

# LABOUR RELATIONS POLICY

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## **PART ONE**

### **1. DEFINITIONS**

- 1.1 “Aggravating Circumstances” – means negative circumstances which may be cited by a prosecutor in the hearing in favour of a severe sanction.**
- 1.2 “Balance of Probabilities” – means a highly probable situation whereby there is a likelihood that certain circumstances exist due to the nature of facts presented in comparison with the facts of the opposite case.**
- 1.3 “Bargaining Council” – means the South African Local Government Bargaining Council and its divisions as established in terms of the Labour Relations Act, No 66 of 1985.**
- 1.4 “Conditions of Employment” – means terms and conditions of service in respect of which an employee is required to observe and abide by.**
- 1.5 “Ill Health” – means a negative condition of an employee’s health which adversely affects his/her work performance.**
- 1.6 “Incapacity” – means inability to perform a job by an employee due to ill health or poor work performance.**
- 1.7 “Injury” – means a condition of physical infirmity resulting from any form of danger.**
- 1.8 “Mitigating Circumstances” – means positive circumstances of which an employee representative may present as evidence in favour of a lenient sanction.**
- 1.9 “Municipal Manager” – means a person appointed in the position of a Municipal Manager in terms of the Municipal Systems Act, No 32 of 2000.**
- 1.10 “Municipal Official” – means a person appointed as Municipal employee in terms of the Municipal Systems Act No. 32 of 2000 and other labour laws.**
- 1.11 “Municipality” – means the Matatiele Local municipality as established in terms of the Municipal Structures Act No. 117 of 1998.**
- 1.12 “Poor Work Performance” – means deteriorating and unsatisfactory standard of performance by an employee resulting from negligence or incompetence.**
- 1.13 “Presiding Officer” – means a person appointed to preside over a grievance or a disciplinary hearing.**
- 1.14 “Procedural Unfairness” – means unfairness arising out of failure to comply with the procedural requirements.**
- 1.15 “Prosecutor” – means a person appointed by the employer to press charges in the disciplinary hearing.**
- 1.16 “SALGA” – means South African Local Government Association as established in terms of Section 2(1)(a) of the Organised Local Government Act, No 52 of 1997**
- 1.17 “Substantive Unfairness” – means unfairness arising out of failure to notice material aspects about the case.**
- 1.18 “Superior” – means a senior Municipal official in relation to the employee concerned.**

## **2. OBJECTIVES**

- 2.1 The Matatiele Local Municipality's (MLM) Labour Relations Policy is intended to form a basis for the consistent implementation of Labour Relations objectives throughout the Municipality.**
- 2.2 The Labour Relations Policy is also an expression of the Municipality's philosophy towards its Human Resources Management (HRM)**
- 2.3 Labour Relations is a management function, which seeks to maximize the effectiveness of the relationships between Employer and Employees/Employees' Representative Unions (employees).**

**In this regard, the Municipality promotes the following principles:**

- 2.3.1. To ensure the existence of sound relationships between the Municipality, employees and employee representatives (Trade Unions).**
  - 2.3.2. To contribute to the achievements of the Municipality's goals and long term stability.**
  - 2.3.3. To facilitate effective and meaningful negotiations between the Municipality and employees.**
  - 2.3.4. To enable management to manage in a way commensurate with their responsibility.**
  - 2.3.5. To ensure that the Labour Relations Policy and practices are consistent with the requirements of all labour legislation and the rapidly changing Socio-Political environment.**
- 2.4 To this end, both the MLM and the Employees/Employees' Representative Unions (employees), shall observe the following OBLIGATIONS; RIGHTS and; DUTIES:**

## **3. RIGHTS, DUTIES AND OBLIGATIONS**

- 3.1 The Municipality recognizes that the relationships between employer and employees contain elements of common interest and elements of conflicting interest, and by virtue of this, is dynamic in nature. The parties recognize that they have the following rights, duties and obligations:**

### **3.1.1. Employer Rights**

**In order to meet its obligations in keeping with management responsibility, the employer has *inter alia*:**

- 3.1.1.1 The right to manage.**
- 3.1.1.2 The right to control employment.**
- 3.1.1.3 The right to grant/refuse leave of absence.**
- 3.1.1.4 The right to direct access/exit to employees.**
- 3.1.1.5 The right to enter into employment contracts.**
- 3.1.1.6 The right to maintain efficiency.**
- 3.1.1.7 The right to further the Municipality's business/service delivery interests.**
- 3.1.1.8 The right to expect employees to carry out legitimate and reasonable instructions.**
- 3.1.1.9 The right to maintain discipline.**
- 3.1.1.10 The right to lock-out where all prescribed procedures have been exhausted.**

### **3.1.2. Employer Duties**

- 3.1.2.1. To establish sound relationships with employees.**
- 3.1.2.2. To facilitate contact with employees.**

- 3.1.2.3. To discuss matters of mutual interest with all stakeholders.
- 3.1.2.4. To understand the real and legitimate needs of employees.
- 3.1.2.5. To assist, where required, employee representatives understand their own responsibilities.
- 3.1.2.6. To provide facilities for employer/employees meetings.
- 3.1.3. **Employer Obligations**
  - 3.1.3.1. To pay employees for their services rendered and not deduct any unlawful amounts from their salaries/wages.
  - 3.1.3.2. To abide by: all legislation; Bargaining Council's resolutions collective resolutions; Employer Organisations resolutions; internal agreements and Council resolutions.
  - 3.1.3.3. Conform to the terms of contracts of employment.
  - 3.1.3.4. Provide a safe working environment and conditions.
  - 3.1.3.5. To deal with employees and their representatives in a fair manner and in good faith.
- 3.1.4. **Employee Rights**
  - 3.1.4.1. The right to work and job security.
  - 3.1.4.2. The right to fair remuneration and conditions of service.
  - 3.1.4.3. The right to safe working environment.
  - 3.1.4.4. The right of access to training and re-training.
  - 3.1.4.5. The right to organize and belong to a trade union.
  - 3.1.4.6. The right to association and disassociation.
  - 3.1.4.7. The right to negotiate and bargain collectively.
  - 3.1.4.8. The right to protection against unfair labour practices.
  - 3.1.4.9. The right to withhold labour where all prescribed procedures have been exhausted.
  - 3.1.4.10. The right to engage in discussions in relation to decisions which directly affect their lives.
- 3.1.5. **Employee Duties**
  - 3.1.5.1. To communicate grievances to the next level of seniority if these cannot be immediately resolved.
  - 3.1.5.2. To maintain regular communication with supervisors/ management.
  - 3.1.5.3. To help others where possible, to understand the importance of economic considerations.
  - 3.1.5.4. To ascertain the views and feelings of other employees towards the Municipality and to brief management of employees' customs and cultures, where and whenever possible.
- 3.1.6. **Employee Obligations**
  - 3.1.6.1. To implement the Municipality's operational plans as directed by supervisor/management.
  - 3.1.6.2. To comply with the terms of the employment contract.
  - 3.1.6.3. To meet standards of work requirements.
  - 3.1.6.4. To abide by the Municipality; SALGA and SALGBC's procedures, policies and resolutions.
  - 3.1.6.5. To carry out legitimate and reasonable management's instructions.
  - 3.1.6.6. To observe all legal requirements.

#### **4. DISCIPLINARY PROCEDURE AND CODE**

##### **4.1. Purpose and Scope**

The purpose of this procedure and code is:

- 4.1.1 To support constructive labour relations within the Municipality.**
- 4.1.2 To promote mutual respect amongst employees and between employees and employer.**
- 4.1.3 To ensure that managers and employees share common understanding of misconduct and discipline.**
- 4.1.4 To promote acceptable conduct within the work place.**
- 4.1.5 To provide employees and employer with a quick and easy reference for the application of discipline.**
- 4.1.6 To avert and correct unacceptable conduct.**
- 4.1.7 To prevent arbitrary or discriminatory actions by managers/supervisors towards employees.**

##### **4.2. Principles**

The following principles inform the Procedures and Code and must inform any decision to both employer and employees.

- 4.2.1. Discipline is a corrective measure and not intended to be punitive.**
- 4.2.2. Discipline must be applied in a prompt, fair, consistent and progressive manner.**
- 4.2.3. Discipline is a management function.**
- 4.2.4. A disciplinary procedure and code is necessary for the efficient delivery of service and the fair treatment of employees, and ensures that employees:**
  - 4.2.4.4. Have a fair hearing in formal or informal setting.**
  - 4.2.4.5. Are timeously informed of allegations of misconduct made against them.**
  - 4.2.4.6. Receive written reasons for decisions taken.**
  - 4.2.4.7. Are made aware of their right to appeal against any decisions.**
- 4.2.5. As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.**
- 4.2.6. If an employee commits an act of misconduct that is also a criminal offence, the criminal procedure and the disciplinary will continue as separate and different proceedings.**

##### **(i) SCOPE OF APPLICATION**

This Procedure and Code shall apply to all employees of the Matatiele Local Municipality.

## **PART TWO**

### **1. GRIEVANCE PROCEDURE**

#### **1.1 Definition**

**1.1.1** Grievance is any cause of dissatisfaction on the part of an employee or group of employees owing to the working situation or the application of Conditions of Employment other than that occasioned by a penalty confirmed in terms of the disciplinary procedure.

**1.1.2** Grievance procedure is a set of measure through which a reported grievance of an employee or a group of employees is handled for the purpose of redress.

#### **1.2. Objectives**

**1.2.1** To provide a procedural framework for redress of employees' grievances.

**1.2.2** To give effect to ethos of mutual respect at the workplace.

**1.2.3** To create a healthy atmosphere of interpersonal and human relations at work.

**11.13.1** To facilitate and promote a culture of good practice and fellowship.

#### **1.3. Procedure**

The procedure of handling all grievances is provided for in the collective agreement concluded by the South African Local Government Bargaining Council (SALGBC).

### **12 DISCIPLINARY CODE AND PROCEDURE**

#### **2.1 Definition**

Disciplinary procedure is a formal action plan through which employee's acts of misconduct and other deviant behaviour which constitute work offences, infringements and transgression of rules, regulations, standards of good practice violation of organizational order, discipline, interests, values and norms as enshrined and alluded to in the Disciplinary Code are redressed in a systematic and orderly manner.

#### **2.2. Objectives**

**2.2.1.** To make a provision for a reasonable and fair procedure for managing and effecting discipline in the workplace of the Municipality.

**2.2.2.** To exert efforts for correction of employee's deviant behaviour through a system of graduated disciplinary measures ranging from counselling, verbal warning, written warning, final written warning, fine and dismissal or demotion or suspension from duty without pay.

**2.2.3.** To provide a framework for listing of examples of possible work offences and/or act of breach of discipline of the Municipality.

**2.2.4.** To provide a framework for a reasonable and fair process of investigation and inquiry into the alleged acts of misconduct and breach of organizational discipline.

**2.2.5.** To give effect to the Labour Relations Act No. 66 of 1995 of the Republic of South Africa.

**2.2.6.** To regulate administration and institution of disciplinary measures and proceedings within the Municipality.

**2.2.7.** To provide a procedural framework for uniform and consistent treatment of employees in similar or same circumstances warranting disciplinary action.

**3. BREACH OF DISCIPLINE, INFRINGEMENTS, OFFENCES AND PENALTIES**

- 3.1. Disciplinary proceedings and action shall be instituted against any employee who contravenes the code of conduct or acts against the interests of the Municipality, or who commits a social, criminal and economic or other offences to the detriment of the Municipality and its image in terms of, but not limited to the list of possible offence contained in the Disciplinary Code.**
- 3.2. The Municipal Manager or his authorised representative shall appoint, in the first instance, a suitably qualified person employed by the Municipality, preferably one level of two above the employee's position, to serve as the Presiding Officer.**
- 3.3. The Disciplinary hearing shall commence as soon as reasonably possible, but not later than three (3) months from the date of Municipal Manager's or his authorised representative's decision to institute disciplinary proceedings.**
- 3.4. In the event of misconduct by an employee that appears less serious, warranting a sanction less than a final written warning, a formal Disciplinary Hearing will not be required. The Employee shall be given an opportunity to make either verbal or written presentation, either personally or through his representative, prior a determination being made. Proper records shall be kept of the afore-mentioned proceedings.**
- 3.5. The disciplinary measures shall include a verbal warning, a written warning, final written warning, fine, demotion, suspension from duty without pay and dismissal.**

**4. AUTHORITY TO INITIATE AND INSTITUTE DISCIPLINARY ACTION/PROCEEDINGS**

- 4.1. The authority to initiate and effect the disciplinary procedure shall be vested in the Municipality's Management and its designees or representatives in various workstations at both corporate and operational levels.**
- 4.2. Employees of the Municipality in the job categories of Supervisor, foreman, officer or superintendent and above will be referred to as authorized Municipal officials who constitute various management levels of the Municipality.**
- 4.3. The authorized Municipal officials shall in terms of disciplinary code and procedure have authority to take disciplinary action in all circumstances warranting such action.**
- 4.4. All employees of the Municipality irrespective of the ranks they hold, shall cautiously report suspected and possible infringements to the appropriate official in the Department concerned.**
- 4.5. Neither the Employer nor the Employee shall be entitled to be represented by a legal practitioner in disciplinary proceedings, unless both parties agree, in writing, to allow legal representation, or if the presiding officer, upon receiving an application by any party, determines that it is reasonable to allow legal representation, having regards to the following factors:**
  - (i) The nature of questions of law raised by the Disciplinary Hearing.**
  - (ii) The complexity of the case.**
  - (iii) The public interest.**
  - (iv) The comparative ability of the opposing parties or their representatives to deal with the Disciplinary Hearing.**
- 4.6. Should it not be possible to appoint a suitably qualified person, employed by the Municipality, to serve as Employer Representative, due to lack of suitably qualified persons, or where Employer Representatives are threatened or intimidated, the Municipal Manager or his authorised representative may**



appoint a suitably qualified external person, from outside its employ, excluding a legal practitioner, to serve as employer representative.

