotion shall imply a reduction both in rank and remuneration

- c. The appeal authority may, on good cause shown, condone the late lodging of an appeal.
- d. The appeal authority, who shall consider the appeal, shall be:
 - i. The Executive Authority of the employee, or
 - ii. An employee appointed by the Executive Authority, who was not involved in the decision to institute the disciplinary proceeding, and who has a higher grade than the chair of the disciplinary hearing.
- e. If the person referred to in paragraph 10 (d) requires a hearing, she or he shall notify the employee of the date and place.
- f. The appeal authority may;
 - i. Uphold the appeal, and/or
 - ii. Reduce the sanction to any lesser sanction allowed in terms of clause 9.4.a of the policy, or
 - iii. Confirm the outcome of the disciplinary proceeding.
- g. The employer shall immediately implement the decision of the appeal authority. Where the appeal authority decides to reduce the sanction or to confirm the outcome of the disciplinary proceedings (e.g. dismissal cases), the sanctions will be implemented by the employer from a current date.
- h. The Department must finalise the appeal within 30 days, failing which, in cases where the employee is on precautionary suspension, he/she must resume duties immediately and await the outcome of the appeal while on duty.

APPROVED:



Mr. F. AYSEN
HEAD OF DEPARTMENT
DEPARTMENT OF SPORT, ARTS AND CULTURE

01/04/2013
DATE

ACTS OF MISCONDUCT

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive and will include the Code of Good Practice and Misconduct provision as stipulated in the PFMA and its concomitant circulars):

- i. Fails to comply with, or contravenes an Act, regulation or legal obligation;
- ii. Willfully or negligently mismanages the finances of the State;
- iii. Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor;
- iv. Willfully, intentionally or negligently damages and or causes loss of state property;
- v. Endangers the lives of self or others by disregarding safety rules or regulations;
- vi. Prejudices the administration, discipline or efficiency of a department, office or institution of the State;
- vii. Misuses his or her position in the Department to promote or to prejudice the interest of any political party;
- viii. Steals, bribes or commits fraud;
- ix. Accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the department;
- x. Fails to carry out a lawful order or routine instruction without just or reasonable cause;
- xi. Absents or repeatedly absents him/herself from work without reason or permission;
- xii. Commits an act of sexual harassment;
- xiii. Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution;
- xiv. Performs poorly or inadequately for reasons other than incapacity;
- xv. Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours;
- xvi. Without authorisation, sleeps on duty;
- xvii. While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol;
- xviii. While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner;
- xix. Contravenes any prescribed Code of Conduct for the Department;
- xx. Assaults, or attempts or threatens to assault, another employee or person while on duty;
- xxi. Incites other personnel to unprocedural and unlawful conduct;
- xxii. Displays disrespect towards others in the workplace or demonstrates abusive or insolent behavior;
- xxiii. Intimidates or victimises fellow employees;
- xxiv. Prevents other employees from belonging to any trade union or body;
- xxv. Operates any money lending scheme for employees for own benefit during working hours or from the premises of the Department;

- xxvi. Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer;
- xxvii. Refuses to obey security regulations;
- xxviii. Gives false statements or evidence in the execution of his or her duties;
- xxix. Falsifies records or any other documentation;
- xxx. Participates in unprocedural, unprotected and/or unlawful industrial action;
- xxxi. Commits a common law or statutory offence while on state premises.

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

RE: WRITTEN WARNING - YOURSELF

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:
If you object the warning, you may direct an appeal to [name] within five working days.

The nature of the misconduct is:
.....
.....
.....

.....
SIGNATURE OF EMPLOYEE

DATE:.....

.....
SIGNATURE OF MANAGER

DATE:

.....
SIGNATURE OF WITNESS (If applicable)

DATE:

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

RE: FINAL WRITTEN WARNING - YOURSELF

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:.....
.....
.....
.....

If you object the warning, you may direct an appeal to [name] within five working days.

.....
SIGNATURE OF EMPLOYEE

DATE:.....

.....
SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE:

.....
SIGNATURE OF WITNESS (If applicable)

DATE:.....