



HUMAN RESOURCES POLICY AND PROCEDURE

MISCONDUCT POLICY AND PROCEDURE

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3. MISCONDUCT POLICY

3.1 PURPOSE

The purpose of this document is aimed at correcting unsatisfactory behaviour by an individual, or a group of employees. Correction and education are the primary aims.

3.2 STATEMENT

Settlers Park Retirement Village expects employees to use good judgement in performance of their duties and to maintain a satisfactory employee / employer relationship. Settlers Park Retirement Village expects its employees to do their best work in their positions, with integrity and a commitment to excellent service to the community within Settlers Park Retirement Village.

3.3 OBJECTIVES

The main objective of this policy is to serve as a guideline to the employees with reference to what will be deemed as irregular conduct. It spells out how Settlers Park Retirement Village will deal with any occurrences of misconduct and give guidelines as to the disciplinary measures which may be imposed. Settlers Park Retirement Village may in its discretion impose a lighter disciplinary measure than given in this guideline at any time, provided that such a decision is reasonable and consistent with the treatment of other employees under similar circumstances.

3.4 SCOPE

The Misconduct Policy applies to:

- 3.4.1 All permanent vacant positions within Settlers Park Retirement Village
- 3.4.2 Full-time and part-time employees (half day and two third day employees) who are regarded as permanent employees
- 3.4.3 Temporary employees who have applied for permanent vacancies within Settlers Park Retirement Village
- 3.4.4 All Volunteer positions within Settlers Park Retirement Village

3.5 ROLE AND RESPONSIBILITIES

- 3.5.1 _____ (Position) is responsible for drafting and updating the policy in line with The Basic Conditions Of employment Act 75 of 1997 and The Labour Relations Act 66 of 1995

- i. The Employer attempts to contact the employee in writing at the last known address;
- ii. The employee was duly notified in writing of the necessity to furnish his employer with his address and any changes of address

3.7.3.2 After the aforementioned five days has lapsed, a notice of desertion, to submit reasons for absence and a notice for a disciplinary hearing will be sent to the employee by registered mail to his / her last-known postal address, or such notice will be handed to the employee or to a person over the age of 16 years at the employee's last known address. In the event of the employee failing to submit acceptable reasons for his / her absence and / or fails to attend the hearing, the employee will be deemed to have deserted and his / her services be terminated. The employer will serve a notice on the employee as prescribed above, which will serve as notification that his / her services have been terminated on the said fifth day.

3.7.3.3 Should an employee report for duty within a reasonable time after his / her employment contract has been terminated due to desertion, the (Position) may consider re-employment if the employee can produce reasonable and valid reasons for his / her actions and with consideration for whether the position has been filled or not but Settlers Park Retirement Village will be under no obligation to re-employ him / her.

3.7.3.4 The employee will be allowed a period of one month to lodge with his employer a written appeal against his dismissal

3.7.4 DISCIPLINARY PROCEDURE

3.7.4.1 UNDERTAKING

Both parties agree that strict adherence to this procedure will ensure that discipline be maintained and that the employee is treated fairly.

3.7.4.2 OFFENCES AND PENALTIES

The schedule of offences and possible penalties is set out in Annexure "A" hereto and the written warning and final written warning referred to below is set out in Annexure "B". Annexure "C"-Notice is the notice to attend a disciplinary enquiry. Annexure "D" is the disciplinary report to be completed in every

event of disciplinary action. Annexure "E" is to be handed to the employee in event of appeal.

3.7.4.3 PROCEDURE

Should the employee commit serious misconduct as outlined in Annexure "A", the employee shall be given an Annexure "C" to appear before a disciplinary enquiry (committee), which will consist of the supervisor and Manager or person appointed by the Manager or the employer, who will act as chairperson. The Chairperson shall determine the date, time and place of the disciplinary enquiry. The employee shall have the right to be represented by a Shop Steward who is also employed by the organization, Union Representative or co-employee and to present evidence. Should the employee refuse or fail to appear before the disciplinary committee, the enquiry may proceed in the employee's absence. The employee will also have the right to appeal. The employee will first resort to appeal before opting for any external dispute resolution mechanism

i. COURSE OF ENQUIRY

During the inquiry, the employee will be confronted with the alleged transgression and he / she will be given the opportunity to state his / her side of the case. The chairperson will listen to and evaluate all the evidence and will come to a conclusion as to the employee's guilt based on the balance of probabilities.