**5. CUMULATIVE NATURE AND GRADUATED SYSTEM OF DISCIPLINARY ACTION**

- 5.1. Disciplinary action taken against any employee will be treated in a cumulative manner as provided for in the disciplinary code and procedure.**

**6. SCENARIO A**

**PROCEDURE FOR HANDLING ALLEGED WORK OFFENCE/S NOT WARRANTING A FULLY-FLEDGED DISCIPLINARY INQUIRY WHICH MAY LEAD TO VERBAL WARNING OR A FORMAL WRITTEN WARNING**

- 6.1 If there are reasonable grounds arising from a report, formal or informal information, situation or circumstances to believe that a work offence has been allegedly committed by an employee of the Municipality, the person who is in the position of authority e.g. the foreman, supervisor, manager, or Head of the Department, unit or Directorate or any person designated to be in charge of a particular work domain/situation shall effect the following disciplinary procedure:**

**LEVEL 1**

- (a) In cases where the alleged work offence is relatively less serious or a verbal warning or informal reprimand is the preferred penalty in terms of the disciplinary code, the person in position of authority shall call the employee concerned to a meeting.**
- (b) The alleged act of deviation from the norms and standards of discipline shall be communicated to the employee in a friendly but serious manner by the respective Municipal official.**
- (c) The employee shall be shown the implications and possible disastrous consequences of his/her behaviour should it be continued by him/her.**
- (d) An employee shall be notified at least 5 working days before, about his/her invitation to attend the meeting.**
- (e) The disciplinary hearing shall commence within a reasonable time from the date of service of the notice of Disciplinary Hearing but not earlier than seven (7) days and not later than fifteen (15) days from the date of service.**
- (f) The time period mentioned above may be amended by mutual agreement between the Employer and the Employee or his representative. If there is no agreement, either party may apply to the Presiding Officer for an amendment of the time – period, in which case, the Presiding Officer shall consider the submissions by the parties and determine a new date for the Disciplinary Hearing.**
- (g) An employee shall be entitled to be represented by a fellow employee in the meeting.**
- (h) A cordially verbal warning or informal reprimand must be issued by the official to the employee. A record of issuing of such warning must be produced and be forwarded to the Corporate Services Department for filing in the employee's personnel file.**

**LEVEL 2**

- (a) When the alleged act of transgression is relatively of serious nature, the person in a position of authority shall write to the employee about the alleged work offence and require the employee to respond to the correspondence bearing alleged contravention/s within 5 working days. Upon receipt of such response,**

- (b) the Municipal official shall set a date and time for deliberating on the acts of transgression in a meeting with the employee and his/her representative.
- (c) Upon considering and evaluating merits and demerits of the case, an appropriate penalty shall be awarded to the employee by the Municipal official if circumstances warrant so. The issued formal written warning shall be acknowledged by the employee and his/her representative and signed by the Municipal official effecting disciplinary measures.
- (d) The copy of the written warning shall be transmitted to the Municipality's Corporate Services Department for filing in the employee's personnel file.
- (e) Cases of suspected or alleged drunkenness on duty shall in addition to this method be also dealt with in terms of application of alcohol tests in the presence of a shop steward or a witness.

## **7. SCENARIO B**

### **PROCEDURE FOR HANDLING ALLEGED WORK OFFENCES WARRANTING A FULLY-FLEDGED DISCIPLINARY INQUIRY WHICH MAY LEAD TO THE IMPOSITION OF A FINAL WRITTEN WARNING, SUSPENSION FROM DUTY WITHOUT PAY, DEMOTION, FINE AND DISMISSAL AS ONE OR MORE OF THE PENALTIES TO A GUILTY EMPLOYEE**

- 7.1** In cases where the alleged work offence is of a serious nature or one or more of the penalties listed above are likely to be imposed in the disciplinary inquiry, the person in position of authority or Municipal official shall conduct a comprehensive preliminary investigation in respect of the alleged work offences/s by doing the following:
  - 7.1.1** Gathering of as much information as practicable about the alleged incidence from the relevant parties including possible witnesses.
  - 7.1.2** Advising/informing the employee about the alleged breach of rules, regulations and disciplinary or a situation or circumstances relating to the breach of rules, regulations and discipline and concurrently instructing the employee to respond to the correspondence within a time-frame of 5 working days by portraying his/her side of the story with regard to the allegation/s or the extent to which she/he's concerned in respect to the breach of cited rules, regulations and standard of discipline and show cause why disciplinary charges cannot be laid against him or her in respect of the allegations.
  - 7.1.3** Information gathered from other parties including possible witnesses shall not be given to the employee prior to making his/her written response to the correspondence implicating her/him in the scene of transgression of rules, regulations and standards of discipline written by his/her superior and prior to a disciplinary hearing.
  - 7.1.4** The person in position of authority or Municipal official shall consult the Municipality's Corporate Services Department about the alleged violation of work standards by the employee concerned for the purpose of analysing the information gathered with regard to the possible charges against the employee.
  - 7.1.5** The Municipality's Corporate Services Department together with the person in the position of authority or Municipal official/prosecutor shall phrase technically correct charges which will be laid by the prosecutor on behalf of the Municipality against the employee, in terms of, but not limited to the Disciplinary code and the procedure.

- 7.1.6 The charges shall be communicated to the employee concurrently with the date, time and venue of the disciplinary inquiry in a notice to appear before a disciplinary inquiry, at least 5 working days before the date of inquiry.
- 7.1.7 The Municipality's Corporate Services Department shall where necessary in consultation with the Municipal Manager appoint a suitable person to preside over the disciplinary inquiry as presiding officer in writing.

## **8. SUSPENSION PRIOR TO DISCIPLINARY INQUIRY**

- 8.1 Any time after the preliminary investigation which will have involved hearing of the employee's side of the story on contemplated allegations, the Municipality may suspend the employee from duty in writing, pending outcome of the disciplinary inquiry only if, in the objective opinion of the Municipality, continued presence of the employee at the workplace poses a serious threat to the interests of the Municipality in so far as employee's work and inherent standards of discipline are concerned.
- 8.2 An employee suspended in terms of Clause 8.1 shall be entitled to his/her full salary during the period of his/her suspension, unless the Municipality is of the objective opinion that it is practically unreasonable for the Municipality to be expected to continue remunerating the employee at his/her full or partial salary in the light of the nature of allegations and the need for the protection of interests of the Municipality.
- 8.3 An employee who is suspended from duty without pay, may undertake other work for remuneration only if such action will not inhibit the employee's free and easy accessibility for appearing before the pending disciplinary inquiry.
- 8.4 A suspended employee must be charged within seven working days and a disciplinary inquiry must be held within twenty-one (21) working days after the lapse of seven (7) working days reckoned from the date of suspension.
- 8.5 If a disciplinary inquiry cannot be held within a period specified in clause 8.4 owing to reasons arising from the employee's inability to attend an inquiry on grounds of sickness, injury or any other factor, such days of the employee's unavailability won't be counted as part of the 21 day-period cited in clause 8.4.
- 8.6 A suspended employee may seek a written permission from the Municipality to enter the workplace premises only for making preparations for the pending disciplinary inquiry.
- 8.7 Authority to suspend any employee of the Municipality shall be vested in the Municipal Manager or assignee.

## **9. STANDARD PROCEDURE AND REQUIREMENTS**

- 9.1 Under all circumstances and in all cases where prima facie, it seems as if the appropriate penalty or penalties to be awarded to the employee concerned will be possible penalties or penalty mentioned in Scenario B of the disciplinary code and procedure, a fully-fledged disciplinary inquiry with the involvement of the Municipality's Corporate Services Department must be convened.
- 9.2 The Municipal official concerned shall have the indispensable responsibility and burden to prove unequivocally that an offence has been committed before initiating appropriate disciplinary proceedings and action in terms of disciplinary code and procedure.

