



**UNIVERSITEIT VAN DIE VRYSTAAT  
UNIVERSITY OF THE FREE STATE  
YUNIVESITHI YA FREISTATA**

# **DISCIPLINARY POLICY AND PROCEDURE**

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## 1. DISCIPLINARY PROCEDURE VS GRIEVANCE PROCEDURE

- 1.1 The main difference between a disciplinary procedure and a grievance procedure lies in the direction and level of handling. Discipline is applied exclusively from a higher to a lower level. A lower level can never apply discipline to a higher level. On the other hand, a grievance is laid at a lower level and handled by a higher level. A grievance can therefore, for example, be laid against working conditions or against unfair practices by higher-level supervisors.
- 1.2 There is therefore a clear difference between a disciplinary procedure and a grievance procedure. Although the line between the two procedures sometimes becomes vague in the case of disciplinary offences, it is still important that the two processes should be distinguished and remain distinguishable. Both serve a specific purpose and fulfil a specific role in the handling of problems in any organisation. The absence of a grievance procedure would leave a hiatus with regard to the handling of many problems that are not related to disciplinary offences in any way.
- 1.3 The laying of a grievance in terms of a grievance procedure could result in disciplinary action against a person if the grievance forms the basis of a disciplinary offence. **It is therefore possible to move from a grievance procedure to a disciplinary procedure.** The statements made during the grievance procedure can be used during the disciplinary procedure and therefore do not have to be made again. It is, however, important that the rights of the accused be acknowledged (see par 5.3.3) and that the disciplinary procedure be handled in terms of paragraph 5 as contained in this document.
- 1.4 However, the laying of a grievance does not necessarily result in disciplinary steps. Dissatisfaction with working conditions, e.g. workload, remuneration, deductions, equipment, office space, unfair treatment by superiors, etc. are grievances that should be addressed in terms of a grievance procedure. In this case discipline is not a factor at all, and the grievance procedure is the correct procedure for addressing and solving the problem.

## 2. AIM AND SCOPE OF THE DISCIPLINARY POLICY AND PROCEDURE

- 2.1 The aim of the disciplinary policy and procedure is to provide persons responsible for maintaining discipline at the UFS with the necessary guidelines to enable them to apply the policy and procedures in practice. This will also give legal security to employees and trade unions. Existing disciplinary policy documents of the UFS, as well as trade union agreements, were taken into account and incorporated where necessary. This policy replaces all previous policies and procedures in this regard.
- 2.2 Procedures contained in paragraphs 6 and 7 of this document must be used for the investigation of situations (1) in case of absence without permission/leave, or (2) where a person is suspected of being under the influence of alcohol or drugs while on duty, or where (3) poor health leads to an inability on the part of an employee to do his/her work, or (4) where an employee is accused of poor work

performance or incompetence.

- 2.3 Any behaviour or omission on the part of an employee that is unacceptable or in conflict with the rules and regulations of the UFS, or brings the image and functioning of the UFS in disrepute can be regarded as justification for the institution of remedial or disciplinary steps and action against the employee.

### **3. UNDERLYING PRINCIPLES OF DISCIPLINARY ACTION**

Regardless of the nature and seriousness of any complaint, improper behaviour, action or omission, it is the standpoint of the UFS that the following underlying principles are fundamental to the handling and settlement of disciplinary action at all times:

- 3.1 The typical uniqueness of the UFS as a higher education institution, with excellence as broader motive, must be honoured and promoted at all times.
- 3.2 The UFS supports the progressive approach to discipline as contained in the Labour Relations Act (Act 66 of 1995), and recognises that the primary aim of disciplinary action must be to correct the actions of employees and to maintain standards of performance rather than to punish. In addition, the UFS hereby gives recognition to the full set of rights of an employee in terms of the Labour Relations Act (Act 66 of 1995), the Constitution, and the Employment Equity Act (Act 55 of 1998).
- 3.3 The rights of all the parties involved must be respected at all times and the principle of equal treatment and non-discrimination must be applied uniformly.  
This includes:
- the right of the UFS to reprove employees who act contrary to the disciplinary code of the UFS;
  - the rights of defendants to be treated fairly and equitably;
  - the right of all parties to be given the opportunity to present their case (*audi et alteram partem*); and
  - that there will be no prejudice or conflict of interest in the handling of the matter.
- 3.4 It is also the duty of the UFS to ensure that all employees are aware of the contents of the disciplinary policy, procedures and code and to ensure that it is accessible to all employees by placing it on the UFS intranet and making it available at the Labour Relations Division.
- 3.5 The UFS attaches great importance to the confidentiality of all proceedings and the maintaining of confidentiality by all persons involved in any of the proceedings, irrespective of the context (see par 5.4.1).
- 3.6 The general principle for the taking of disciplinary action of any nature is that an employee's direct supervisor/head (i.e. the immediate head the person reports to) is responsible for the maintaining of discipline and the investigation of any complaints.

