

## PUBLIC SERVICE STAFF RULES

### MISCONDUCT AND DISCIPLINARY ACTION

#### 1. PURPOSE

The purpose of charging a staff member with misconduct and the ensuing disciplinary action is to maintain a good standard of work and conduct and the proper behaviour required from a staff member as well as to ensure that the rules and regulations of the public service are complied with.

#### 2. LEGAL PROVISIONS

Sections 25 to 29 of the Public Service Act, 1995 (Act 13 of 1995) (hereinafter referred to as the Act) defines misconduct and the procedure to follow when a staff member makes himself or herself guilty of misconduct.

#### 3. INTRODUCTION

3.1 While the Act defines misconduct and prescribes the procedures offices, ministries or agencies should follow when dealing with charges of misconduct, the Staff Rules on Misconduct and Disciplinary Action \* elaborate on certain matters which are not prescribed in the Act and should be used as a guideline by offices, ministries or agencies when a staff member makes himself or herself guilty of misconduct.

3.2 The contents of this chapter must, however, be read in conjunction with sections 25 to 29 of the Act in order to obtain an overall view on how to deal with charges of misconduct.

3.3 In cases where the staff member concerned was appointed on probation suspension should not be considered at all as a probationary appointment is a conditional appointment subject to the staff member's display of diligence and satisfactory conduct. Any form of misconduct during this period should therefore be conclusive reason to terminate the probationary appointment after the staff member concerned has been granted the opportunity to be heard (*audi alterum partem* rule). (Refer to PSSC BV: Filling of posts: On Probation).

#### 4. GUIDELINES IN DEALING WITH ACTIONS THAT CONSTITUTE MISCONDUCT

4.1 The following offences can be used as guidelines when dealing with actions that constitute misconduct :

##### 4.1.1 Major Offences

##### (a) Examples Of Major Offences

- (i) Theft.
- (ii) Fraud.

- (iii) Bribery.
- (iv) Malicious damage to State property.
- (v) In unauthorised possession of State property.
- (vi) Driving an official vehicle under the influence of stupefying drugs/liquor.
- (vii) Intimidation.
- (viii) Incitement.
- (ix) Perjury.
- (x) Falsification of records/documents (This includes medical certificates and educational qualifications).
- (xi) Assault.
- (xii) Making false statements when applying for employment or undergoing a medical examination.
- (xiii) Disobeys or disregards work-related orders.
- (xiv) Inebriety or drug abuse where the lives or property of others are endangered.
- (xv) Sexual harassment.
- (xvi) Revealing confidential information to unauthorised persons.
- (xvii) Gross discourteousness.
- (xviii) Racism.
- (xix) Tribalism.
- (xx) Nepotism.

Note If a staff member is caught red-handed with stolen goods or is suspected of a criminal offence, the offence must be reported to the Namibian Police, as well as the Auditor-General in terms of the relevant Treasury Instructions.

(b) Possible Action To Be Considered

First Offence : Charge with misconduct

4.1.2 Serious Offences

(a) Examples Of Serious Offences

- (i) Illegal striking in terms of the Labour Act.
- (ii) Flagrant disregard of safety standards.
- (iii) Misuse of State property for private purposes.
- (iv) Under the influence of intoxicating liquor or stupefying drugs during official hours of duty.
- (v) Abusing of sick leave.
- (vi) Sleeping on duty.
- (vii) Repeated absence from the workplace while on duty.
- (viii) Repeated unauthorised and/or uncommunicated absenteeism.
- (ix) Physical fighting.
- (x) Using abusive language.

- (xi) Failure to report an accident or damage.
- (xii) Driving State vehicles without authority.
- (xiii) Reckless driving of State vehicles.
- (xiv) Insolence.
- (xv) Gross negligence or indolence.

(b) Possible Action To Be Considered

- (i) First Offence : First written warning
- (ii) Second Offence : Final written warning
- (iii) Third Offence : Charge with misconduct

4.1.3 Minor Offences

(a) Examples Of Minor Offences

- (i) Poor time control.
- (ii) Horseplay.
- (iii) Improper conduct
- (iv) Carelessness.
- (v) Not reporting for overtime without a reasonable excuse.
- (vi) Not dressed in a clean, decent and tidy manner.

(b) Possible Action To Be Considered

- (i) First Offence : Verbal warning
- (ii) Second Offence : First written warning
- (iii) Third Offence : Final written warning
- (iv) Fourth Offence : Charge with misconduct

4.1.4 The examples of misconduct and the possible action to be considered merely serve as guidelines and depending on the seriousness of the offence and the circumstances different action can be taken e.g. immediately charging a staff member with misconduct without a prior final warning.

4.2 Warnings With Regard To Misconduct

4.2.1 Verbal Warning

- (a) Verbal warnings may be initiated by a supervisor if he or she is of the opinion that the staff member's behaviour is unsatisfactory, but does not warrant a written warning or more stringent disciplinary action.
- (b) A verbal warning is normally valid for a period of three

months.