- 9.3 The regional or provincial office of the respective Trade Union should be informed and consulted when disciplinary proceedings against a trade union representative or office bearer or official are instituted.**
- 9.4 No decision regarding the form of disciplinary proceedings/action will be instituted without first providing the employee with the opportunity of stating his/her side of the story in respect of the alleged contravention/s unless the Municipality cannot be reasonably be expected to provide this opportunity.**
- 9.5 No decision regarding the award of penalty to the employee shall be made without affording the employee an opportunity of hearing his/her response to the allegation/s leading evidence and cross-examination of witness in a hearing session.**

## **10. DISCIPLINARY INQUIRY PROCEDURE**

### **Stage 1 – Preliminary Questions**

**Questions in regard to the following but not limited to, must be asked by the presiding officer from the employee: -**

- 10.1.1 Timeous receipt of written advice to appear before a disciplinary inquiry.**
- 10.1.2 Simultaneous advice about the charge or charges when advised to appear before a disciplinary inquiry.**
- 10.1.3 Information about the right to representation by a fellow employee, shop steward, trade union representative, or any other suitable person to lead evidence in defence and to call witnesses.**
- 10.1.4 whether the employee together with his/her representative had reasonable time to prepare for the case as opposed not to whether the employee and his/her representative have actually prepared for the case**

### **Stage 2 – Putting of charge or charges**

- 10.2.1 Charge or charges must be put to the employee one – by – one by the presiding officer.**
- 10.2.2 The presiding officer must check for the employee's understanding of the charges.**
- 10.2.3 Opportunity for pleading must be afforded to the employee by the presiding officer.**
- 10.2.4 If the employee pleads guilty, the presiding officer must check the employee's understanding of his/her plea of guilt, and no further evidence must be heard.**
- 10.2.5 If the employee pleads not guilty, the evidence must be led by both parties to the disciplinary inquiry, that is, the employee and employer or Municipality together with their witnesses in as comprehensive manner as provided for in the disciplinary enquiry format of proceedings.**

### **Stage 3 – Making of judgment**

- 10.3.1 Judgment in respect of whether the employee is found guilty or not must be made.**
- 10.3.2 If the employee is not found guilty, the case is dismissed forthwith.**

**10.3.3 If the employee is found guilty, stage 4 must apply.**

**Stage 4 – Leading of evidence on mitigating and aggravating circumstances**

**10.4.1 Opportunity for leading evidence on mitigation and aggravating circumstances must be given by the presiding officer to both parties respectively.**

**10.4.2 The decision regarding the appropriate sanction as per the disciplinary code must be made at this stage.**

**Stage 5 – Awarding of penalty**

**10.5.1 The employee is given his/her penalty in writing by the presiding officer.**

**10.5.2 The employee is advised about a recourse to appeal if he/she is in discontent with the process and/or outcome of the disciplinary enquiry.**

**11 ROLE OF THE PRESIDING OFFICER**

**The presiding officer shall: -**

**11.1 Chair, open and co-ordinate the proceedings of the disciplinary inquiry by following and adhering to the disciplinary enquiry procedure.**

**11.2 Will firstly give opportunity of leading evidence to the prosecutor and his/her witnesses.**

**11.3 Give opportunity to the accused employee and his/her representative for cross-questioning the Municipal representatives and his/her witness's one by one immediately after evidence presentation.**

**11.4 Give opportunity to the accused employee to respond to the charges and evidence led by the prosecutor and his/her witnesses and to call witnesses.**

**11.5 Give the same opportunity to the prosecutor to cross-question both the accused employee, his/her representative and witnesses.**

**11.6 Be free to cross-examine all parties to the inquiry including the witnesses from both sides on any matter related to the charges under inquiry.**

**11.7 Have authority to direct and control the disciplinary inquiry proceedings to ensure that they do not go astray and are always on the right track for the purpose of achieving the ends and objectives of the disciplinary inquiry.**

**11.8 Give further opportunity to both parties that is, the Municipal representative/prosecutor on one hand and the accused employee and his/her representative on the other hand to make concluding arguments on each party's submission to the Presiding Officer.**

**11.9 Apply his/her mind to the complete submissions and representations made by the parties to the disciplinary inquiry, depending on the given circumstances in relation to the case, its complication and complexity and the extent to which the presiding officer would like to consult on it, an adjournment of the disciplinary inquiry until a specific time or date or further notice can be made at this juncture.**

**11.10 Deliver his/her judgment in respect of whether the employee is guilty or not on charge/s laid against him/her**

- 11.11 Give both parties the last opportunity to make submissions in mitigation on the part of the accused employee and his/her representative and in respect of aggravating circumstances on the part of the prosecutor before or after delivery of judgment.
- 11.12 Allow the employee and his/her representative to consult each other outside the inquiry proceedings upon receipt of request to do so and the same right shall apply to the prosecutor to consult with his/her principals as he/she wishes.
- 11.13 After listening to the last arguments and applying his/her mind to evidence on both mitigation and aggravating circumstances, give consideration to the following factors:
  - 11.13.1 Factors warranting leniency
    - 11.13.1.1 Length of service
    - 11.13.1.2 Influenced by others
    - 11.13.1.3 Person's calibre
    - 11.13.1.4 Lack of seriousness Cultural orientation possible immaturity
    - 11.13.1.5 Lack of appropriate experience Poor training and/or orientation First offence
  - 11.13.2 Factors warranting heavier penalty
    - 11.13.2.1 Valid prior warning/s
    - 11.13.2.2 Seriousness of offence
    - 11.13.2.3 Damages/losses to the employer Consequences of the offence/s
    - 11.13.2.4 Breach of relations of mutual trust
    - 11.13.2.5 Reparability of employer – employee relations
- 11.14 Hand down the penalty or penalties against the employee in the disciplinary inquiry or outside the enquiry through written judgement, and findings and penalty to both parties.

## **12 APPEAL**

- 12.1 An employee who is in disagreement with the finding of a disciplinary inquiry or any penalty awarded may within three working days of the decision lodge with the office of the Municipal Manager an appeal against the finding or penalty or both.
- 12.2 The penalty awarded in the disciplinary inquiry shall remain intact and effective until reversed and changed by the outcome of the appeal if applicable.
- 12.3 All appeals shall be presided over by the Municipal Manager or a person acting as his/her nominee.
- 12.4 The appeal officer shall be furnished with the records of proceedings and other documentation at his/her disposal by the Corporate Services Department.
- 12.5 The appeal officer shall review the facts in relation to the findings of the disciplinary inquiry and penalty or penalties awarded to the employee.
- 12.6 The appeal officer shall interview the employee concerned and other witnesses when necessary as the case may be in order to establish whether there are any factors warranting leniency or amendment of judgment and/or change of penalty.
- 12.7 The appeal officer may set aside, confirm or reduce the penalty.
- 12.8 The decision of the appeal officer shall be final and bring the disciplinary proceedings in respect of the employee concerned to an end.

**13 EXTERNAL REMEDIAL ACTION**

- 13.1** If an employee is still in disagreement with the process and outcome of the disciplinary inquiry and its appeal he/she will be free to pursue the matter with the Eastern Cape division of the Bargaining Council.
- 13.2** If the employee is not satisfied with the outcome of the Bargaining Council, the dispute may be pursued in terms of the provisions of the Labour Relations Act, No 66

**14. RETRENCHMENT PROCEDURE OR PROCEDURE FOR OPERATIONAL REQUIREMENTS – BASED DISMISSAL**

**14.1 Definition**

- 14.1.1** Retrenchment procedure is a mechanism through which steps and measures to be followed and effected respectively when retrenching or dismissing one or more employees on grounds of operational requirements are set.
- 14.1.2** For the purpose of the Municipality and other parties to this procedure, this procedure shall be followed by the Municipality as an employer when there is a contemplation of dismissing one or more employees on grounds of operational requirements.

