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The Delicate Art of Conducting Labour Related Disciplinary hearings in Tanzania



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Introduction



Most Employers and Human Resource Professionals will attest to the fact that one of the most mentally agonizing duties they have is when they have to call a spade a spade and commence disciplinary proceedings against a member of staff. Disciplinary Proceedings or hearings as they are interchangeably called are a means of dealing with Labour disputes between an employer and an individual employee. For many Employers and HR Professionals there is the frustration in knowing that you must follow the laid out procedures to the letter, despite the all-encompassing urge to throw the employee out of the front gate or directly into a jail cell.

First and foremost, it must be borne in mind that just as individual employers have rights, all employees have rights under the labour laws and these rights must be observed in administering the disciplinary procedures. Labour laws in Tanzania are extremely protective of the employee(s) who is perceived to be the “weaker” party and accordingly the Employer who institutes disciplinary hearings must ensure that they proceed in full compliance with the letter and spirit of the law. Disciplinary hearings are usually called when an employee fails to carry out his or her duties or fails to conduct himself/herself in a reasonable manner in conformity with the policies and/ or rules of their particular organization as expected by the employer.

For disciplinary hearings to commence an employer has to issue a verbal and written warning(s) to the employee regarding the alleged misconduct, which will be the initial guide to determining the appropriate disciplinary action to follow. However, this will depend on the kind of misconduct committed by the employee.

Pursuant to the Employment and Labour Relations (Code of Good Practise) Rules, GN No 42 of 2007 an employer may conduct a disciplinary hearing meeting if:

- The conduct of the employee is unacceptable;
- The employee is incapable of rendering satisfactory services at work due to ill health, injury or poor performance; and /or
- In cases where there is incompatibility between the employer and employee.



As previously mentioned compliance with procedural requirement during the course of a disciplinary hearing is imperative as even the smallest procedural mistake may result in the findings and ruling of the disciplinary committee being thrown out on a technicality. It is advised that the employer plans and prepares for the hearing by adhering to the following steps:

Step 1. Pre - hearing Conduct and Prep

Investigate: Prior to giving notice with regard to a disciplinary hearing it is important to ascertain whether or not there are sufficient grounds for a disciplinary hearing to be held. Management must proceed to gather all the information and evidence available in connection with the intended hearing. Evidence can include statements and other related documents to the matter.

Prepare: Once investigations are complete and evidence is compiled, the Employer must prepare for the hearing. This is extremely important as it involves much more than just making a list of attendees. It requires identifying key people whom must attend the hearing and for what purpose; informing them regarding the matter, the actual time, date and venue for conducting the hearing as well. It is advisable that the ideal hearing be held in a private a space, in particular a suitably sized room where there are no interruptions.

Give Notice: The Employee subject of the disciplinary hearing must be informed about the intended disciplinary hearing through a written notice. The notice should be properly served. It is recommended that the employee who is served with a notice sign either a copy of the notice or a dispatch book to as confirmation of their receipt of the notice.

The notice should be in writing and must contain the following: -

- All of the allegations against the employee. New allegations cannot be raised once the hearing has commenced;
- Time, date and place of the proposed hearing. Giving the employee a reasonable opportunity to prepare for the hearing. It should be not less than 48 hours before the expected date of the hearing. If the employee cannot attend due to circumstances beyond his or her control, it is advised that another hearing date be arranged; and
- The Employee must be appraised of his/her rights of being represented by either a colleague or an official of the Company's trade union, if in existence (as the case might be).



Step 2. Procedure during the hearing

A senior manager should be appointed to act as Chairperson of the hearing. It should be noted however that if the Senior Manager is involved directly in the matter giving rise to the hearing he or she should not sit as the chairperson. In the event that the Senior Manager is precluded from Chairing due to direct involvement in the matter, the appropriate procedure is that a senior manager from a different office/department may serve as chairperson so as to ensure impartiality. The chairperson is bound to explain to the Employee the purpose of the hearing and how it will be conducted.

The Employee must be given an opportunity to be heard, it should always be remembered that a hearing is two-way traffic. The management representative should present the allegations against the employee and go through the evidence in support of the allegations and the employee should be given an opportunity to respond to the allegations. If a colleague or a representative from a trade union accompanies the employee, they should also be given audience during the hearing. However they will not be allowed to answer questions on behalf of the employee facing disciplinary hearing.

Parties must be allowed to call witnesses if any, though those witnesses called should not be present throughout the hearing,

but instead they should be called individually for the sole purpose of giving their testimony. Witnesses may be questioned by either party during the course of the hearing.

Where an employee is found guilty of the allegations raised against him/her, the employee shall be given a chance to present mitigating circumstances before a final decision is made on the sanctions to be imposed. It must be noted that the conduct of the entire hearing must be documented in a prescribed form (Labour Form No. 04) and the said Form must be signed by all the attendees and kept confidential.



Step 3. Procedure after the hearing

The Chairperson of the hearing is tasked with making his/her decision based on a balance of probabilities as to whether the employee is guilty of misconduct or not; and recommend appropriate measures to be taken.

The outcome of the hearing should be communicated to the employee as soon as possible, but no later than five working days after the hearing.

In drafting the outcome, it should be remembered that the ruling should contain the reason for the decision and a notification to the employee of his/her right to appeal. The employee may exercise his/her right to appeal to more senior management against the outcome of the hearing within the five working days after receiving the outcome of the hearing.

Conclusion

As shown above, disciplinary hearings should be done as per the letter of the law to ensure that employees comply with the rules and policies governing their employment or face sanctions for failure to do so.

The slightest of mistakes with regard to following procedure may lead the entire hearing being rendered worthless. Disciplinary sanctions may only be imposed in respect of all allegations that were properly investigated and brought to the employee's attention during the hearing and not otherwise.

Should you wish to learn more about how disciplinary proceedings should be conducted please feel free to contact Lyson Law Group at the addresses given below.



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