Annexure G5d

**CHEMICAL INDUSTRIES EDUCATION AND TRAINING AUTHORITY (CHIETA)**

**Disciplinary Policy**

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# **PURPOSE**

This Policy serves as a guideline for both management and employees with reference to what will be deemed as irregular conduct. It spells out how the CHIETA will deal with any occurrences of misconduct and gives guidelines as to the disciplinary measures which may be imposed. The Disciplinary Policy must be applied consistently and fairly to all employees of the CHIETA. Each employee shall have a right to a fair and impartial investigation and disciplinary hearing, prior to any disciplinary action being taken against him/her.

# **OBJECTIVE**

* 1. The applying of discipline is designed to correct the employee's behaviour, in response to a perceived misdemeanour or wrongdoing by that employee. The actions the employer finds inappropriate to the business procedures and policies will most likely lead to that employee either being verbally reprimanded (if the transgression allegedly committed is minor and warrants a warning) or be subjected to a disciplinary hearing (if the misconduct allegedly committed is severe and warrants a hearing).
  2. In instances of misconduct, where the employee is found guilty after following a fair procedure, the sanction imposed may range from a verbal warning to dismissal, depending on the seriousness of the offence and the circumstances surrounding the commission of that offence and other factors as decided by the Chairperson of the Hearing.
  3. The seriousness of the misconduct will determine how the offence will be dealt with. The employer follows the principles of corrective and progressive discipline.

# **SCOPE**

This Disciplinary Policy and behavioural guidelines apply to all the employees of the CHIETA. All forms of disciplinary hearings should be dealt with at the time of infringement, but always within a reasonable time after gaining knowledge of occurrence.

# **DEFINITIONS AND TERMS**

* 1. **Aggravating factors** means those factors that the Initiator can bring to the fore during a disciplinary hearing which increase the severity of the misconduct committed**.**
  2. **Disciplinary Policy/ The Policy** means the CHIETA Disciplinary Policy**.**
  3. **CCMA** means the Commission for Conciliation, Mediation and Arbitration.
  4. **Dismissal** means the termination of the employee’s contract of employment with or without notice.
  5. **Employee** mean any person employed by CHIETA, including Interns, Fixed term employees, Permanent employees, and includes the Executives.
  6. **Employee representative** means an employee of CHIETA who has been chosen by the Employee to represent him/her in a disciplinary hearing.
  7. **Employer** means the CHIETA.
  8. **External chairperson** means a chairperson appointed by the CHIETA to preside over a disciplinary hearing and who is legally qualified**.**
  9. **Initiator** means a person, be it an employee of CHIETA or an external person who is appointed by CHIETA to present and/or prosecute the CHIETA’s case and lead evidence at a disciplinary hearing.
  10. **Legal representative** means a person who is legally qualified to practice as an attorney or an advocate in any court of law in the Republic of South Africa.
  11. **Misconduct** means any conduct by the employee which is not tolerated by the CHIETA and which is sanctioned as such in terms of the CHIETA’s Disciplinary Policy.
  12. **Mitigating factors** means those factors that the employee who is appearing at a disciplinary hearing can present to try and reduce or lessen the alleged misconduct committed.
  13. **Warning** means a reprimand issued by the CHIETA falling short of dismissal.
  14. **Witness** means any person who is called to give evidence at a disciplinary hearing.

# **POLICY STATEMENT**

Chemical Industries Education and Training Authority (CHIETA) expects its employees to comply with various rules, regulations, and policies of the CHIETA and carry out all reasonable and lawful instructions given to them by their managers and to behave in an orderly manner. The CHIETA further expects all its employees to attend to work punctually and be available for the hours of work that they are contracted to perform the various duties agreed to between them and the CHIETA. All employees are further expected to comply with all health and safety regulations and further agree to being searched and having their properties searched as they enter or exit the CHIETA premises.