The following steps will take place during the inquiry:

- The charge(s) will be read to the employee.
- The employee will be given the opportunity to plead on the charges, i.e. he / she will indicate whether he / she is guilty or innocent of the alleged misconduct.
- If the employee pleads guilty, no evidence is heard and the chairperson only hears the employee's opinion regarding an appropriate disciplinary measure, and studies the employee's employment record with the company, where after the disciplinary measure is imposed.
- If the employee pleads not guilty, the chairperson will call witnesses to state the employer's case.

- The employee will have the opportunity to cross-examine every witness.
- The employee will then have the opportunity to call his / her witnesses and to question them.
- The chairperson may question the employee's witnesses.
- After all the evidence has been heard, the chairperson will give the employee the opportunity to summarise his / her case and to give his / her opinion regarding the finding the chairperson should arrive at, considering all the evidence.
- The chairperson now summarises the evidence.
- The chairperson may now adjourn the inquiry to reach a decision regarding the employee's guilt or innocence.
- The chairperson now makes the decision regarding the employee's guilt or innocence known and gives reasons for the decision.
- The employee's service record is now presented to the chairperson.
- The employee is given the opportunity to give evidence in mitigation and to request the chairperson to impose a specific disciplinary measure.
- If applicable, the chairperson may hear the employee's supervisor on the question of an appropriate disciplinary measure.
- The chairperson may again adjourn the inquiry to decide on a disciplinary measure.
- The chairperson makes the disciplinary measure known and gives reasons for the decision.

The disciplinary measure is recorded on the appropriate form and the employee is requested to sign the form as acknowledgement of receipt. Should the employee refuse to sign, any witness present may sign as proof that the employee has heard the disciplinary measure.

The chairperson informs the employee of the right to refer this matter for further attention in terms of the

Labour Relations Act, 1995. The employee will have the right to appeal the outcome of the enquiry. The employee will first resort to an appeal before opting for any external dispute resolution mechanism.

ii. **WRITTEN WARNINGS**

If the employee commits non-serious misconduct as outlined in Annexure “A” that merits a written warning, the Chairperson of the disciplinary committee shall complete the disciplinary report. The employee as well as the members of the disciplinary committee shall sign the report and a copy thereof shall be handed to the employee. Each written warning shall be valid for a period of 6 (six) months, after which it will expire

iii. **FINAL WRITTEN WARNING**

Should the employee commit misconduct, which merits a final written warning, the same procedure as for a written warning, set out above, must be followed. The employee shall also be informed that a further contravention may result in demotion or dismissal. A final written warning will also be valid for 6 (six) months.

iv. **SUSPENSION AS SANCTION**

If an employee is convicted of serious misconduct, he / she may be suspended without pay for a maximum period of 1 (one) week. The employee consents not to be remunerated for the period of suspension.

v. **SUSPENSION IN ANTICIPATION OF A HEARING**

Should the employee commit a dismissible offence, the employer may suspend the employee's employment on full pay with immediate effect and the employee shall appear before a disciplinary committee as soon as possible.

vi. **DEMOTION**

Should the Chairperson upon completion of a disciplinary hearing decide that the employee should be demoted, the employee's salary/wages shall be adjusted accordingly with immediate effect.

3.7.4.4 APPEAL PROCEDURES

- i. In the event of the employee wishing to appeal against his/her conviction and/or the sanction imposed on him/her, as result of a disciplinary hearing, he/she must submit the grounds for appeal in writing within 7 days after being notified of the conviction and/or sanction, unless the sanction was a dismissal following a conviction after the desertion procedure has been followed.
- ii. The prescribed appeal application form (“Annexure E”) must be completed and submitted to the employer / manager / supervisor.
- iii. No formal appeal hearing shall be held, the employer shall submit the appeal application to an independent person, who was not involved in the initial hearing, who shall make a final decision based on the appeal application, the minutes of the disciplinary hearing, as well as other relevant facts
- iv. The result of the appeal application shall be communicated to the employee within a reasonable time period.
- v. If a disciplinary enquiry is held in the absence of the employee due to the employee's unavailability or refusal / failure to appear, the employer shall hand a copy of the disciplinary report to the employee or send a copy per registered post to his / her last known address.
- vi. This disciplinary procedure shall not apply in the case of a dismissal as a result of an unprotected strike or any other unprotected industrial action. In such event the employees (and their union, if applicable), shall be warned to return to work, failing which they may be dismissed summarily.

- vii. The employee agrees to undergo any medical examination or examination by means of apparatus especially designed for this purpose of testing under the influence of liquor or a narcotic substance in the event of any suspicion by the employer or supervisor of such employee being influenced or effected.
- viii. The employee accepts the admissibility of such testing and result of such testing, and the submission of such report or result of testing will be sufficient proof of the state of influencing of such an employee on time of testing.