3.7 The UFS will not unilaterally deviate from the procedure.

## 4. TYPES OF DISCIPLINARY ACTION

- In taking disciplinary action, the approach of the UFS is one of corrective or progressive rather than retributive discipline. Consequently there are different types of disciplinary action.
- The seriousness of the offence (see Disciplinary Code) will determine the type of disciplinary action chosen. Serious offences, for example theft, fraud and assault, can therefore lead to dismissal without all the other steps, such as verbal warnings, having to be taken first.

### 4.1 INFORMAL DISCIPLINARY ACTION

- Informal disciplinary action involves remedial steps aimed at correcting the employee's behaviour to the desired standard being prescribed for an employee without formal steps being taken.
- Among others, it could include training (informal and/or formal), corrective counselling and a verbal warning. In such a case formal disciplinary action is therefore not instituted.

#### 4.1.1 Corrective counselling

- Corrective counselling is the first type of disciplinary action and is aimed at correcting or improving unsatisfactory behaviour on the part of an employee. Corrective counselling is handled by the direct supervisor/head of the accused.
- Corrective counselling involves the following:
  - Make sure that the employee is aware of the offence/misconduct/poor performance that justifies disciplinary action.
  - Obtain the reasons for the offence/misconduct from the employee
  - Reach an agreement on the action to be taken to solve the problem.
  - Take the necessary action steps for implementing the action or development plan agreed upon.
  - Keep a record of all corrective counselling/action.
- Although corrective counselling usually comprises informal disciplinary action, its nature changes to formal disciplinary action if it is ordered after a disciplinary hearing (see par 5.4.3).
- Corrective counselling can also be regarded as the first step in the formal handling of misbehaviour/poor work performance.

#### 4.1.2 Verbal warnings

- If the misbehaviour is of a minor nature, the employee concerned can be warned verbally by his/her direct supervisor/head, after the offence/misconduct has been discussed with the employee.
- Record must be kept of the verbal warning as an **informal warning** to the employee, and the verbal warning may be taken into account in further disciplinary action resulting from similar offences.

**Such a warning remains valid for three (3) months.**

## 4.2 FORMAL DISCIPLINARY ACTION

- Informal disciplinary action also involves steps that are prescribed for an employee and which are aimed at correcting the employee's behaviour to the desired standard. The disciplinary action is therefore of a considerably more formal and serious nature than in the case of informal action. Formal disciplinary action includes written warnings, final written warnings, temporary suspension with payment, demotion and dismissal (see Disciplinary Code).

### 4.2.1 Written warnings

- Should the verbal warning fail or should the employee's behaviour require more serious action than a mere verbal warning, the employee's direct supervisor/head should institute **formal disciplinary steps** against the employee and notify the employee of a disciplinary hearing to be held in terms of paragraph 5.
- Should the presiding officer find the accused employee guilty of the offence, the employee can be given a **(1) written warning** or **(2) final written warning**. The seriousness of the offence and/or the person's disciplinary record will play a role in determining whether it will be (1) or (2).
- Record must be kept of a (1) written warning and (2) final written warning to the employee, and both can be taken into account in further disciplinary action resulting from similar offences.
- The accused employee has the right to to make representations, within five (5) working days of the outcome of the disciplinary hearing, to the Director: Human Resources for revision of the sanction.

**A written warning remains valid for six (6) months, and**

**A final written warning remains valid for twelve (12) months.**

### 4.2.2 Demotion

- In some circumstances demotion can also be applied as a type of disciplinary action. This type of disciplinary action will be taken mainly in cases of (1) incapacity (poor health or injury - see par 7.1) or (2) inability/incompetence (poor work performance - see par 7.2).
- Demotion must be applied in terms of the stipulations of paragraphs 5 and 7.
- The accused employee has the right to to make representations, within five (5) working days of the outcome of the disciplinary hearing, to the Director: Human Resources for revision of the sanction.

