

Statutory Instrument 15 of 2006.

Labour (National Employment Code of Conduct) Regulations, 2006

S.Is 15/2006, 232/2006.

ARRANGEMENT OF SECTIONS

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IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 101(9) of the Labour Act [Chapter 28:01] made the following regulations:—

1. Title

These regulations may be cited as the Labour (National Employment Code of Conduct) Regulations, 2006.

2. Interpretation

In these regulations—

“Act” means the Labour Act [Chapter 28:01];

“disciplinary committee” means a committee set up at a workplace/establishment composed of employer and employees representatives, to preside over and decide over disciplinary cases and/or worker grievancies;

“disciplinary authority” means a person or authority or such disciplinary committee dealing with disciplinary matters in an establishment or at a workplace;

“superior” means a person responsible for the supervision of staff of a section and includes such other superiors in the establishment or organisation;

“misconduct” means offences as given in section 4 of these regulations.

3. Objectives of the code

The objectives of the code shall, among other issues include the following—

- (a) to provide machinery for careful investigation of offences before corrective/disciplinary action can be administered; or
- (b) to ensure consistency and prompt action by the responsible/administering official or committee on issues concerning discipline; or
- (c) to ensure equating an offence to the resultant corrective action allowing for mitigation or aggravating factors; or
- (d) to provide guidelines on procedural and substantive fairness and justice in handling disciplinary matters at the workplace.

4. Misconduct

An employee commits a serious misconduct if he or she commits any of the following offences—

- (a) any act of conduct or omission inconsistent with the fulfilment of the express or implied conditions of his or her contract; or
- (b) wilful disobedience to a lawful order; or
- (c) wilful and unlawful destruction of the employer’s property; or
- (d) theft or fraud; or
- (e) absence from work for a period of five or more working days without leave or reasonable cause in a year; or

[Paragraph amended by s.i. 232 of 2006.]

- (f) gross incompetence or inefficiency in the performance of his or her work; or (g) habitual and substantial neglect of his or her duties; or
- (h) lack of a skill which the employee expressly or implied held himself or herself to possess.

5. Termination of contract of employment

No employer shall terminate a contract of employment with an employee unless—

- (a) the termination is done in terms of an employment code which is registered in terms of section 101(1) of the Act; or

[Paragraph amended by s.i. 232 of 2006.]

- (b) in the absence of the registered code of conduct mentioned in (a), the termination in terms of the National Employment Code of Conduct provided for under these regulations; or
- (c) the employer and employee mutually agree in writing to the termination of the contract; or
- (d) the employee was engaged for a period of fixed duration or for the performance of a specific task and the contract of employment is terminated on the expiry of such period or on the performance of such task.

[Paragraph amended by s.i. 232 of 2006.]

6. Disciplinary procedure

(1) Where an employer has good cause to believe that an employee has committed a misconduct mentioned in section 4, the employer may suspend such employee with or without pay and benefits and shall forthwith serve the employee with a letter of suspension with reasons and grounds of suspension.

(2) Upon serving the employee with the suspension letter in terms of subsection (1), the employer shall, within 14 working days investigate the matter and conduct a hearing into the alleged misconduct of the employee and, may, according to the circumstances of the case—

- (a) serve a notice, in writing, on the employee concerned terminating his or her contract or employment, if the grounds for his or her suspension are proved to his or her satisfaction; or
- (b) serve a notice, in writing, on the employee concerned removing the suspension and reinstating such employee if the grounds for suspension are not proved.

(3) A determination or order served in terms of subsection 2(b) shall provide for backpay and benefits from the time of the summary suspension.

(4) At a hearing in terms of subsection (2), an employee shall have the right to—

- (a) at least three working days notice of the proceedings against him or her and the charge he or she is facing;
- (b) appear in person before the employer or the employer's representative or disciplinary authority as the case may be and be represented by either a fellow employee, worker's committee member, trade union official/officer or a legal practitioner;
- (c) call witnesses and have them cross-examined;
- (d) be informed of the reasons for a decision;
- (e) address in mitigation before the ultimate penalty is imposed.

7. Penalties

(1) In general, disciplinary action should, in the first instance, be educational and then corrective. Punitive action should only be taken when the said earlier steps have proved ineffective.

(2) As far as is possible similar offences committed in similar circumstances should be treated equitably through the award of similar penalties allowing for mitigating and aggravating circumstances.

(3) The dismissal penalty to be imposed for an offence in section 4 is not obligatory but is meant as a guide to employers and an employer may, at his or her discretion apply a lesser penalty for example, a written warning.

(4) For offences which do not warrant dismissal an employer may issue a verbal or written warning as the case may be.

8. Appeals

[Heading substituted by s.i. 232 of 2006.]

(1) Depending on the size and circumstances of an establishment or a workplace, an employer may appoint a person in his or her employment as an Appeals Officer or with the agreement of his or her employees or worker representatives, an Appeals Committee to preside over and decide on appeals.

(2) Any internal appeal structures shall be limited to not more than two appeals authorities.

[Subsection amended by s.i. 232 of 2006.]

(3) A person or party who is aggrieved by a decision made in terms of section (2) may, in writing, note an appeal within seven working days with the Appeals Officer or Appeals Committee.

(4) The Appeals Officer or Appeals Committee, as the case may be, may call for a formal hearing to hear the appeal or decide from the record submitted.

[Subsection amended by s.i. 232 of 2006.]

(5) An Appeals Officer or Appeals Committee, as the case may be, shall have 14 working days from the date of receipt of the appeal, to dispose of the appeal.

[Subsection substituted mended by s.i. 232 of 2006.]

(6) A person or party who is aggrieved by a decision or manner in which an appeal is handled by his or her employer or the Appeals Officer or Appeals Committee, as the case may be, may refer the case to a Labour Officer or an Employment Council Agent, as the case may be, within seven working days or receipt of such decision.

[Subsection substituted mended by s.i. 232 of 2006.]

(7) The Labour Officer or an Employment Council Agent to whom a case has been so referred shall process the case as provided for under section 93 of the Act.

[Subsection amended by s.i. 232 of 2006.]

Repeal

The Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, 2003, published in Statutory Instrument 130 of 2003, are repealed.