

## 1. INTRODUCTION:

Disciplinary procedures apply to all employees and is a guide for appropriate disciplinary action. In such a way, it does not detract from the management's right to depart from it depending on the circumstances of each case, it aims to achieve flexibility, consistency and to ensure fairness in the application of disciplinary actions for both an employee and an employer.

These procedures are governed by The Employment and Labour Relations Act, 2004, Employment and Labour Relations (Code of Good Practice) Rules 2007 G.N No.42 and Employment and Labour Relation (Forms) Rules, 2007 G.N No. 65 together with any other laws governing the Employment Relations in Tanzania.

An employee may be terminated from work for various reasons and the law has provided for a list of offences that an employee may be terminated from, but the Law is not exhaustive and so an employer may discipline any employee for good cause even though the specific offence has not been stated in the law.

It should be well understood that, even when there are valid reasons for terminating an employee, an employer must always follow the rules and regulations set for a fair procedure. If the procedures are properly done, then the Employer will avoid losing the case in court i.e Commission for Mediation and Arbitration.

The penalties available in relation to the commission of the offence differs depending on the offense itself. The existence of any previous warnings i.e written warnings and other material factors should be considered in deciding on the appropriate disciplinary action.

### 1. OFFENCES FOR WHICH WARNINGS MAY BE CONSIDERED:

- *ABSENCE*

1. Late for work, leaving work place without permission or general time keeping offences.
2. Absence from work without permission or without acceptable reason for up to five working days.

- *INSTRUCTIONS*

1. Failure to carry out reasonable instructions of the employer.

- *WORK PERFORMANCE*

1. Poor work performance without acceptable reasons.

2. Conducting unauthorized private work at the workplace.

- *PROPERTY*

1. Causing damage or loss to the employer's property or other property (e.g. property belonging to other employee, customer, client or members of the public) either through negligence or failure to carry out instructions.

2. Misuse or neglect of the employer's property.

- *BEHAVIOUR*

1. Unacceptable behavior towards customers, clients, fellow employees or members of the public.

2. General offences and breach of organization rules or policy.

1. OFFENCES WHICH MAY CONSTITUTE OF SERIOUS MISCONDUCT AND LEADING TO TERMINATION OF AN EMPLOYEE'S CONTRACT:

- *ABSENCE*

1. Absence from work without permission or without acceptable reason for more than five working days.

- *INSUBORDINATION*

1. Commission of serious or repeated act of insubordination at the employer or during working hours against employer.

- *POOR WORK PERFORMANCE*

1. Habitual, substantial or willful negligence in the performance of work.
2. Unacceptable work performance, behavior or consistent work performance below average despite at least two written warnings.
3. Dishonesty or any other major breach of trust.
4. Gross incompetence or inefficiency in the performance of work.
5. Lack of skill, which the employee expressly or impliedly claimed to possess.

- *PROPERTY*

1. Causing serious damage (real or potential) to or loss of the employer's property or other property (e.g. belonging to other employees, customers or clients), either through gross negligence or willful damage.
2. Theft or unauthorized possession of the employer's property or other property (e.g. belonging to other employees, customers, clients)
3. Fraud or misappropriation of organization funds.

- *BEHAVIOUR*

1. Abusive behavior, assaults, threatened assaults or other unacceptable conduct towards other employees, customers, clients, or members of the public.
2. Being under the influence of alcohol or drugs whilst at work or consuming alcohol or drugs whilst on duty.
3. Other serious breaches of organizational rules or policy which have the effect of causing an irreparable break down in the employment relationship
4. Criminal convictions relating to an offence which impacts directly or indirectly, on the employment relationship.

1. **DISCIPLINARY MEASURES:**

- **COUNSELLING AND VERBAL WARNINGS**

The primary aim of disciplinary measures is to correct employees behavior, in order to ensure that they conduct themselves in an acceptable manner, the primary means of achieving this objective should be the counseling of employees by managers of what is expected of them if it does not work stronger action may be required as per the Schedules of *Employment and Labour Relations (Code of Good Practice GN. No. 42)*.

- WRITTEN WARNINGS

A written warning may be issued by a supervisor or manager, if the work performance or conduct of an employee has not improved following counseling or verbal warnings or if the misconduct requires stronger actions than a verbal warning.

The employee may also appeal if aggrieved by a written warning to the next level of management, the manager considering the appeal should personally advise the employee of the outcome of the appeal within five working days upon which the manager should record the outcome on the appropriate part of the original warning form and the employee's copy and return it to the employee.

- DISCIPLINARY HEARING

If further misconducts are committed by the same employee or if the employee commits a serious misconduct that might lead to termination of the Employment Contract, then the employer should convene a disciplinary hearing which the process should not be construed as a formal hearing. It will have to be chaired by an impartial chairperson who must be appointed by the employer. Whereby, the employer should inform the employee of the reasons for the hearing and the employee must be given an opportunity to prepare for hearing which the process should not be construed as a formal hearing. The Hearing shall commence and governed by the following guidelines;

- An Introduction of the members of the committee by the chairperson.
- Summary of allegations against employee, whereby the employer will have to analyze a series of facts which led to a misconduct or offences the employee is being charged with in brief.
- Date and time which the employee was informed of the hearing must be recognized and noted by all members of the committee.
- Also, the date and time of that hearing must be noted too.
- The Chairperson shall note down the names of the persons present at hearing and their designations/occupations.
- The Employee has a right to bring with him/her to the hearing a representative such as friend, relative lawyer or fellow employee. Thus, the chairperson should note down the name of that representative if any. If the employee did not bring one the Chairperson should note on the same.
- The Employee has a right to seek for an interpreter from the Employer if the language used at the hearing cannot be understood by him. The Chairperson is also obliged to note down the name of the interpreter if any.

- Thereafter, the Chairperson shall give the Employee a chance to defend himself whereby he will prove a brief summary of his response to allegations to the committee.
- At all the material time the Chairperson will have to note down the evidence in summary. In case of witnesses the Chairperson should ensure that their names and testimonials are well noted down for the purpose of writing his decision on the hearing.
- Thereafter, the hearing will be marked over, and the Chairperson will have to provide in writing his findings, based on the evidence presented during the hearing. If he decides to penalize the Employee, then he will have to state the punishment and provide the relevant factors considered in deciding on that appropriate penalty by him.
- After hearing the evidence, the chairperson should make decision based on the balance of probability. The chairperson may decide to terminate the employee if the said misconduct is repeated and serious to the extent that the employment relationship has become intolerable. He will have to call upon the employee and deliver his decision to the employee and this might be the same day or the next day after the hearing was conducted.
- If the Chairperson found the employee guilty of the offence alleged, then he will have to give the employee one last chance of defending himself.
- Lastly the decision will have to be signed by the Chairperson and the Employee whether the Employee is found guilty or not.
- If the Employee is aggrieved with the decision of the Chairperson, then he has a right to Appeal to the Senior Manager of the Company and the law provides the employee with five working days of this action.
- After the Senior Manager has received the Appealing Form from the Employee, he has a duty to go analyze or review the Chairpersons' decision.
- Thereafter, the Senior Manager shall have to provide his own findings of the appeal whereby he shall have to state the reasons as to whether he thinks the Chairperson's decision stands or why it should not stand and finally the outcome of the Appeal will have to be shared with the Employee.