3.7.4.5 VALIDITY OF WARNINGS

TYPE OF WARNING	PERIOD VALID
Verbal warning	Three (3) months
First written warning	Six (6) months
Final written warning	Nine (9) months

- i. If a valid warning exists against an employee when he / she is found guilty of an offence, the existing warning will be taken into account when the disciplinary measure is imposed. An existing warning may thus have an aggravating effect on a following disciplinary measure.
- ii. Dismissal with or without notice will be without payment of leave credits. No service certificate or letter of commendation will be issued.
- iii. Monthly paid employees will be given one (1) months' notice or one (1) month's salary will be paid in lieu of notice.
- iv. Dismissal on grounds of disability will take place with notice or with payment in lieu of notice. A letter of commendation and a service certificate will be issued.

3.7.4.6 SUSPENSION

- i. An employee may be suspended temporarily pending the conclusion of a disciplinary enquiry into a very serious transgression. Suspension will take place with retention of salary and is not a disciplinary measure. The purpose of suspension is exclusively to protect Settlers Park Retirement Village against any further damage that may be caused by the continued presence of such an employee in the workplace.
- ii. When suspension is considered, the Manager will provide the employee with the reasons for the contemplated action. The Manager will also give the employee an opportunity to furnish reasons why he / she is of the opinion that suspension is not warranted.
- iii. After having decided to suspend an employee in terms of this procedure, the manager will inform the employee of the reasons for this decision. The disciplinary enquiry will take place as soon as reasonably possible after suspension.

3.8 RECORD KEEPING

 (Position) will keep a written record of all disciplinary inquiries and such records will be kept on the employee's personal file. Any such records must be made available to the employee or his / her authorised representative on written request.

3.9 AMENDMENTS TO THIS PROCEDURE

This procedure may be amended by the Human Resources Department in consultation with all the affected employees, provided that the procedure is not in conflict with the provisions of the Labour Relations Act.

Annexure “A”

EMPLOYEE DISCIPLINARY CODE

In determining the disciplinary action to be taken the following guidelines will be applied:

<u>DISCIPLINARY CODE</u>					
Nature of offence	Category	First Offence	Second Offence	Third Offence	Fourth Offence
Guidelines with regards to action steps of Employer					
Absenteeism					
Leaving workplace without permission	Very Serious	Final Written Warning	Dismissal with or without notice		
Absent from work without good reason/leave or collective absence	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Absent from work for less than 4 consecutive days without permission or a valid reason	Very Serious	Final Written Warning	Dismissal with or without notice		
Absent from work for four or more consecutive days without permission or a valid reason	Very Serious	Dismissal with or without notice			
Failure to inform Employer of absence and expected date of return	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Absent from work station	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Leaving work place early without permission	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Poor Time Keeping					
Arriving late for work	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Failure to report for overtime duties	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Taking of longer rest periods (tea breaks, meal breaks) without permission	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Sleeping while on Duty					
Sleeping on duty – Security Staff	Very Serious	Final Written Warning	Dismissal with or without notice		
Sleeping on duty – Hotel Staff	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Insubordination					
Gross Insubordination	Very Serious	Dismissal with or without notice			
Failure to carry out a lawful and reasonable instruction	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Refusal to carry out a lawful and reasonable instruction	Very Serious	Final Written Warning	Dismissal with or without notice		
Deliberately ignoring the authority of the Employer	Very Serious	Final Written Warning	Dismissal with or without notice		

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Being rebellious, mutinous	Very Serious	Final Warning	Written	Dismissal with or without notice		
Unruly and defiant behaviour	Very Serious	Final Warning	Written	Dismissal with or without notice		
Adopting an insolent attitude towards any supervisor or Employer	Very Serious	Final Warning	Written	Dismissal with or without notice		
Insolence and Insulting Behaviour						
Insolence towards a colleague	Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Vulgar speech, abusive, obscene or racial language or behaviour directed at colleagues or guests	Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Abusive actions or gestures directed at colleagues or guests	Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Insolence towards guests	Very Serious	Final Warning	Written	Dismissal with or without notice		
Distribution of unauthorised or obscene publications	Less Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Uniform Offences						
All offences relating to incorrect / dirty uniforms, incorrect shoes, name badges, personal appearance and / or personal hygiene	Minor	Verbal Warning	Written Warning	Final Warning	Written	Dismissal
Alcohol & Drug Related Offences						
Positive alcohol test reading	Very Serious	Final Warning	Written	Dismissal with or without notice		
Being under the influence of alcohol	Very Serious	Final Warning	Written	Dismissal with or without notice		
Drinking or taking drugs whilst on duty	Very Serious	Final Warning	Written	Dismissal with or without notice		
Being under the influence of drugs	Very Serious	Final Warning	Written	Dismissal with or without notice		
Unauthorised possession of drugs or alcohol	Very Serious	Dismissal with or without notice				
Dealing in drugs or alcohol whilst at work	Very Serious	Dismissal with or without notice				
Inability to carry out duties	Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Reporting for duty whilst under the influence of alcohol or drugs	Serious	Written Warning	Final Warning	Written	Dismissal with notice	
Intimidation						
Intimidation of colleagues	Very Serious	Dismissal with or without notice				
Theft & Related Offences						
Unauthorised possession of company property	Very Serious	Dismissal with or without notice				

Unauthorised removal of company property	Very Serious	Dismissal with or without notice			
Dishonesty					
Dishonesty	Very Serious	Dismissal with or without notice			
Signing in for another employee	Very Serious	Dismissal with or without notice			
Falsifying of documents	Very Serious	Dismissal with or without notice			
Fraud	Very Serious	Dismissal with or without notice			
Forgery	Very Serious	Dismissal with or without notice			
Effecting false entries in the attendance or other registers	Very Serious	Final Written Warning	Dismissal with or without notice		
Submitting false documentation or information	Very Serious	Dismissal with or without notice			
Giving false evidence or making a false statement	Very Serious	Dismissal with or without notice			
Submitting a false medical certificate	Very Serious	Final Written Warning	Dismissal with or without notice		
Submitting false information to obtain Family Responsibility Leave	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Abuse of Sick Leave	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Behaviour not in the best interest of the company					
Behaviour which brings the company's name into disrepute	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Soliciting gifts, tips	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Breach of Confidentiality	Very Serious	Final Written Warning	Dismissal with or without notice		
Serious undermining of SPRV business, position or authority	Very Serious	Dismissal with or without notice			
Infliction or threatened infliction of bodily harm					
Fighting	Very Serious	Dismissal with or without notice			
Physical assault	Very Serious	Dismissal with or without notice			
Threat of physical assault	Very Serious	Final Written Warning	Dismissal with or without notice		
Offences relating to driving					
Negligent driving of company vehicles	Very Serious	Dismissal with or without notice			
Unauthorised conveying passengers / goods in company vehicles	Serious	Written Warning	Final Written Warning	Dismissal with notice	

Driving a company vehicle without a valid driver's licence	Very Serious	Dismissal with or without notice			
Driving a company vehicle whilst under the influence of alcohol	Very Serious	Dismissal with or without notice			
Transporting staff or guests whilst under the influence of alcohol	Very Serious	Dismissal with or without notice			
Unauthorised driving of a company vehicle	Very Serious	Final Written Warning	Dismissal with or without notice		
Offences relating to the company					
Negligent damaging or endangering of property of the company or any of its guests.	Very Serious	Final Written Warning	Dismissal with or without notice		
Intentional damaging or endangering of property of the company or any of its guests.	Very Serious	Dismissal with or without notice			
Unauthorised use of company property	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Unauthorised use of guest property	Very Serious	Final Written Warning	Dismissal with or without notice		
Unauthorised use and / or abuse of company telephones or internet facilities	Very Serious	Final Written Warning	Dismissal with or without notice		
Petty negligence (negligence which does not hold serious financial implications)	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Dangerous Weapons					
Unauthorised possession of firearms or dangerous weapons	Very Serious	Dismissal with or without notice			
Unauthorised use of firearms or dangerous weapons	Very Serious	Dismissal with or without notice			
Sexual Harassment					
Any form of sexual harassment	Very Serious	Dismissal with or without notice			
Poor Work Performance					
Poor or sub-standard work	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Indolent or slow work	Minor	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Neglect of Duty	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Failure to carry out assigned duties and responsibilities	Serious	Written Warning	Final Written Warning	Dismissal with notice	
Displaying discourtesy towards any person or guest	Serious	Verbal Warning	Written Warning	Final Written Warning	Dismissal with notice
Health & Safety Offences					

Failure to comply with Fire / Health / Safety regulations (including failure to report a fire, accident or emergency)	Very Serious	Final Written Warning	Dismissal with or without notice		
Intentional or reckless interference with health and safety measures	Very Serious	Final Written Warning	Dismissal with or without notice		
Intentional abuse of health and safety equipment	Very Serious	Final Written Warning	Dismissal with or without notice		

Notes:

- a) The above guidelines are intended to be applied flexibly and any mitigating or aggravating factors will influence the decision.
- b) Absenteeism is less than (3) three working days without permission or reasonable excuse.
- c) Absconding is (5) Five or more working days without notifying the company.
- d) The disciplinary procedure will be as per the requirements set out in the Labour Relations Act code of good practice

ANNEXURE “B”

WRITTEN DISCIPLINARY WARNING

DATE ISSUED:

EXPIRY DATE:

NAME (OF PERSON ISSUING THE WARNING):

DESIGNATION:

ISSUED TO:

POSITION:

DESCRIPTION OF OFFENCE:

You are hereby given a WARNING/FINAL WARNING (*delete which is not applicable*) in respect of this offence:

ACTION REQUIRED TO AVOID FURTHER DISCIPLINARY ACTION IS:

Should you fail to comply with the above or commit a further offence, further disciplinary action may be taken. If you wish to do so, you must submit a letter outlining the reasons for requesting an appeal within 5 days of receiving this letter.

Name of person issuing warning letter

Signature

Date

Signature of employee acknowledging receipt of this notice

Date

Or signed by two witnesses who have been given to the stated employee should the staff member refuse to sign this notice.

Witness 1: _____

Date: _____

Witness 2: _____

Date: _____

ANNEXURE “C”

NOTICE OF A DISCIPLINARY ENQUIRY

ISSUED TO:

POSITION:

Dear (employee name),

DISCIPLINARY ENQUIRY

1. You are required to attend a disciplinary enquiry on (date) at (time) at the (place);
2. The allegations against you are:
 - 2.1 (state allegations)
3. You have the right:
 - 3.1 to a formal enquiry.
 - 3.2 to be present at the enquiry.
 - 3.3 to be given time to prepare your case.
 - 3.4 to be given advance warning of the charges.
 - 3.5 to be advised of the allegations and charges.
 - 3.6 to be represented or assisted at the hearing by one person, a colleague of your choice or by a shop steward – in each case an employee of the Company, or trade union representative.
 - 3.7 to ask questions of any evidence produced or of statements by the witnesses.
 - 3.8 to call witnesses to testify on your behalf. Are your witnesses available?
 - 3.9 to use an interpreter. You may request another employee to act as interpreter. Do you need an interpreter? Y / N
 - 3.10 to appeal within five working days against any penalty which may be imposed and conveyed to you.
4. It is your responsibility to arrange for your witnesses and representation and to ensure that they attend the enquiry. An interpreter will be arranged for you if you so require, provided the **Chairman** is advised of your need for an interpreter **at least 2 (two) working days before** the date of the enquiry.
5. Should you fail to attend the enquiry without valid reason, or you obstruct the progress of the proceedings the chairman has the discretion to proceed in your absence, to make a finding, and impose a penalty, including that of summary dismissal.

Yours faithfully

(Name of Manager / Employer)

NOTICE TO ATTEND A DISCIPLINARY ENQUIRY

I, (employees name) _____ hereby acknowledge receipt of this notice and confirm that the contents and implications of **paragraph 1 – 4** hereof have been fully explained to me and I understand it.

I require and interpreter YES ☐ NO ☐

Employee's Signature: _____ **Date:** _____

Delete what is not applicable:

☐ **Employee refused to sign**

☐ **Employee signed**

Signature of Management: _____ **Date:** _____

ANNEXURE “D”

RECORD OF DISCIPLINARY ACTION

Employee Name	Employee Title
Manager Name	Manager Title
Today’s Date	Incident Date
Incident Time	Incident Location

Description of Incident

Witnesses to Incident:

Was this incident in violation of a company policy?

“Yes “No

If yes, specify which policy and how the incident violated it.

Names of those in attendance at current disciplinary action meeting:

What action will be taken against the employee?

Has the impropriety of the employee's actions been explained to the employee?

"Yes "No

Did the employee offer any explanation for the conduct? If so, what was it?

Corrective or disciplinary action to be taken:

Verbal ☐ Written ☐ Suspension ☐ Dismissal ☐ Other (explain below)

(If on probation, period begins _____ and ends _____)

Goals to be achieved:

Consequences for failure to improve performance or correct behaviour:

Prior discussions or warnings on this subject, whether oral or written:

Employee statement:

I acknowledge that I have read and understand the above information and consequences.

Employee Signature

Date

Supervisor Signature

Date

(Distribution: One copy to Employee, one copy to Supervisor and original to Personnel File.)

ANNEXURE “E”

APPEAL FORM

NAME OF EMPLOYEE:

DATE OF HEARING:

OUTCOME OF HEARING:

REASONS FOR SEEKING AN APPEAL

SIGNATURE OF REPRESENTATIVE

SIGNATURE OF EMPLOYEE

DATE