**14.2. Objectives**

- 14.2.1.** To usher in a retrenchment procedure compliant with the Labour Relations Act, No 66 of 1995.
- 14.2.2.** To give effect to the provisions of Section 189 of the Labour Relations Act, No 66 of 1995.
- 14.2.3.** To provide a framework for the management of retrenchment or dismissal on grounds of operational requirements of the Municipality.
- 14.2.4.** To create a stable and healthy atmosphere of labour relations with regard to retrenchment or dismissals on grounds of operational requirements within the Municipality.

**14.3 Procedure**

- 14.3.4.** The Municipality shall make an endeavour to avoid retrenchment by inter-alia considering with the Union... the transfer, retention of workers, working short time, elimination of overtime and offering of early retirement.
- 14.3.5.** In the event of the Municipality contemplating to retrench any employee, the Trade Union, Local Labour Forum and the affected employees shall be consulted.
- 14.3.6.** The Municipality and consulting parties shall attempt to reach consensus on appropriate measures to avoid the dismissal, to minimize a number of dismissals, to change the timing of the dismissal and to mitigate the adverse effects of the dismissals
- 14.3.7.** The Municipality and other consulting parties shall agree on the method for selecting employees to be retrenched and on the severance pay for the employees concerned.

**14.3.8. The Municipality shall disclose in writing to the other consulting parties the following relevant information.**

- (i) reasons for the contemplated or proposed retrenchments**
- (ii) alternatives before resorting to retrenchment**
- (iii) number and job categories of employees**
- (iv) proposed method of selection for retrenchment**
- (v) timing of execution of retrenchments**
- (vi) proposed severance package**
- (vii) Possible assistance from the employer to the employees to be retrenched.**
- (viii) Measures of re-employability of workers when suitable vacancies arise in the Municipality.**

**14.3.9. The Municipality may disclose any other information to other consulting parties in so far as it is legally tenable.**

**14.3.10. The Municipality shall allow the other consulting parties to make representations about the matter of contemplated or proposed retrenchments.**

**14.3.11. The Municipality shall consider and respond to the representations of the other consulting parties, if the Municipality disagrees with the other parties, reasons for such disagreement shall be stated by the Municipality.**

**14.3.12. The Municipality shall select the employees to be retrenched according to the criteria agreed – upon between the Municipality and the other consulting parties.**

**14.3.13 If there is no agreed – upon criteria, the selection criteria to be followed must nevertheless be fair and objective.**

**14.3.11 Facilitator for facilitating the consultation process will be appointed if number of affected employees is 50 or above.**

## **15 INCAPACITY DETERMINATION PROCEDURE**

### **15.1. Definition**

**15.1.1 This is a procedure in which measures and guidelines for determining an employee's incapacity on grounds of poor work performance and ill health or injury are established.**

**15.1.2 This is a procedure that shall be followed when the Municipality monitors the performance of employees placed on a probationary period, any other regularly or permanently hired employee and any other employee who's standard of performance shows signs of deterioration as a result of ill health or injury or poor work performance.**

### **15.2. Objectives**

**15.2.1 To give effect to Schedule 8 of the Labour Relations Act, No 66 of 1995.**

**15.2.2 To streamline Municipality's approach towards management of incidents of incapacity on the part of one or more employee as defined in 15.1.1 of incapacity determination procedure.**

**15.2.3 To provide a framework for uniform and consistent management of poor work performance of one or more employees arising from different reasons**

**15.2.4 To enforce an incapacity determination mechanism that is compliant with the reasonable and legally accepted standards.**



### **15.3. Procedure**

#### **15.3.1 Incapacity on grounds of poor work performance**

- 15.3.1.1** A newly hired employee shall be placed on probation by the Municipality for a period of not less than six months given the circumstances of the job.
- 15.3.1.2** The Municipality shall conduct an induction on a newly hired employee in relation to his or her job description and other obligations in terms of his/her employment contract and the Municipality's conditions of service.
- 15.3.1.4** The Municipality's organizational unit concerned shall immediately set performance standards for the new employee or any other employee in terms of the Municipality's performance management system.
- 15.3.1.5** The Municipality's organizational unit concerned shall provide necessary coaching, guidance, instruction, counselling including training if applicable to the employee and orientation in respect of a newly hired employee which will reinforce rendering of satisfactory service by the employee to the Municipality.
- 15.3.1.6** Bi-monthly employee's work performance evaluation in respect of an employee placed on probation and regular work performance reviews or appraisals in case of any other employee shall be conducted by the Municipality's organizational unit concerned.
- 15.3.1.7** The Municipality shall keep records of each instance of employee's work performance evaluation or appraisals including steps and precautionary measures taken to alleviate and remedy negative situation identified
- 15.3.1.8** An employee will be entitled to appropriate work performance evaluation which will be preceded by setting of performance standards like key performance/result areas, targets, objectives, and impact.
- 15.3.1.8** The Municipality will conduct an investigation into reasons for unsatisfactory performance and consider ways of dealing with the problem, short of dismissal.
- 15.3.1.9** In cases of poor work performance on grounds of ill health or injury the employee's physical, psychological and/or mental ability to meet required performance standards will be investigated and suitable alternative work shall be considered.
- 15.3.1.11** Proceedings towards establishing an employee's irreversible and hopeless situation of incapacity will be instituted by the Municipality in a form of a formal hearing.
- 15.3.1.12** The employee concerned will be given a right to be heard and to be assisted by a Trade Union representative or fellow employee or any suitably qualified person.
- 15.3.1.13** remedies to establish incapacity of an employee will include, but not limited to:
  - 15.3.1.13.1** Offer of disability retirement in case of an employee with ill health or injury.
  - 15.3.1.13.2** Demotion in case of any employee other than the one with ill health or injury or on probation.

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- 15.3.1.13.3 change of job in case of an employee with ill health or injury.
- 15.3.1.13.4 dismissal from the employ of the Municipality as a last resort.
- 15.3.1.13.5 In the event of a legally subtle, complicated and technical situations a severance package may be negotiated with the employee concerned in case of any employee other than an employee with ill health/injury or employee on probation.

## **16 ABSCONDMENT**

### **16.1 Definition**

**16.1.1** The word “abscond” is defined in the Oxford dictionary as leaving hurriedly and secretly. It can therefore be said that absconding means one does not have the Intention to return to work. In circumstances where the employer does not know whether the employee will return to work or not, the employer will have to establish this before the employee can be dismissed. It is therefore a common practice that Un-communicated absence for a period of ten days or more will be dealt with as Absconding in most disciplinary codes. Abscondment and desertion refer to cases where an employee stays away from work for a longer period, but with the clear intention not to continue with employment, this intention being evident

**16.1.2** This means that it is very important for every employee to communicate his/her absence with the superior from the first day so that it cannot be assume that the employee has absconded. The contact numbers of every employee and Next of kin has to be updated on the personnel files. This will assist the municipality when tracing the whereabouts of an employee in case of disappearance.

**16.1.3** A written communication/ an authorised communication tool, shall be used by the employee to communicate his/ her absence with the superior from the first day, so that it cannot be assumed that the employee has absconded.

**16.1.4** The contact numbers of every employee and next of kin have to be updated on the personnel files. This will assist the municipality when tracing the whereabouts of an employee in case of disappearance;

**16.1.5** In circumstances where the employer does not know whether the employee will return to work or not, the employer will have to establish this before the employee can be dismissed. It is therefore a common practice that uncommunicated absence for a period of ten days or more will be dealt with as absconding in most disciplinary cases.

