

# How should an employee's misconduct in the workplace be addressed?

***The purpose of implementing discipline in the workplace is to correct unacceptable behaviour. Progressive discipline is beneficial to both the employer and employee and needs to be applied.***



In order for an employer to evaluate and establish their employees' conduct, it is important that all employers implement a ***disciplinary code of conduct*** along with the ***company's disciplinary procedures***. The purpose of implementing discipline in the workplace is to correct unacceptable behaviour. Disciplinary codes and procedures must be made available to all employees to establish certainty and clarity regarding the rules in the workplace.

In terms of *Schedule 8 of the LRA* with reference to the *Code of Good Practice*, "The courts have endorsed the concept of corrective or progressive discipline. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings".

## **What are the obligations of the employer and employee?**

The employer has to ensure that all employees are aware of the rules and the reasonable standards of behaviour expected of them in the workplace. The employee has the obligation to familiarise him/herself with and abide by the rules and the reasonable standards of behaviour set by the employer in the workplace.

The most productive and effective manner to implement progressive discipline is to determine the seriousness of each instance of misconduct. Firstly, the company's disciplinary code of conduct and procedures must list the offences and categorise them as minor, less serious or serious. Secondly, the disciplinary code of conduct and procedures must indicate what disciplinary action may be imposed should an employee commit certain offences. Thirdly, by implementing this process, all employees are made aware of the rules and regulations as well as the possible consequences of their conduct in the workplace, thus eliminating any uncertainty. A Code of Conduct should also indicate which instances of misconducts may lead to the possible dismissal of an employee.

# What is the difference between a Counselling Session and Disciplinary Action?

- **Counselling Session:**

In cases where an employee is in breach of a rule that is minor and can be condoned, it is advisable that a counselling session be held with the employee. The purpose of the counselling session is to address the offence and to ensure that the offence will not be repeated in future. Furthermore, a counselling session provides guidance to the employee for future tasks.

Repeated misconduct will warrant a written warning, which can be graded according to the degree of severity or seriousness thereof. More serious offences or repeated misconduct could justify a final written warning or other action short of dismissal, for example demotion or suspension. When a written warning is issued, the employee will be asked to sign such warning to acknowledge receipt thereof. Should the employee refuse to sign, it is advisable to have a witness present to sign the warning indicating that the employee had refused to sign the warning as acknowledgement of receipt. Is it not a requirement in law that a warning needs to be signed by an employee to constitute a valid warning. The process alluded to above in the event of a refusal to sign by an employee is sufficient to establish a legitimate and valid warning. If the employee refuse to sign a warning, by virtue of the employee not recognising or disputing his/her guilt then the employee should be provided with an opportunity to state his/her case in a disciplinary hearing.

- **Disciplinary hearing:**

Once an employee has committed repeated offences or if the nature of the offence is severe, it could warrant a disciplinary hearing and possible dismissal after all the facts of the case had been weighed up and the mitigating and aggravating circumstances had been taken into account. A disciplinary hearing should also be resorted to in the event that the employee disputes a written warning presented to an employee.

## What is the essence of Progressive Discipline?

Progressive discipline is beneficial to both the employer and employee and needs to be applied.

**The Code of Good Practice: Dismissal** states that “this approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. The manner in which the employer implements progressive discipline should never be in the form of victimization. Constructive guidance and mentoring of employees should be implemented to enable them to perform to their best abilities in their workplace”.

In conclusion, by implementing progressive discipline in the workplace, the employee’s misconduct and offences will be addressed in a fair, objective and procedural manner.

*SERR Synergy* guides and assists businesses in a practical and supportive way with regard to the required processes and procedures to ensure labour legislation compliance and to minimise their exposure to risk when employing staff.

*About the author:* Lané Boshoff is an admitted Advocate of the High Court of South Africa. She obtained her *BA Law* and *LLB* degrees from the University of Pretoria. She joined *SERR Synergy* in July 2018, where she is currently employed in the Labour department.

The following source is acknowledged:

- Code of Good Practice for Dismissal: Schedule 8 of the Labour Relations Act of 1995, as amended.