# **5.1 CODE OF ETHICS AND CONDUCT**

The CHIETA has adopted a Code of Ethics and Conduct and expects all its employees to subscribe to and abide by the principles set out therein. Contravention of the values and principles contained therein constitutes a disciplinary offence and non-compliance may lead to dismissal. The CHIETA acknowledges that non-compliance to the Code of Ethics constitute misconduct.

# **5.2 SUSPENSION PENDING OUTCOME OF A DISCIPLINARY ENQUIRY**

If the CHIETA deems it necessary during the investigation into any misconduct allegedly committed by an employee, the employee may be suspended from work on full pay with benefits until the investigation or disciplinary enquiry is concluded.

The CHIETA will have the right to suspend an employee, with full pay, prior to the determination of disciplinary action where, in the opinion of management, an alleged offence by an employee is regarded as serious, or the continued presence of the employee at the CHIETA’s premises may prejudice the interests of the CHIETA, the employee, other employees, or hamper investigations.

Suspension will be considered in the following circumstances:

1. If it is considered that the employee may interfere with the investigation or witnesses.
2. if there is a risk that the employee may tamper with or destroy evidence.
3. to prevent a re-occurrence of the conduct in question or to limit the CHIETA’s potential losses or damages; or
4. Where the allegations against the employee are considered so serious that, if proven, it may lead to summary dismissal; or
5. When in the discretion of the Company, it is considered that suspension is appropriate in the circumstances; or
6. The company may consider other reasonable measures short of suspension for e.g., temporary revoking of mandates / signing powers.

If the employee is dismissed following the enquiry, the employee’s pay entitlement will cease on the date of his or her dismissal.

# **5.3 DIFFERENT GROUNDS FOR TERMINATION OF THE EMPLOYMENT CONTRACT**

## **5.3.1 MISCONDUCT**

Misconduct is one of the grounds in law that justifies an employer terminating the contract of employment of an employee. Misconduct means that an employee did not comply with the rules of the employer, usually set out in an employee’s contract or in a policy or a disciplinary policy of the company, however, there may be other instances of misconduct that fall outside this scope and which are recognised in law.

For a disciplinary action for reasons related to misconduct to be fair, the dismissal must be:

1. **Substantively fair** - there must be a valid reason in law and supported by the evidence for the termination of the contract of employment. The facts of each case will determine whether the dismissal is for a fair reason and whether dismissal is the appropriate penalty; and
2. **Procedurally fair** - the dismissal must be affected in a procedurally fair manner which simply entails that the employee be given the opportunity to answer any charges (audi alteram partem) and there will be no expectation to a fully-fledged hearing taking place in each case. It will also be open to the Company in certain cases to deal with such matters, where appropriate, on written exchanges.

## **5.3.2 DESERTION OR ABSCONDMENT**

An employee will be deemed to have deserted and/or absconded if he/she is absent from duty for a period exceeding three (3) days without providing a valid reason for such absence or without permission. The employer will warn an employee on the third consecutive day of absence of the consequences of his/her absence. The offence is still punishable if the employee returns before disciplinary action is taken. XXX

## **5.3.3 INCAPACITY**

**5.3.3.1 Poor Work Performance**

Poor performance is a form of incapacity. It can also be described as incompetence, lack of skill and/or knowledge, incompatibility, bad attitude, carelessness, inaccuracy, incomplete work, poor social performance, and failure to comply with reasonable standards.

Poor work performance includes, but is not limited to, sloppiness, non-compliance with return dates and incomplete work. Poor work performance will be dealt with similarly to minor transgressions.

In a case of repeated, patterned transgressions of any kind over a prolonged period, the employer will be entitled to subject the employee to a disciplinary enquiry. In such a case, the employee will be charged with poor work performance as a serious transgression.

**5.3.3.2 DISABILITY, ILL HEALTH, OR INJURY**

Disability is not misconduct but is a form of incapacity that may lead to the termination of the employment contract. Two types of disability are distinguished, i.e., disability due to diseases, which may be temporary or permanent, and disability on judicial grounds.