**16.1.6** Notwithstanding 16.1.5 an employee who absents himself/ herself from his/ her official duties without permission of his/ her supervisor/ manager or any designated authorised person in the Municipality, for a period exceeding one calendar month (30 days) shall be deemed to have terminate himself/ herself because of misconduct.

**16.1.7** An employee who is deemed to have terminated his/ her duties after the expiry of the period referred to in 16.1.6 above, the Municipality on a good cause shown not contrary to any law, may approve the reinstatement of the employee;

**16.1.8** The employee(s) who have been deemed to be terminated, as referred to in 16.1.7 shall be reinstated subject to conditions provided they report for work and show good cause.

### **16.2 Objectives**

**16.2.1** This clause on abscondment is intended to provide measures for the municipality of abscondment and absenteeism.

- 16.2.2 All employees of the Matatiele Local Municipality have to know and understand this policy because committing this offence can result to dismissal
- 16.2.3 To create a stable and healthy atmosphere of labour relations with regards to dismissal because of absconding employees.
- 16.3 Procedure
- 16.3.1 The Matatiele Local Municipality shall deal with abscondment as per the provision of the applicable Disciplinary Procedure Collective Agreement.

### PART THREE

#### DISCIPLINARY CODE

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
1. Time keeping and work time use	1. Persistent late coming for work or leaving work early without permission.	Verbal warning	Written warning with loss of pro-rata income	Final written warning with loss of pro-rata income	
	2. Absence from work (without good/valid reason)	Written warning with loss of pro-rata income	Final written warning with loss of pro-rata income	Dismissal with loss of pro-rata income	
	3. Unwarranted and unauthorized absence from the workplace	Written warning with loss of pro-rata income	Final written warning with loss of pro-rata income	Dismissal with loss of pro-rata income	

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	4. Malingering, tardiness or loafing on the job.	Verbal warning	Written warning	Final written warning	Dismissal
	5. Sleeping on duty.	Written warning	Final written warning	Dismissal	
	6. Habitual and excessive absenteeism i.e. numerous occasions of absence from work place with or without permission.	Written warning	Final written warning	Dismissal	

	7. Failure to apply for sick leave within three working days of assumption of duties from a sick leave.	Written warning	Final written warning	Dismissal	
	8. Failure to report absence on account of alleged incapacity before 12h00 of the first day of incapacity given ability to do so	Written warning	Final written warning	Dismissal	
	9. Failure to apply for annual leave for at least 15 working days or a number of outstanding annual leave days due to an employee within six months following the lapse of an annual leave cycle.	Written warning	Final written warning	Dismissal	

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	10. Failure to produce a medical certificate after being absent for more than two days on grounds of sickness or when required to do so.	Written warning with loss of pro-rata income	Final written warning with loss of pro-rata income	Dismissal with loss of pro-rata income	
	11. Abuse of sick leave	Written warning	Final warning	Dismissal	
	12. Gross abuse of sick leave	Dismissal			
2. Quality and output of work	1. Poor quality of work or not working up to standard	Written warning	Final warning and/or demotion	Dismissal	
	2. Negligent use of Municipal work material, financial and other resources.	Written warning	Final warning	Dismissal	
	13 Neglect of duty or carelessness in	Written warning	Final warning	Dismissal	

	execution of duties				
	14 Gross negligence by action, inaction and non-action	Final warning	Dismissal		
	15 Failure to do work with no valid and good excuse /reason.	Verbal warning	Written warning	Final warning	Dismissal
	16 Failure to do work with no valid and good excuse /reason	Written warning	Final warning	Dismissal	
	17 Refusal to perform work or a function in terms of job description or a reasonable instruction from your immediate supervisor or any other superior through your immediate superior.				
<b>CATEGORY</b>	<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
3. Attitudinal & execution of duties & related offences	1. Failure to wear Municipal uniform	Verbal warning	Written warning	Final warning	Dismissal
	2. Wearing incorrect council uniform or protective clothing on duty.	Verbal warning	Written warning	Final warning	Dismissal
	3. Negligent or dangerous driving	Dismissal			
	4. Failure to carry out reasonable and lawful instruction.	Final warning	Dismissal		
	5. Not parking correctly on the Municipal premises.	Verbal warning	Written warning	Final written warning	
	6. Smoking in "no smoking" area.	Written warning	Final warning	Dismissal	Dismissal
	7. Failure to report an accident on the job including an accident of a vehicle which you were driving	Final warning	Dismissal		

	without good and valid reason.				
	8. Unreasonable refusal to become a witness in a disciplinary hearing after having been approached to do so by the employer in a case whereby you are an eye – witness.	Final warning	Dismissal		
	18 Misuse or abuse of position of authority, power and trust	Final warning	Dismissal		

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	10. Deliberately supplying incorrect information.	Final warning	Dismissal		
	10. Using inappropriate route at the Municipality's Expense without good and valid reason	Written warning with or without fine	Final warning with or without fine	Dismissal without fine	
	11. Insubordination – failure to carry out a reasonable and legitimate instruction by an authorized person or body	Written warning	Final warning	Dismissal	
	12. Failure to perform a legitimate function of the Municipality including non-institution of a disciplinary action in a given situation without a good/valid cause.	Written warning	Final warning	Dismissal	
	13. Gross insubordination	Final warning	Dismissal		
	14. Drunkenness on duty and / or refusal to submit alcohol test.	Dismissal			
	15. Drunken driving and / or driving	Dismissal			

	Municipal vehicle whilst under the influence of alcohol.				
	16.Unauthorised possession and/or consumption of alcohol or illegal drugs on work premises during working time	Dismissal			
<b>CATEGORY</b>	<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
	17.Illegal strike or influencing other/others to strike illegally.	Final Warning	Dismissal		
	18.Deliberately carrying out an illegal or Unauthorised action.	Final warning	Dismissal		
<b>4. Risk measures &amp; Safety-related Offences</b>	1. Failure to wear protective clothing or use of equipment where supplied.	Verbal written warning with loss of pro-rata income when work has been affected.	Written warning with loss of pro-rata income when work has been affected.	Final written warning with loss of pro-rata income when work has been affected.	Dismissal
	2. Failure to comply with safety standards.	Written warning	Final warning	Dismissal	
	3. Causing malicious damage to Municipal property.	Warning	Dismissal		
	4. Lighting fires on Municipality's property without authority or causing damage to Municipal property.	Final warning	Dismissal		
	5. Damages resulting from undue interference with any supply of power fuel materials or services.	Final warning	Dismissal		
	6. Failure to observe or apply safety measures.	Final warning	Dismissal		