#### 4.2.2 Written Warning

- (a) Written warnings can be given by the supervisor to the staff member when verbal warnings for minor offences were unsuccessful or for a first serious offence.
- (b) A written warning is normally valid for a period of six months.

#### 4.2.3 Severe Written Warning

- (a) A severe written warning can be issued by the supervisor to the staff member if the first written warnings were unsuccessful.
- (b) A severe written warning is normally valid for a period of nine months.

#### 4.2.4 Final Written Warning

- (a) A final written warning can be requested by the supervisor and will be issued by the personnel officer under the signature of the permanent secretary concerned. This must be done after an investigation by the supervisor.
- (b) Final written warnings can be given for major offences or for additional offences by staff members to whom previous written warnings were issued.
- (c) A final written warning is normally valid for a period of twelve months.

Note: A workplace representative must be present when verbal or written warnings are given to staff members.

### 5. SUSPENSION OF STAFF MEMBERS

- 5.1 Section 26(2)(a) to (d) of the Act fully describes the procedure to follow for the suspension of staff members.
- 5.2 Suspension is a traumatic experience and must not be effected lightly. Furthermore where the suspension involves full remuneration, it is an expensive action. Suspension and the duration thereof must therefore be restricted to the minimum.
- 5.3 Suspension can often be avoided by temporarily transferring a staff member elsewhere in the office, ministry or agency in terms of section 31(1) of the Act.

- 5.4 The period of suspension can be restricted by -
- 5.4.1 allowing a staff member to resume duty immediately after the need for suspension expires; and/or
  - 5.4.2 expediting the investigation and fixing specific dates for an inquiry.
- 5.5 Suspension should under no circumstances be utilised as a punitive measure in itself as this will constitute punishment before the case has been investigated and the person heard. \*

## 6. FORMULATING OF CHARGES OF MISCONDUCT

### 6.1 Preliminary Investigation By The Supervisor

- 6.1.1 An investigation by the supervisor is normally initiated after -
- (a) a major or serious offence has been committed by a staff member; or
  - (b) an accumulation of minor offences by a staff member;
- 6.1.2 When an investigation into an alleged misconduct is conducted the staff member concerned as well as witnesses should be interviewed to *inter alia* obtain answers to the following questions:
- (a) How did it happen?
  - (b) When did it happen?
  - (c) Where did it happen?
  - (d) What was the consequence of the alleged misconduct?
  - (e) Who was involved?
  - (f) Why did it happen?
  - (g) Who witnessed it?
  - (h) What is the explanation for the incident?

### 6.2 Formulating Of Actual Charge

- 6.2.1 A staff member may only be charged with misconduct in terms of the provisions of section 26(1) read in conjunction with section 25 of the Act.
- 6.2.2 If the misconduct with which a staff member is charged, constitutes an offence of which he or she has been convicted

by a court of law, a certified copy of the record of his or her trial and conviction by that court (Annexure A) shall, upon the identification of the staff member as the person referred to in the record, be conclusive proof -

- (a) of the commission by him or her of that offence; and
- (b) to the disciplinary committee that he or she is guilty of misconduct on account of the commission of that offence,

unless the conviction has been set aside by a superior court.

- 6.2.3 The charge must be served on the staff member charged (Annexure B) together with the charge sheet. ( Annexure C or D).

7. ADMISSION OF GUILT BY STAFF MEMBER OR FAILURE TO COMPLY WITH DIRECTIONS

- 7.1 In terms of section 26(4) of the Act, in the case where a staff member charged admits the charge or fails to comply with the direction in the charge, he or she is deemed to have been found guilty of misconduct as charged.
- 7.2 If the staff member is deemed to have been found guilty as referred to in paragraph 7.1 the permanent secretary concerned may refer the case to a disciplinary committee for a recommendation of punitive measures to be taken or he or she may take action in terms of section 26(12)(a)(i) or (ii) of the Act or propose more stringent disciplinary action to the Prime Minister who may, on the recommendation of the Commission, take action in terms of section 26(12)(a)(iii), (iv) or (v) of the Act.

8. DENIAL OF GUILT BY A STAFF MEMBER

- 8.1 If a staff member denies the charge the permanent secretary concerned must establish a disciplinary committee in terms section 26(5) of the Act. (Annexure E)
- 8.2 In order for a staff member to prepare for the inquiry he or she must be given reasonable notice in writing. (Annexure F).

9. APPOINTMENT OF THE DISCIPLINARY COMMITTEE

- 9.1 The appointment of the disciplinary committee is made in terms of section 26(5) of the Act.
- 9.2 Roles And Functions Of Persons Involved In A Disciplinary Inquiry
- 9.2.1 The roles and functions of persons who are involved in disciplinary inquiries are as follows: