



Steps to follow when holding a disciplinary hearing

When holding a disciplinary hearing, it is vital that the employer follow the correct procedure and have sufficient proof. South Africa's labour market is highly regulated, which makes it crucial for employers to continuously comply with labour law. Clear rules and procedures in the workplace creates order and an environment receptive to growth.

Employers must remember that they have many rights in the workplace, including the right to:

- establish a fixed standard in terms of quality and quantity
- implement rules in the workplace
- apply discipline when these rules are broken

A disciplinary code is vital to ensure that there are clear rules and procedures in the workplace for employees to follow. When these rules are not followed, the employer can apply progressive discipline (in the form of warnings). In cases of severe misconduct, the employer can proceed directly to a disciplinary hearing.

Why must the employer hold a disciplinary hearing?

Holding a disciplinary hearing ensures that a fair procedure is followed and that there is substantive reason to dismiss the employee. The employer must take note to give the employee the opportunity to present his case and to call witnesses.

What are the steps to follow during a disciplinary hearing?

1. Issue the employee with a notice to attend a disciplinary hearing

On the notice the employer must state the date, time and place where the hearing will take place. The notice must also contain a detailed description of the charges brought against the employee, including the date, time and description of the incident(s). We advise employers to give the employee 48 hours' notice of the hearing, excluding weekends and public holidays, to allow the employee to prepare for the hearing.

2. Have the hearing on the proposed date and time

Even if the employee doesn't show up for the hearing, the hearing must still take place and should the employer present evidence to the chairperson. The chairperson must determine if the employee had sufficient notice of the hearing and if the employee is absent with a valid reason or not. At the end of the hearing the chairperson will make a recommendation to the employer to either dismiss the employee or not.

3. During the hearing the chairperson will ask the employee to plead guilty or not guilty to the charges brought against him

The employer presents his case by presenting evidence and calling witnesses. The employee is then allowed to present his case and cross examine the evidence presented by the employer. Thereafter the employer may cross examine the employee's evidence and witnesses. At the end of the disciplinary hearing, both parties will make closing arguments.

4. The chairperson must make a finding of guilty or not guilty

After making closing arguments, the employer will be asked to present aggravating factors and the employee mitigating factors. The chairperson will then determine the appropriate sanction. If the sanction is dismissal, the employee can be dismissed with immediate effect.

A disciplinary hearing can be formal or informal, but it is essential that the employer can prove that a hearing was held. Therefore we advise employers to have a formal hearing as the employer can then ensure that all the paperwork is in order if the matter proceeds to the CCMA.

The chairperson of the hearing should be an objective and impartial third party to the matter, preferably with knowledge of labour law. It is important to be able to prove at the CCMA that the chairperson wasn't biased.