	7. Failure to report a spillage or contamination on Municipal property caused by you.	Final warning	Dismissal		
<b>CATEGORY</b>	<b>NATURE OF OFFENCE</b>	<b>FIRST OFFENCE</b>	<b>SECOND OFFENCE</b>	<b>THIRD OFFENCE</b>	<b>FOURTH OFFENCE</b>
	8. Burning of bitumen valves whilst discharging without first obtaining permission.	Final warning	Dismissal		
	9. Being in possession of a dangerous and offensive weapon without the Municipality's permission.	Final warning	Dismissal		
	10. Unauthorised carrying of passengers or family members in a Municipal vehicle or in contrast to the policy.	Final warning	Dismissal		
	11. Behaviour endangering the safety of other persons	Final warning	Dismissal		
<b>5. Criminal Offences</b>	1. Wilful misuse of Municipal property for substantial personal gain.	Verbal warning	Written warning	Final warning	Dismissal
	2. Wilful damage of Municipal property materials or equipment.	Dismissal			
	3. Theft or unauthorized possession of Municipal, employee or customer property.	Dismissal			
	4. Driving a Municipal Vehicle without a valid driver's license and/or without	Dismissal			



	permission or authorization.				
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CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	5. Falsification of Municipal records and/or giving of false information at work whether verbally or in writing.	Dismissal			
	6. Fraud and/or forgery or misrepresentation of Municipal records.	Dismissal			
	7. Being involved in an act of bribery or corruption.	Dismissal			
	8. Inciting employees to violence and/or rebellion or any form of action against the authority of the Municipality.	Dismissal			
	9. Being convicted by a court of law of a crime that does not carry an option of a fine.	Dismissal			
	10. Tempering with engine sentinels, vehicle tachographs And/or speedometer.	Final warning	Dismissal		
	11. Assault of Employer or Municipal employee and/or customer.	Dismissal			
	12. Attempted assault of Employer or Municipal employee and/or customer.	Final warning	Dismissal		

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
6. Social offences	1. Creating disturbance or chaos at work e.g. horse play.	Final warning	Dismissal		
	2. Use of insulting or abusive language when addressing a colleague, subordinate, superior or customer.	Final warning	Dismissal		
	3. Threatening assault or injury.	Final warning	Dismissal		
	4. Racial or verbal abuse and/or swearing and/or shouting at a colleague, subordinate, Councillor, superior or customer.	Final warning	Dismissal		
	5. Making disparaging and derogatory remarks against an employee, colleague or superior.	Final warning	Dismissal		
	6. Breach of confidentiality in respect of confidential Municipal information.	Final warning	Dismissal		

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
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	7. Attempting to attack or attacking a personal integrity of a superior, colleague, Councillor or customer including a member of the public through slander or character assassination.	Final warning	Dismissal		
	8. Making senseless or baseless accusations or allegations against a superior, fellow employee, Councillor or customer including a member of the public.	Final warning	Dismissal		
	9. Display of contempt /disrespect of management authority through any form of behavioural conduct.	Final warning	Dismissal		
	10. Taking instructions from a Councillor without authority.	Written warning	Final warning	written	Dismissal
	11. Communication of affairs of the Municipality to a Councillor without authority.	Written warning	Final warning	written	Dismissal

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	12. Communicating an alleged irregularity	Written warning	Final warning	written	Dismissal

	or infringement or any classified or confidential Municipal information to any other person or Councillor other than a superior officer or the Speaker of the Council.				
	13. Communication with the media on any unicipal matter without authority or permission.	Final written warning	Dismissal		
	13.Any act of unprofessional conduct which puts the Municipality into disrepute or tarnish the good name and image of the Municipality.	Final written warning	Dismissal		
	15.Gross act of unprofessional conduct which puts the Municipality into disrepute or tarnish the good name and image of the Municipality.	Dismissal			

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	16.Any act /conduct of a discriminatory nature against any person at the workplace as defined in the Employment	Final warning	Dismissal		

	Equity Act, Act No 55 of 1998.				
	17.Failure to report an act of irregularity to the immediate superior or the next superior or Municipal Manager in the absence of an immediate superior.	Final warning	Dismissal		
	18.Failure to take corrective action upon receipt of a report of alleged transgression or incident warranting a corrective action.	Final warning	Dismissal		
7. Sexual harassment	1. Asking for sexual favours or making consent to sexual interaction as a condition for employment, promotion or a decision related to an employment condition or any work-related matter.	Final warning	Dismissal		
	2. Sexual abuse and/or discrimination on the basis of sex.	Final warning	Dismissal		

CATEGORY	NATURE OF OFFENCE	FIRST OFFENCE	SECOND OFFENCE	THIRD OFFENCE	FOURTH OFFENCE
	3. Persistent untoward sexual conduct, persistent unbecoming sexual advance and persistent irritative sexual conduct e.g. use of sexual slurs, or innuendos,	Final warning	Dismissal		

	sexually irritative words and pictures.				
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#### **PART FOUR**

#### **MATATIELE LOCAL MUNICIPALITY FORMAL DISCIPLINARY ENQUIRY PROCEDURE**

#### **PRESENT**

**Chairperson/Presiding Officer:** \_\_\_\_\_

**Initiator/Employer Representative:** \_\_\_\_\_

**Management Representative:** \_\_\_\_\_

**Accused:** \_\_\_\_\_

**Interpreter:** \_\_\_\_\_

**Shop Steward:** \_\_\_\_\_

**DATE OF ENQUIRY** \_\_\_\_\_

**PLACE OF ENQUIRY** \_\_\_\_\_

#### **PROCEDURE**

**1. The Presiding Officer should at the start of the hearing ask the employee the following questions:**

- (a) Were you given adequate notice of the hearing (5 days or more)?  
YES/NO
- (b) Were you informed that you may be represented by a representative of your choice?  
YES/NO
- (c) Were you informed that you may have an interpreter?  
YES/NO
- (d) Were you informed that you may call witnesses?

YES/NO

- (e) Were you told prior to the hearing the nature of the offence with relevant particulars of the charge/s?

YES/NO

If the answer to one of the above questions is in the negative and the employee can substantiate the claim then the hearing should be referred to a later date.

2. The prosecutor then reads out the charge sheet and asks the following questions:

(a) Have you heard the charge/s? YES/NO

(b) Do you understand the charge/s? YES/NO

CHARGE:

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3. Before pleading the accused is informed that he/she may lodge an objection to the Presiding Officer if he/she believes that the Presiding Officer would not be impartial.

Do you have an objection to me as Presiding Officer?

YES/NO

4. If the answer to the above is yes, then the Presiding Officer should listen to evidence supporting the objection and decide if he/she should excuse himself/herself. If the Presiding Officer believes he/she should excuse himself/herself then he/she should postpone the enquiry to a later date and the Municipality must appoint somebody else to chair the hearing.

5. Before proceeding the accused should be informed about the different pleadings.

5.1 Guilty

5.2 Not guilty

5.3 Have already been charged and found guilty on this charge by a disciplinary enquiry.

5.4 Have already received a warning on this charge.

5.5 Have already been found not guilty of this charge by a disciplinary enquiry.

6. Do you understand the different pleadings?

YES/NO

7. The Presiding Officer should then request the accused or his/her representative to plead to each charge.

(a) First charge 

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(b) Second charge 

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(c) Third charge \_\_\_\_\_

(d) Fourth charge \_\_\_\_\_

- 8 If the accused pleaded “guilty” to all charges proceed to No. 18 of the procedure.
8. If the accused pleaded “guilty” to some of and “not guilty” in regard to others proceed in regard to all charges pleaded “not guilty”
10. The Prosecutor is then requested to lead evidence in regard to his witnesses and the accused or his representative is informed that they may cross-examine the witness after the prosecution has first lead evidence.
11. Does the accused/representative understand his/her rights?

YES/NO

12. The Initiator/Employer Representative calls:

a. First Witness

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

b. Second Witness

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

(c) Third Witness

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

(d) Fourth Witness

Full Name: \_\_\_\_\_

Designation: \_\_\_\_\_



whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

13. After cross-examination by the accused/representative the prosecution should have the right to cross-examine the witness.
14. The prosecution then closes its case.
15. The accused or his/her representative are then requested if they wish to tender evidence in defence of their case.
16. Do you wish to tender evidence?