### 4.2.3 Dismissal

- Should the nature and seriousness of the offence/misbehaviour require it, or should the employee commit the same or a similar offence/misconduct within twelve (12) months of the date of the final written warning, the employee can be dismissed after having been found guilty in the course of formal disciplinary action.
- The underlying principle of remediation must, however, still be taken into account and dismissal should only be regarded as the ultimate type of disciplinary action.
- The dismissal of the accused employee takes immediate effect on the date of the verdict of the presiding officer. Any dismissal is referred to the Director: Human Resources for confirmation, but such referral does not influence the validity of the dismissal.
- The accused has the right to appeal against his/her dismissal in accordance with the appeal procedure as described in paragraph 5.5.3.

### 4.2.4 Criminal or civil proceedings

- The fact that an employee was found guilty or not guilty in the course of criminal or civil proceedings will not preclude the UFS taking further disciplinary steps against the employee concerned.

## 5. DISCIPLINARY PROCESS

**NOTE:** The accused employee may make written presentations to the Director: Human Resources to request extension of the time limits stipulated in paragraphs 4, 5, 6, 7 and 8 of this document.

### 5.1 THE INVESTIGATION PROCESS

#### 5.1.1 The lodging of a complaint

- A complaint can be lodged against any employee by any organisation or person, whether an employee or not. The employee/staff member or organisation that lodged the complaint must refer the complaint to the direct supervisor/head of the accused employee, if the name of the person is known. Should the identity of the employee and/or the employee's direct supervisor/head not be known, the complaint must be referred in writing to the Manager: Labour Relations (Department of Human Resources).
- On receipt of any complaint, the Manager: Labour Relations must immediately inform the employee and his/her direct supervisor/head of the complaint received, after which the direct supervisor/head must initiate the disciplinary process.
- In exceptional cases and depending on circumstances, the complaint can be lodged directly with the Manager: Labour Relations or the Director: Human Resources.

### **5.1.2 The preliminary investigation**

- The preliminary investigation is an important step and must be taken with great care for it determines the subsequent steps that will be taken in terms of the procedure.
- If an employee is accused of a disciplinary offence, his/her direct supervisor/head must proceed with an investigation into the nature and extent of the alleged offence by means of consultation with the employee and possible witnesses.
- The purpose of the preliminary investigation is to determine the exact nature of the complaint, to what extent there are grounds for the complaint, the seriousness of the accusation and what type of action is required to put the matter right.
- During the preliminary investigation there is as yet no assumption of transgression or guilt. The intention is one of gathering facts in an informal manner with a view to establishing the facts on which the complaint is based

### **5.2 INFORMAL DISCIPLINARY ACTION**

- Should the direct supervisor/head, following a consultation as described above, be of the opinion that there is sufficient evidence that the employee may be guilty, the direct supervisor/head must:
  - explain the standard of behaviour to which the employee must conform to him/her;
  - explain the possible consequences of further offences to him/her;
  - provide the employee with counselling, advice, guidance and, if necessary, training in an attempt to prevent the offence from being repeated.
- Should he/she be of the opinion that the problem can be solved without more ado, the direct supervisor/head may solve the problem in co-operation with the accused employee, and with the knowledge of the complainant. Among others, this could include training (informal and/or formal), corrective counselling and a verbal warning. In such a case formal disciplinary action is therefore not instituted.
- None the less, the direct supervisor/head must keep a record of any remedial action or informal solution of the problem. A copy must be sent to the Manager: Labour Relations for record-keeping purposes.
- However, should it not be possible to solve the problem in an informal manner or on a voluntary basis, or should the findings of the preliminary investigation be disputed, or should the nature of the complaint demand it (see Disciplinary Code), formal disciplinary action must be instituted.



## **5.3 FORMAL DISCIPLINARY ACTION**

### **5.3.1 Institution of formal disciplinary action**

- In cases of more serious (see Disciplinary Code) or repeated offences, or where no solution to the problem could be obtained by means of an informal process during the preliminary investigation, the direct supervisor/head may, after consultation with his/her supervisor/head, decide to refer the matter to the Manager: Labour Relations for formal disciplinary action. The Manager: Labour Relations will then facilitate the disciplinary process in co-operation with the direct supervisor/head.
- The charges must be formulated in writing and handed to the employee concerned.
- Should the accused employee refuse to receive the notice of the disciplinary hearing, the contents thereof must be read to the accused employee and his/her refusal to receive the charge sheet must be recorded on the notice.
- The charge sheet must set out the essential elements of the offence/misconduct/poor performance or incompetence of which the employee is accused and the charge sheet must be accompanied by an exposition of the employee's rights in respect of the disciplinary procedure (see par 5 – Disciplinary Documentation/Forms – Appendix D).

