

MISCONDUCT

CWIB MASTERCLASS
OCT '25

WHAT IS MISCONDUCT IN LEGAL FRAMEWORK?

- * It is one of three permissible grounds for dismissal
- * The others are Incapacity (sickness/injury) and
- * Operational Requirements – retrenchments

HOW DOES IT PRESENT IN EVERY DAY LIFE?

Theft, laziness, absenteeism, arriving for work under the influence, disregarding instructions, non-performance etc.

All of the above and more – requires a way to determine its real occurrence.

TOOLS TO IDENTIFY MISCONDUCT

Labour Relations Act guiding principles

“Occurs when a rule is broken or behaviour is unacceptable”.

It deals with the conduct or behaviour of persons / employees.

It requires immediate action be taken by an Employer.

TYPES OF MISCONDUCT EXAMINED

1. Absenteeism

“Employee absence without entitlement, consent, or reason”

- Absent without leave
- Absent without leave from workstation
- Abuse of leave – sick/family responsibility/study etc
- Timekeeping offences

WHY ADDRESS THIS APART FROM A MORAL PRINCIPLE?

1. Law protects the employment relationship between parties – contained in the contract they enter into.
2. Relationship demands that Employees attend at work to honour contractual obligations – Duty of the Employer

ADDRESSING THE UNDESIRED CONDUCT - MISCONDUCT

- The law provides parameters within which discipline takes place.
- The Labour Relations Act has fairness as its core value or principal.

Thus Employers expected to be fair when addressing any issue/dispute with an employee/worker.

HOW TO ADDRESS THE CONDUCT?



Discipline in any form is to be progressive.



The aim is to correct errand behaviour.



Graduated discipline required



Punitive – punishment is always the last resort > Dismissal

IMPLEMENTING DISCIPLINARY MEASURES

1. Disciplinary Code – tailored.
2. Disciplinary Procedures included in the Code.
3. Serves as a guide > cannot address all events.
4. Grievance Procedure > Employees able to vent issues.

IMPORTANCE OF THE DISCIPLINARY MECHANISMS/DOCUMENTS

1. CODE OF CONDUCT

- Sets out the expectations and duties of Employees.
- Outlines failure and the potential action/consequences.
- Employees must be made aware of the Code and its content.

DISCIPLINARY MECHANISMS II

- Copies of the Code must be easily accessible to everyone.
- It must be clear and in a language that everyone understands.
- Ensure that Employees are familiar with the Code and its contents.

DISCIPLINARY MECHANISMS III

2. GRIEVANCE PROCEDURE

- Easily accessible to everyone.
- The person in charge should be approachable and open to receive complaints - must be impartial.
- Provides a safe place for Employees to raise concerns or issues.

EXERCISING DISCIPLINE

Complaint – Absenteeism

- Counsel Employee > continues.
- Warned > graduated warnings – depends on the circumstances.
- Employer – at wits end > impacts the workplace and co-workers > Dismissal seems fair.

STEPS PRIOR TO DISMISSAL

1. ***THE BROKEN RULE*** – Did the absent Employee break a workplace rule > found in the Code of Conduct / Policy documents.
 - Was the Employee aware of the rule?
 - Is the rule reasonable?
 - Is the rule applied consistently?
 - Proof of Counselling sessions and outcomes.

STEPS PRIOR TO DISMISSAL II

2. TRANSGRESSING THE RULE

- Proof of the times and dates that the Employee was absent.
- Evidence of how the rule was flouted/ignored/broken.
- No official approval / no application / no communication to take leave.

STEPS PRIOR TO DISMISSAL III

2. TRANSGRESSING THE RULE Cont.

- Does absence follow a pattern – Every Monday/Friday/Following pay day?
- How was absence monitored – access control / camera footage?
- How was absence discovered? (*Also speaks to Intention of Employee*)

STEPS PRIOR TO DISMISSAL IV

- Determine the period of absence – relates to the charge and the seriousness of the misconduct.
- Determine the loss to the business because of the absence.
- Proof of Counselling and warnings – in writing.

STEPS PRIOR TO DISMISSAL V

3. INTENTION OF THE EMPLOYEE

- Employee did not follow procedure (rule ignored).
- Was it intentional?
- Proof – Employee applied and was declined/aware no leave entitlement/had a job interview and wanted to save leave left.

READY FOR HEARING!!

THANK YOU FOR LISTENING!!

Contact Adtello Advisory Services