YES/NO

17. The accused or his/her representative calls:

**a. First Witness**

**Full Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

**b. Second Witness**

**Full Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

**c. Third Witness**

**Full Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

**d. Fourth Witness**

**Full Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

whose evidence is noted and attached as Annexure \_\_\_\_\_ where necessary

18. After cross-examination by the prosecution the accused or his/her representative should have the right to cross-examine the witness.
19. The accused then closes its case.
20. After listening to both cases presented to him/her the Presiding Officer should weigh up the cases presented to him and decide which one is the more probable and that party should be successful (balance of probabilities).
21. The following finding is made by the Presiding Officer in regard to:
  - (a) First charge \_\_\_\_\_
  - (b) Second charge \_\_\_\_\_
  - (c) Third charge \_\_\_\_\_
  - (d) Fourth charge \_\_\_\_\_
22. If found "not guilty" the employee should be discharged.
23. If found "guilty" proceed with the procedure.
24. The Prosecutor after the finding of the disciplinary enquiry reads out any previous convictions of the accused (Previous warnings etc.)
25. The accused acknowledges the correctness of the previous convictions.

YES/NO

26. The Presiding Officer reads out the valid previous convictions and attached as Annexure \_\_\_\_\_ where necessary.
27. The accused or his/her representative are then requested if they wish to tender evidence in mitigation.
28. Do you wish to tender evidence in mitigation?

YES/NO

- 28.1 The evidence is attached as Annexure \_\_\_\_\_.

29. The Presiding Officer then decides on the sentence: The sentence is the following:

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30. The reasons for the sentence are as follows:

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30.1 Would you need a copy of the reasons?

YES/NO

31. The accused is then informed of his/her right to appeal against the finding and sentence

With \_\_\_\_\_ in \_\_\_\_\_ days of sentence.

31.1 Would you like to appeal?

YES/NO.

SIGNED:

\_\_\_\_\_  
CHAIRPERSON/PRESIDING OFFICER

\_\_\_\_\_  
REPRESENTATIVE

\_\_\_\_\_  
ACCUSED

\_\_\_\_\_  
PROSECUTOR/EMPLOYER REPRESENTATIVE

DATE:

#### GUIDELINES TO THE PRESIDING OFFICER OF A DISCIPLINARY ENQUIRY OR APPEAL

The purpose of these guidelines is to provide you as Presiding Officer of a disciplinary inquiry with a checklist prior to taking a decision in regard to the findings and sentence.

In practice it has happened on many occasions that after a decision to dismiss an employee, you are compelled to reinstate the employee because of some substantive or procedural defect.

We hope that this checklist will help you to overcome the problem.

The document also contains the requirements to be taken into account prior to a finding of "guilty" or "not guilty"

We also provide in the last instance grounds that may be regarded as mitigating circumstances.

#### 1. (A) Substantive Fairness

- (a) Was the employee aware of the rule broken? An employee cannot be expected to behave correctly if he/she is not informed of the requirements for correct behaviour.

YES/NO

- (b) Will the sanction to be imposed on the employee be consistent with treatment of other employees who committed the same or an equal offence? (Use the schedule of offences and possible penalties as a guideline).

**YES/NO**

- (c) **Was the special circumstance/s of the case taken into account?**

**YES/NO**

- (d) **Was previous warning/s taken into account? (Not those that have already lapsed because of the time constraint).**

**YES/NO**

- (e) **Was the employee's years of service taken into account?**

**YES/NO**

- (f) **Was there sufficient proof of the offence committed?**

**YES/NO**

- (g) **Was evidence rendered in mitigation taken into account?**

**YES/NO**

**(B) Procedural Fairness**

- (a) **Was the employee aware of the nature of his/her offence?**

**YES/NO**

- (b) **Was the employee given sufficient warning prior to the hearing?**

**YES/NO**

- (c) **Was the employee given an opportunity to state his/her case?**

**YES/NO**

- (d) **Was the employee allowed representation?**

**YES/NO**

- (e) **Was the employee allowed an interpreter?**

**YES/NO**

- (f) **Was the employee's case prejudged or did the Presiding Officer show impartiality?**

**YES/NO**

- (h) **Was the employee fully informed of the reason for the decision given?**

**YES/NO**

- (i) **Was the employee informed of his/her right to appeal?**

**YES/NO**

If the answer to all your questions is positive your actions will in all likelihood be regarded as fair.

## **2. Finding**

Before arriving at a finding of “guilty” or “not guilty the prosecution should prove their case as required in disciplinary hearings on a balance of probabilities which is a much lighter burden than in a criminal court where the burden of proof is beyond reasonable doubt.

What is meant by balance of probabilities is that you as Presiding Officer should take the two cases presented to you and decide which case is the more probable and that party should then be successful.

## **3. Mitigating Circumstances**

It is also required from you as Presiding Officer to take mitigating circumstances into account and therefore we decided to give you an indication of what can be regarded as mitigating circumstances in a court of law.

### **(i) First Offender**

The fact that the accused has a clear service record is the most important mitigating circumstance which should be taken into account when deciding on the sentence.

### **(ii) Personal Circumstances**

The personal circumstance of the accused should also be taken into account, for example he/she might be drinking because his/her spouse just passed away, or because of financial problems.

### **(iii) Pleaded Guilty**

The fact that the accused pleaded guilty can also be regarded as mitigating circumstances because of the indication that the accused is feeling remorse.

### **(iv) Youth**

Can also be taken into account as a mitigating circumstance if the accused is under the age of 18 years.

A Presiding Officer is urged to always keep his/her guidelines at hand at disciplinary hearings so that you can always check your actions.

## **PART FIVE**

### **17. COMMENCEMENT OF THIS POLICY**

17.1 This policy will come into effect on the date of adoption by the Council.

### **18. INTERPRETATION OF THIS POLICY**

18.1 All words contained in this policy shall have an ordinary meaning attached thereto, unless the definition or context indicates otherwise.

18.2 Any dispute on interpretation of this policy shall be declared in writing by any party concerned.

18.3 The Office of the Municipal Manager shall give a final interpretation of this policy in case of a written dispute.

**18.4** If the party concerned is not satisfied with the interpretation, a dispute may then be pursued with the South African Local Government Bargaining Council or Arbitration

**19. PERMANENT/TEMPORARY WAIVER OR SUSPENSION OF THIS POLICY**

**19.1** This policy may be partly or wholly waived or suspended by the Municipal Council on a temporary or permanent basis after consultation with Management and Trade Unions.

**19.2** Notwithstanding clause No. 19.1 the Municipal Manager may under circumstances of emergency temporarily waive or suspend this policy subject to reporting of such waiver or suspension to Council and Trade Unions.

**20. AMENDMENT AND/OR ABOLITION OF THIS POLICY**

**20.1** This policy may be amended or repealed by the Council after consultation with Management and Local Labour Forum.


**21. COMPLIANCE AND ENFORCEMENT**


**21.1** Violation of or non-compliance with this policy will give a just cause for disciplinary steps to be taken.


**21.2** It will be the responsibility of all Managers, Supervisors, Executive Committee and Council to enforce compliance with this policy,

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<p><b>CPS/P124</b> <b>CR 884/28/05/2025</b></p>
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**MR. L. MATIWANE**  
**MUNICIPAL**  
**MANAGER**

  
**CLLR M. STUURMAN**  
**ACTING HON.**  
**MAYOR**

  
**CLLR N. NGWANYA**  
**HON. SPEAKER**