### **5.3.2 Suspension with benefits**

If necessary, and with the consent of the Rector, the Director: Human Resources can, for the protection of witnesses, to prevent interference with the investigation of the prosecutor, or to prevent disruption in the workplace, suspend the accused employee with full benefits and salary, pending the outcome of the disciplinary hearing. The duration of the suspension should not be longer than twenty five (25) working days and if the suspension is extended valid reasons for the extension should be supplied.

### **5.3.3 Rights of the accused employee**

The accused employee has the following rights with regard to the complaints lodged against him/her and such rights must be expounded on the charge sheet:

- The right to hear and receive the complaint(s) in writing.
- The right to object against the presiding officer within 24 hours of receiving the charge sheet.
- The right to state his/her case in defence against the accusation(s).
- The right to receive and study any document submitted as evidence beforehand. The list of witnesses should preferably be available 48 hours prior to the hearing.
- The right of having his/her case finalised within a reasonable time.
- The right to have an interpreter present if necessary to interpret the proceedings in a language he/she understands. The request for an interpreter must be submitted to the presiding officer at least 24 hours

before the start of the disciplinary hearing.

- The right to representation by an internal trade union representative or a fellow employee.
- The right to prepare to respond to the charge(s) and to receive timely notice of a disciplinary hearing (at least 72 hours before the start of the disciplinary investigation).
- The right to pose questions to witnesses via the presiding officer.
- The right to a verdict within a reasonable period of time (within 7 working days).
- The right to present extenuating circumstances prior to a decision being made regarding an appropriate sanction.
- The right to be notified of any sanction.
- The right to refer a dispute about the verdict, in accordance with the agreed-upon procedures for settling a dispute, to either
  - (1) the Commission for Conciliation, Mediation and Arbitration, or
  - (2) private arbitration in terms of a collective agreement.
- The right to protection against victimisation that may result from any statements and/or assertion or other action during a disciplinary hearing as well as from membership of any organisation or trade union.

## **5.4 DISCIPLINARY HEARING**

### **5.4.1 Notice and recordkeeping**

- The Manager: Labour Relations must determine the time, place and date of the disciplinary hearing, taking the stipulations of paragraph 8.3 into account. The employee must receive at least seventy-two (72) hours' notice of the holding of the disciplinary hearing. The Manager: Labour Relations assists the presiding officer in respect of the administration of the hearing.
- It is the responsibility of the accused employee to select his/her representative and to notify him/her of the time, date and venue of the disciplinary hearing.
- The disciplinary hearing must take place in camera, and a full record of the proceedings must be kept.
  - Record must be kept in the form of tape recordings of the hearing, which recordings must be preserved for two (2) years.
  - The presiding officer must prepare a complete record of the disciplinary hearing (see Appendix E – Disciplinary Documentation/Forms).
  - The Manager: Labour Relations must appoint a person to keep comprehensive minutes of the proceedings.
- All persons involved in the disciplinary proceedings must sign a statement of confidentiality, which statement will be filed in the personnel file of the accused employee (see Appendix L – Disciplinary Documentation/Forms).
- All documentation with regard to the formal disciplinary steps taken against an employee will be filed in the employee's personnel file.

#### 5.4.2 Parties present at the hearing

**The formal disciplinary hearing is handled by an independent presiding officer, appointed from a panel of presiding officers.**

- **The panel of presiding officers is appointed by the EM (Executive Management) and the members of the panel need not necessarily be UFS employees, but must possess the necessary knowledge and experience of labour legislation.**
- **The presiding officer for every disciplinary hearing is appointed by the Manager: Labour Relations in consultation with the Director: Human Resources.**
- The following parties must be present at the hearing:
  - The presiding officer
  - The line manager (direct supervisor of the complainant) should the nature/complexity justify it as determined by the Director: Human Resources
  - The Manager: Labour Relations (or his/her representative)
  - The complainant (usually the accused employee's direct supervisor/head)
  - The accused employee
  - The accused's representative, if any (e.g. trade union representative, fellow employee)
  - An interpreter (if necessary and if requested by the employee)
  - The required witnesses
  - Any other person recommended by the presiding officer.
- The accused employee's absence, without an acceptable reason, from a disciplinary hearing does not render the findings of the investigation invalid and a disciplinary hearing may proceed in the absence of an employee if the employee does not have an acceptable reason for being absent from the disciplinary hearing.