When an employee becomes disabled due to disease, the probability of recuperation will be considered and leave without remuneration may be granted for a period agreed upon. CHIETA may thereafter consider dismissal with notice, considering the type of work which is to be done and the impact of the employee’s continued illness will have on it.

If an employee becomes unable to attend work due to legal procedures, for e.g., if he/she is detained, CHIETA may consider this as a breach of the employment contract and dismiss such an employee after considering the reason for detention as well as the (expected) duration thereof.

**5.3.3.3 INCOMPATIBILITY OR UNSUITABILITY**

Incompatibility is the inability of people to maintain cordial and harmonious relationships with colleagues. Employees become incompatible when their colleagues, subordinates or superiors are unable to tolerate their behaviour. Employers are entitled to require employees to maintain harmonious working relationships in the workplace.

Examples of aspects displaying incompatibility would include an employee’s attitude, his/her way of doing things, his/her disruptiveness, pushiness, temper, impatience, lack of sensitivity, meddling, manipulation, interpersonal relationships, or his/her general disagreeability that causes fellow employees to get upset.

# **5.4 REPRESENTATION AT THE HEARING**

The CHIETA recognises the right of the employees to representation during disciplinary enquiries on the understanding that:

5.4.1 an employee may elect a fellow employee, shop steward to be his/her chosen representative in terms of this policy at a disciplinary hearing.

5.4.2 an employee may elect to conduct his/her own defence and not to be represented.

5.4.3 an employee may not elect to be represented by more than one person at any stage of this procedure.

5.4.4 before any employee representative absents himself from his or her workplace in terms of this policy, he/she must obtain the prior approval of his/her immediate supervisor, which will not be unreasonably withheld; and

5.4.5 an employee who wishes to be legally represented by an outside legal representation must bring such an application for such legal representation at the start of the disciplinary hearing before the chairperson, and that such application may not be unreasonably withheld. This should be for the cost of the employee.

5.4.6 the employer may elect to be represented at the disciplinary hearing by a senior manager and/or an HR representative and/or an external representative, who will serve as an initiator and will lead the employer’s evidence at that hearing. The employer is at liberty to choose own initiator depending on the complexity and/or veracity of the charges.

5.4.7 CHIETA reserves the right to appoint an external chairperson, depending on the complexity and/or veracity of the charges or on any other reasonable ground.

# **5.5 THE POSSIBLE SANCTIONS**

The Disciplinary Policy provides progressive steps of increasing severity for unacceptable performance and conduct. The disciplinary procedure can be handled informally or formally.

Informal, being day-to-day corrective actions in the form of verbal reprimands. Formal, being disciplinary action taken against an employee, anything more serious than a verbal encounter on corrective actions.

Action must be taken against an employee by Management up to a written warning.

The application of discipline may take one of the following forms depending on the seriousness of the conduct or the situation being informal or formal:

## **5.5.1 Informal/Real-time disciplinary meetings:**

5.5.1.1 Counselling and/or Verbal warning.

5.5.1.2 Written warning; or

5.5.1.3 Final written warning.

## **5.5.2 Formal/Disciplinary hearing:**

5.5.2.1 Counselling and/or Verbal warning,

5.5.2.2 Written warning,

5.5.2.3 Final written warning,

5.5.2.4 Demotion; or

5.5.2.5 Dismissal.

If a valid warning exists against an employee at the time when he/she is found guilty of another offence, the existing warning will be considered when the disciplinary measure is imposed. An existing warning will have an aggravating effect during a subsequent disciplinary procedure.

A disciplinary action/warning shall contain the following information:

1. a description of the behaviour which is unacceptable.
2. a description of what may or will happen if the unacceptable behaviour continues.