#### 5.4.3 Procedure

**The process followed by the presiding officer shall be an inquisitory process.**

- After the charge has been put to the accused employee and he/she has been informed of his/her rights, the presiding officer must ask the employee to indicate:
  - whether the accused pleads **GUILTY** or **NOT GUILTY**.
- If the accused pleads **GUILTY**, the presiding officer can find the accused guilty and, after considering extenuating/ aggravating circumstances, as well as taking the person's disciplinary record into account in consultation with the line manager, take the necessary disciplinary action (see Disciplinary Code).
- If the accused pleads **NOT GUILTY**:

- It will be noted as such and the presiding officer will grant the accused the opportunity to explain his/her plea of not guilty.
- the presiding officer can hear the evidence. The evidence of the complainant is heard first and, after that, the evidence of the accused.
- the presiding officer asks any question he/she may find necessary in order to determine the facts and merits of the case. Questions to witnesses can be asked by any party via the presiding officer. The presiding officer will decide whether the questions are relevant or not, and whether the questions must be allowed or not.
- the accused is entitled to adduce evidence and call witnesses to testify on his/her behalf.
- the presiding officer, having heard the evidence of the witnesses and arguments by the complainant and the accused, announces his/her verdict of **GUILTY/NOT GUILTY**. The presiding officer must base his/her verdict regarding the guilt or innocence of the accused on a **balance of probabilities**.
- if the presiding officer finds the accused **GUILTY**, relevant evidence is presented by the complainant and accused regarding

(1) **extenuating circumstance; and**  
 (3) **aggravating circumstances; and**  
 (3) **the previous disciplinary record** is considered; after which  
 (4) the appropriate disciplinary action/sanction is taken/applied by the presiding officer.

The presiding officer:

- may rule that the employee concerned must receive **corrective counselling** (In this case counselling therefore constitutes formal disciplinary action.);
  - may give the employee concerned a **written warning**; reprimand him/her and rule that an entry regarding the offence be made on the disciplinary record of the employee concerned;
  - may issue a **final warning** to the employee in respect of the offence, which warning will also be indicated on the employee's disciplinary record;
  - may rule that the employee **be demoted** (mainly applied in case of incapacity or inability/incompetence – see par 7.1 and 7.2) and as alternative to dismissal;
  - may rule that the employee be **dismissed**; or
  - may order any **appropriate disciplinary action/measure**, with the proviso that a combination of the above-mentioned steps may also be ordered.
- The employee can first be informed of the disciplinary action/sanction orally,

reserving reasons.

- After this a written document describing the disciplinary action/sanction and indicating the date of the disciplinary action as well as the reason for the disciplinary action must be handed to the employee as soon as possible, but within five (5) working days. The original document is preserved in the employee's personal file as part of his/her disciplinary record.
- The employee must be requested to sign a copy of the document indicating the disciplinary action (e.g. warning/final warning/dismissal, etc.) to indicate that he/she received it. Should the employee refuse to sign, the document must be handed over in the presence of a suitable witness (e.g. a fellow employee, trade union representative).

## 5.5 EMPLOYEE AND EMPLOYER'S RIGHT TO APPEAL

Both the employee and the employer have the right to lodge an appeal after a disciplinary hearing under the following circumstances:

- **Employee** (accused) – In the case of dismissal, the accused employee can only exercise the right to appeal against his/her dismissal if he/she is of the opinion that the disciplinary action taken by the presiding officer after a disciplinary hearing is not appropriate in terms of the offence.
- **Employer** (complainant) – The employer has the right to lodge an appeal if the accused employee is not dismissed and the employer is of the opinion that the disciplinary action taken by the presiding officer is not appropriate in terms of the offence, which did justify dismissal.

### 5.5.1 Appeal committees

- There are two appeal committees with which an employee (accused) or employer (complainant) can lodge an appeal after a disciplinary hearing in the case of dismissal/non-dismissal. These committees handle different levels of appeal, but for the rest function in a similar manner.
- The **Standing Appeal Committee** handles all appeals by employees (accused) in post levels below the level of Registrar/Dean. This committee functions as a standing committee and is appointed by Council.
- The **Ad Hoc Appeal Committee** handles all appeals by employees (accused) from the level of Registrar/Dean up to Rector's level, as well as appeals by the employer. This committee functions as an ad hoc committee and is appointed by the ECC/Council per appeal lodged.

### 5.5.2 Committee members

The committee members of the two appeal committees are appointed by Council (the members need not be Council members) and comprise the following minimum number of members:

- A presiding officer (appointed by Council).

- A staff member of the Faculty of Law or practising legal practitioner.
- A person from the Human Resources Department. This person may, however, not be the same person as the one who was present at the disciplinary hearing.
- A person from the Meeting Administration Division. This person is responsible for keeping the minutes and is not a member of the committee.
- Any other persons appointed by Council or the presiding officer at its/his/her discretion.

### 5.5.3 Appeal process

The appeal must be lodged with the presiding officer of the appeal committee concerned within five (5) working days of the ruling of the presiding officer having been announced to the accused employee or employer.

- Appeals must be lodged in writing and the following documentation must be provided to the presiding officer of the appeal committee:
  - New evidence/facts that were not available during the disciplinary hearing.
  - The completed prescribed application form for leave to appeal, setting out the grounds for appeal (see Appendix F – Disciplinary Documentation/Forms).
- Such presiding officer, in consultation with the Director: Human Resources, may then agree or refuse to grant leave to appeal (see Appendix G – Disciplinary Documentation/Forms).
- If the application for leave to appeal is not filed within five (5) working days, the presiding officer to whom the application for leave to appeal is addressed, may grant or refuse leave to appeal at his/her discretion, taking the reasons given for the late application for leave to appeal into account.
- In general an appeal will only be allowed under the following circumstances:
  - The prescribed procedure was not followed during the disciplinary hearing.
  - New relevant facts came to light that were not taken into consideration during the disciplinary hearing.
  - The sentence is too harsh or too lenient in relation to the offence.
  - Prejudice and/or bias on the part of the presiding officer.
- If leave to appeal is granted, the appeal committee must handle the appeal.
- Heads of argument for appeal must be submitted to the presiding officer of the appeal committee within five (5) working days of leave to appeal having been granted.
- The appellant may avail himself/herself of a representative, including a legal representative, during the appeal hearing.

- The Manager: Labour Relations must determine a date for the presentation of arguments by the appellant, but no later than ten (10) working days after the submission of argument headings.
- The appellant (or his/her representative) must present his/her arguments to the appeal committee on the scheduled date.
- The appeal committee may call witnesses to clarify obscure or vague aspects with regard to the appeal and the presiding officer can postpone the appeal to a later date to ensure the presence of witnesses.
- The appeal committee must inform the appellant of its ruling in writing within ten (10) working days of the presenting of arguments and evidence, if any, and reasons for the ruling must also be provided in writing (see Appendix H – Disciplinary Documentation/Forms).
- Should the appellant's appeal not be successful, and should there not be any other dispute settlement agreements with a trade union(s), no other internal remedy is available to the employer or employee. However, the employer or employee still has the normal labour law and civil law remedies at his/her disposal should no other procedures have been agreed upon with the trade union(s).

## **6. SPECIFIC PROCEDURES with regard to MISCONDUCT**

### **6.1 ABSENCE WITHOUT PERMISSION/LEAVE**

- 6.1.1 Should an employee be absent without permission/leave for fewer than three days, the normal disciplinary process is followed as discussed in paragraph 5 of the disciplinary policy and procedure.
- 6.1.2 Should an employee be absent without permission/leave for three days and more, the following process is followed:
- The Manager: Labour Relations is informed.
  - A registered letter or telegram/phonogram is sent to the employee's address. In the registered letter or telegram/phonogram the employee is requested to report for work within 24 hours. It is the employee's responsibility to inform the employer of any change in address, marital status, etc. (see Appendix J – Disciplinary Documentation/ Forms).
- 6.1.3 If the employee does report for work, the supervisor must contact the Manager: Labour Relations to make arrangements for a formal disciplinary hearing.
- 6.1.4 Should the employee fail to report for work:
- the supervisor also informs the Manager: Labour Relations.

- a second registered letter or telegram/phonogram is sent to the employee. In the registered letter or telegram/phonogram the employee is requested to report for work within 24 hours (see Appendix J – Disciplinary Documentation/Forms).

Should the employee still not report for duty, the Manager: Labour Relations must be informed.

The normal disciplinary process, as described in paragraph 5 of the disciplinary policy and procedures, will then be followed.

- 6.1.5 Should the employee be absent without permission for five (5) days or more, the person has absconded in terms of the Disciplinary Code. In this case the Manager: Labour Relations must be informed so that arrangements can be made to discontinue payment of the employee's salary temporarily. As soon as the employee puts in an appearance, the supervisor/head must inform the Manager: Labour Relations accordingly. The normal disciplinary process as described in paragraph 5 of the disciplinary policy and procedures will then be followed.

## **6.2 DRUNKENNESS OR BEING UNDER THE INFLUENCE OF DRUGS WHILE ON DUTY**

Should a supervisor suspect that an employee is under the influence of drugs or alcohol, the following guidelines must be followed:

- 6.2.1 It is the responsibility of the supervisor to make a observation of the employee, e.g.:
- are the employee's pupils enlarged/constricted?
  - are the employee's eyes bloodshot?
  - does the employee smell of alcohol?
  - is the employee unstable on his/her feet?
  - is the employee's speech affected?
  - is the employee's speech slurred?
  - what is the employee's general behaviour? for example, is the person exceptionally drowsy or aggressive?
- 6.2.2 A second person must be present to serve as witness of the observation made by the supervisor.
- 6.2.3 During the examination/observation the employee has the right to be represented by a fellow employee or trade union representative.
- 6.2.4 After the examination/observation has been performed, the supervisor can consider further steps:
- If the employee smells of drink or appears to be under the influence of alcohol, the supervisor may request the employee to blow into a breathalyser.



- If the supervisor suspects drug abuse, the employee may be sent for blood tests after the Manager: Labour Relations has been informed.

- 6.2.5 Should the employee refuse to be tested, the observation will determine the next step. A note must be made of the refusal to be tested (see Appendix K – Disciplinary Documentation/Forms) and can be noted as aggravating circumstances in a disciplinary hearing.
- 6.2.6 Should the observation and/or breathalyser test/blood test be of such a nature that it is obvious that the employee is under the influence of drink/drugs, the employee must be sent home.
- 6.2.7 The incident must be reported to the Manager: Labour Relations so that formal steps, as described in paragraph 5 of the disciplinary process, can be followed.

## **7. ADDITIONAL SUPPLEMENTARY PROCEDURES with regard to COMPETENCE**

### **7.1 TERMINATION OF SERVICE AS A RESULT OF INCAPACITY: POOR HEALTH OR INJURY**

- 7.1.1 If it is alleged that an employee is not able to perform his/her duties or perform his/her duties according to the requirements, because of poor health or injury, the Director: Human Resources, or his/her nominee, must appoint an investigating officer who must investigate the nature and extent of the disability and/or injury. The UFS is responsible for the costs of the investigation.
- 7.1.2 At least two medical reports by independent medical practitioners must be obtained by the investigating officer. The reports must be used to determine the extent of the poor health/injury (disability) and whether it is of a temporary or permanent nature.
- 7.1.3 Should the employee exercise his/her right not to be examined medically, the investigation must proceed on the basis of the available information regarding the person's health.
- 7.1.4 If an employee cannot continue performing his/her current duties and will probably be absent for a period that is regarded as unreasonably long in the circumstances, the investigating officer must examine all alternatives to dismissal. These may, for example, include alternative service or the adjustment of the duties or work circumstances of the employee in order to accommodate the employee's disability or illness. The employee's remuneration can also be changed in accordance with the above-mentioned adjustments.
- 7.1.5 When examining the alternatives to dismissal, the investigating officer must take the following factors into account:
- The nature of the work.
  - The period of absence.

- The cause of the disability.
- The nature, seriousness and extent of the disease or injury.
- Whether the employee is capable of doing his/her work and, if so, to what extent the employee is able to do the work.
- The extent to which the employee's work circumstances and/or duties can be adjusted to accommodate the employee's disability.
- The possibility of employing employees on a temporary basis to perform the duties of the sick/injured employee.

7.1.6 In the course of the investigation, as mentioned above, the employee concerned must be consulted, he/she must be afforded the opportunity to be heard and he/she must have the right to be heard and he/she must have the right to be supported by a trade union representative or fellow employee.

7.1.7 On completion of the investigation, the investigating officer must submit a full report to the Director: Human Resources.

7.1.8 The Manager: Labour Relations, in consultation with the Director: Human Resources, appoints a presiding officer to conduct a formal investigation regarding the competence of the employee. With the formal investigation a similar procedure as described in paragraph 5.4 is followed.

The presiding officer:

- May rule that the matter be referred back for implementation of alternatives to dismissal; or
- that the services of the person concerned be terminated.

7.1.9 Both the employee and the employer have the right to lodge an appeal (see par 5.5).

## **7.2 PROCEDURE IN CASE OF ALLEGED INABILITY OR INCOMPETENCE: POOR WORK PERFORMANCE**

7.2.1 If after investigation by the supervisor it is found that an employee (in spite of proper evaluation, instructions, training, guidance and counselling) is unqualified for the post in which he/she was appointed because of his/her poor work performance, the direct supervisor/head must investigate the reasons for the unsatisfactory work performance in accordance with the preliminary investigation (par 5.1.2.) and as stipulated in this document.

7.2.2 The direct supervisor/head shall consult with the employee during the preliminary investigation in order to determine:

- whether the employee succeeded in meeting the required standards of performance;
- whether he/she was aware of the standard of performance and/or whether it could reasonably have been expected of him/her to be aware of the standard of performance;
- whether the employee concerned was provided with suitable assessment,

instructions, training, guidance and counselling;

- whether the employee, after a reasonable period of time that was allowed for improvement, could still not attain the required standard of performance.

7.2.3 On completion of the preliminary investigation, the direct supervisor/head must compile a comprehensive report in which the suitable action for remediation is set out.

7.2.4 Suitable action for remediation may include:

- providing the employee with additional evaluation, instructions, training, guidance and counselling; or
- the implementation of alternative methods to address the problem; or
- referral of the matter for formal disciplinary action.

7.2.5 Any investigation regarding competence must be instituted according to the stipulations of this document, and more specifically similar to the stipulations of paragraph 5.3 and paragraph 5.4.

7.2.6 In taking action demotion or dismissal may be appropriate if all other possible actions failed to address the unsatisfactory work performance or behaviour as desired.

7.2.7 Both the employee and the employer have the right to lodge an appeal (see par 5.5).

## **8. LEGAL REPRESENTATION AND OTHER AID**

8.1 An employee may have no legal representative, or any other representative who is not an employee of the UFS during formal disciplinary action. Only in exceptional cases, usually in case of possible dismissal or if the legal or technical complexity of the proceedings justifies it, can a written request be made to the Director: Human Resources (or his/her nominee) that such legal or other representative be allowed to attend the formal disciplinary action.

8.2 Should an employee wish to avail himself/herself of representation as described in paragraph 8.1, the employee must address the written request to the Director: Human Resources or the person nominated by him/her on the prescribed form (see Appendix I - Disciplinary Documentation/Forms) in good time. The Director: Human Resources or the person nominated by him/her must then make a decision as to whether the representative concerned will be admitted within forty-eight (48) hours and inform the accused employee of it in writing.

8.3 If representation as described in paragraph 8.1 is allowed, the presiding officer must allow the employee preparation time of at least seventy-two (72) hours before the disciplinary hearing is held.

8.4 If the accused employee is allowed to avail himself/herself of legal

representation, the UFS has the right, at its discretion, to appoint a complainant other than the direct supervisor to handle the matter on behalf of the UFS during the disciplinary hearing. Such alternative complainant may be an employee of the UFS or a practising legal practitioner.

8.5 An employee may indeed make use of a legal representative or any other representative who is or is not an employee of the UFS or an officer of a representative trade union at the UFS during an appeal hearing regarding dismissal (see par 5.5).

8.6 The above-mentioned rights must not interfere with the normal work discussions between the direct supervisor and the employee. The employee therefore has no right to any representation during normal work discussions.

**9. DISCIPLINARY DOCUMENTATION/FORMS (APPENDICES)**

|            |  |
|------------|--|
| Appendix A | VERBAL WARNING   |
| Appendix B | WRITTEN/ FINAL WARNING                                     |
| Appendix C | LETTER OF DISMISSAL  |
| Appendix D | NOTICE OF DISCIPLINARY HEARING AND CHARGE SHEET            |
| Appendix E | REPORT OF DISCIPLINARY HEARING                             |
| Appendix F | APPLICATION FOR LEAVE TO APPEAL                            |
| Appendix G | GRANTING/ REFUSAL OF APPLICATION FOR LEAVE TO APPEAL       |
| Appendix H | REPORT OF APPEAL COMMITTEE                                 |
| Appendix I | APPLICATION FOR REPRESENTATION DURING DISCIPLINARY HEARING |
| Appendix J | REGISTERED LETTER OR TELEGRAM/PHONOGRAM – ABSENCE          |
| Appendix K | OBSERVATION – ALCOHOL OR DRUGS                             |
| Appendix L | CONFIDENTIALITY STATEMENT                                  |