## **5.5.3 Counselling and/or Verbal Warning**

Management may give counselling and/orverbal warning. It will normally be initiated where an employee’s supervisor/manager is of the opinion that an employee’s performance or behaviour is unsatisfactory but does not warrant a written warning or dismissal. He/she will verbally warn the employee and explain to him/her the required change in his/her performance or behaviour. The manager will complete a Record of Counselling or Verbal Warning, to be countersigned by the employee, which will be placed in the employee’s personnel file. Should he/she refuse to sign, the fact will be noted on the form in front of at least one (1) witness.

Counselling and/or verbal warning remains valid for three (3) months. In instances where the misconduct is acknowledged, a disciplinary hearing need not be convened.

## **5.5.4 Written Warnings**

Management may give written warnings after having determined all the facts and circumstances of the transgression. A written warning may be given where a verbal warning for any misconduct has failed or where the misconduct is so serious that a verbal warning would not be adequate. In instances where the misconduct is acknowledged, a disciplinary hearing need not be convened.

A written warning remains valid for six (6) months from the date of issue. Written warnings shall be given on the appropriate form and the employee must be requested to sign it to signify that he/she has received the warning and be given the opportunity to leave a comment/ respond in writing. A copy must be placed in the employee’s personnel file. Should he/she refuse to sign, the fact will be noted on the form in front of at least one (1) witness.

## **5.5.5 Final Written Warnings**

Management may give a final written warning after having determined all the facts and circumstances of the transgression. Such final written warning may be given where a first written warning is considered inadequate because of the seriousness of the misconduct. A final written warning may also be given where an employee has, within the previous twelve (12) months, received a written warning for any misconduct. A disciplinary hearing may be convened.

Failure to heed such a final written warning, which will remain valid for twelve (12) months from the date of issue, may result in dismissal, if found guilty at a subsequent disciplinary hearing.

Final written warnings shall be given on the appropriate form and the employee must be requested to sign it to signify that he/she has received the warning and be given the opportunity to leave a comment/respond in writing. A copy must be placed in the employee’s personnel file. Should he/she refuse to sign, the fact will be noted on the form in front of at least one (1) witness.

## **5.5.6 Demotions**

Management may issue a demotion as an alternative to dismissal. This demotion may involve loss of certain benefits – money or otherwise.

## **5.5.7 Dismissal**

An employee may either be summarily dismissed or dismissed with notice, by management in the case of misconduct which warrants stronger action than a final written warning, or of failure to heed a final written warning for any misconduct. The decision between summary- or dismissal with notice, should be based on the nature of the offence and aggravating and mitigating circumstances that exist.

After having determined all the facts and circumstances in a disciplinary hearing, the CEO shall arrive at a decision and shall inform the employee and his/her representative thereof.

# **5.6 ARRANGEMENTS REGARDING TERMINATION**

No letter of recommendation will be issued where an employee is dismissed in a disciplinary hearing.

No notice will be applicable in the event of an employee being dismissed summarily in a disciplinary hearing.

Dismissal on grounds of disability will take place with notice or with payment in lieu of notice. A service certificate will be issued indicating medical incapacity as the reason for termination.

# **5.** **7 INTERNAL APPEALS**

5.7.1 The employee shall be made aware of his/her right to appeal against the disciplinary hearing outcome and given the opportunity to do so within five (5) working days of the decision being made.5.7.2 The appeal application must be submitted in writing to Human Resources.5.7.3 Human Resources will schedule the appeal hearing, which will be presided over by a CHIETA employee at a higher level than the initial disciplinary hearing chairperson or an external service provider. An external service provider will preside over the appeal process if the disciplinary matter involves an Executive Manager or the CEO.5.7.4 Human Resources shall record and file a written record of the proceedings and outcome of a hearing.

5.7.5 The chairperson will then deliberate on the appeal. The chairperson has the authority to confirm, reduce, withdraw, or increase the initial recommendation made by the other chairperson when reaching a recommendation to the CEO.

5.7.6 If the affected employee is not satisfied with the outcome of the appeal hearing, the employee will be reminded of their right to refer the matter to a relevant body.

# **5.8 SANCTION GUIDELINES**

5.8.1 The following serves as a guideline as to the preferred sanctions on some specific forms of misconduct, but these may be adapted by the Chairperson of a hearing taking the specific facts of the matter into account:

| **TYPE OF MISCONDUCT** | **1st TRANSGRESSION** | **2nd TRANSGRESSION** | **3rd TRANSGRESSION** |
| --- | --- | --- | --- |
| **ABSENTEEISM** | | | |
| 1. Absent without permission for less than three (3) days | Written Warning | Final Written Warning | Dismissal |
| 2. Absent without permission for three (3) days or more | Dismissal |  |  |
| 3. Abuse of sick leave (Pattern) | Final Written Warning | Dismissal |  |
| 4. Failure to notify the Company when booked off on sick leave/failing to produce a medical certificate when required to | Written Warning | Final Written warning | Dismissal |
| 1. Reporting for work late or leaving early without permission | Verbal warning | Written warning | Final Written warning |
| 1. Unauthorised and/or extended breaks during working hours and/or idle or lazy | Written warning | Final Written warning | Dismissal |
| **CONDUCT AND PERFORMANCE** | | | |
| Neglecting or failure to carry out lawful instructions | Final Written warning | Dismissal |  |
| Gross insubordination | Dismissal |  |  |
| Failing to attend to your duties | Written warning | Final Written warning | Dismissal |
| Poor quality of work, or failing to maintain Company standards | Final Written warning | Dismissal |  |
| Refusing to work and/or leaving workplace with the intention of refusing to work and/or insubordination | Dismissal |  |  |
| Refusing to work in an area declared safe to do so (insubordination) | Dismissal |  |  |
| Working in an area that is declared unsafe (Insubordination) | Dismissal |  |  |
| Sleeping on duty | Written warning | Final Written warning | Dismissal |
| Unauthorised use / operation of machines, equipment, and vehicles of the Company | Final Written warning | Dismissal |  |
| Unauthorised use / operation of machines, equipment and vehicles of the Company resulting in damage of property or loss to the Company | Dismissal/ Final Written warning | Dismissal |  |
| Improper use of Company’s property including tools, equipment and vehicles | Written warning | Final Written warning | Dismissal |
| Damage or waste or loss of Company’s property due to negligence | Written warning | Final Written warning | Dismissal |
| Poor maintenance or neglect of equipment, vehicles or any of the Company’s property | Dismissal |  |  |
| Deliberate/wilful damage, waste or misuse of Company’s / employee’s property | Final Written warning | Dismissal |  |
| Failure to report damage to the Company’s / client’s or employee’s property | Dismissal |  |  |
| Using company property and/or equipment for personal gain without permission | Final Written Warning | Dismissal |  |
| Using company property and/or material to carry out private work in or outside the Company premises | Dismissal |  |  |
| Reckless or negligent driving and/or public road in Company’s vehicle and/or Company’s premises in private vehicle | Dismissal |  |  |
| Non-compliance with established Standard Operating Procedures / rules / policies | Final Written warning | Dismissal |  |
| Failure of a supervisor to maintain discipline | Written warning | Final Written warning | Dismissal |
| Misuse of position of authority | Final Written warning | Dismissal |  |
| Gross Negligence | Dismissal |  |  |
| Gross Misconduct | Dismissal |  |  |
| Smoking in an area declared a non-smoking zone | Final Written warning | Dismissal |  |
| **INTOXICATION** | | | |
| Reporting for work under the influence of intoxicating substance | Final Written warning | Dismissal |  |
| Absent from work due to being under the influence of intoxicating substance | Final Written warning | Dismissal |  |
| Being in possession of alcohol or drugs on Company’s premises or while on duty | Dismissal |  |  |
| Unlawful distribution of alcohol or drugs on client or the Company’s premises | Dismissal |  |  |
| Drinking alcohol or taking drugs on Company’s premises | Dismissal |  |  |
| Refusal to be tested for intoxicating substance (Insubordination) | Dismissal |  |  |
| **EMPLOYEE BEHAVIOUR** | | | |
| Use of abusive and/or derogatory and/or offensive language and signs and/or insolence. (This can also take place between an Employee and the Employer) | Dismissal / Final Written warning | Dismissal |  |
| Serious disrespect, being arrogant or rude to fellow employee or senior employee (management) | Final Written warning | Dismissal |  |
| Using racially abusive language | Final Written warning | Dismissal |  |
| Assault | Dismissal |  |  |
| Attempted assault | Final Written warning | Dismissal |  |
| Threat to employees and the Company | Dismissal |  |  |
| Fighting at the workplace | Dismissal |  |  |
| Provocation | Dismissal |  |  |
| Intimidation or allowing violence and/or promotion/incitement of labour unrest and/or hindering of operations | Dismissal |  |  |
| Use and/or possession of dangerous weapons at work and/or on Company’s premises | Dismissal |  |  |
| Riotous behaviour or disorderly conduct | Dismissal |  |  |
| Horseplay | Final Written Warning | Dismissal |  |
| Sexual harassment | Dismissal |  |  |
| Harassment or bullying | Final Written warning | Dismissal |  |
| Display of provocative / political slogans | Dismissal |  |  |
| Cause racial conflict between or amongst employees | Dismissal |  |  |
| Misconduct by misbehaving / misconducting outside working hours and/or outside workplace, which conduct impacts negatively on the image and/or reputation of the Company (bring the organisation name into disrepute) | Final Written warning | Dismissal |  |
| Bribery | Dismissal |  |  |
| Fraudulent conduct | Dismissal |  |  |
| Falsification of records / documents | Dismissal |  |  |
| Tampering with information (e.g. sicknote) | Dismissal |  |  |
| Theft / attempted theft and/or any other act of dishonesty | Dismissal |  |  |
| Unauthorised possession of Company’s property and/or property of fellow employee(s) | Dismissal |  |  |
| Deliberate misappropriation | Dismissal |  |  |
| Purposefully reporting for duty and then absenting him/herself with the view of defrauding the Company | Dismissal |  |  |
| Irregular clocking / being out of reach when working remotely | Written Warning | Final Written Warning | Dismissal |
| Breaching the business code of ethics | Dismissal |  |  |
| If found guilty by a competent court or admits to guilt to a criminal offence | Dismissal |  |  |
| Making a false statement or representation which relates to or ensues from his/her duties | Dismissal |  |  |
| Failure to disclose knowledge of fraud, falsification of records or bribery | Dismissal |  |  |
| Failure to carry out the Company’s health and safety policies and procedure | Dismissal |  |  |
| Unauthorised disclosure of confidential information or records | Dismissal |  |  |
| Running an illegal money-lending business | Written warning | Final Written warning | Dismissal |
| Accepting or giving gifts to a client which may influence actions | Final Written warning | Dismissal |  |
| Non-compliance to CHIETA’s Funding Policy and Procedure | Dismissal |  |  |

5.8.2 The chairperson and/or CEO may deviate from the guideline sanctions listed hereabove if the evidence or attitude of the employee supports a deviation.

# **ASSOCIATED POLICIES**

The Disciplinary Policy must be read in conjunction with the following:

• CHIETA Recruitment and Selection Policy

• CHIETA Learning and Development Policy

• CHIETA Grievance Policy and Procedure

• CHIETA Disciplinary Policy and Procedure

# **EFFECTIVE DATE, DATE OF APPROVAL VERSION CONTROL AND QUALITY ASSURANCE**

|  |
| --- |
| Approved by CHIETA Governing Board on: |
| 30 May 2024 |
| Effective Date: |
| 1 June 2024 |
| Next Review Date: |
| 1 June 2025 |
| Version Control: |
| 2 |
| Annual Quality Assurance |
| Executive Manager: Corporate Services |