Short notes on:

**DISCIPLINARY HEARINGS- THE CORRECT WAY TO DISMISS MISBEHAVING EMPLOYEES**

**Introduction**
Many Employers struggle when it comes to dismissing misbehaving Employees. Some Employers do not discipline misbehaving Employees for years. Then suddenly one day when they (the Employer) have had enough of the misbehaving Employee’s behaviour (and all the years of misconduct which they were not disciplined for at all); dismiss them either without following any procedure and/or dismiss them for something that they should not have been dismissed for in the first place.

In general, what is expected of Employers is that they act consistently. They should treat similar misconduct similarly. There are certain exceptions when Employers may deviate from it, but the best yard stick would be to discipline misbehaving Employees in accordance with the Disciplinary Code.

When and how should Employees then be disciplined? When would their misconduct necessitate that they be taken to a disciplinary hearing?

**Misconduct necessitating that Employees be taken to a disciplinary hearing**
Usually the severity of the misconduct would dictate if an Employee should be taken to a disciplinary hearing. However, it is important to note that in certain Sectors certain types of misconduct will be dealt with more harshly than in other Sectors. Sleeping on duty by a Security Guard in the Private Security Industry may be seen as a dismissible offence and the misbehaving Employee will be taken to a disciplinary hearing. Whereas sleeping on duty by a Cleaner at an Engineering firm will not be treated in such a harsh manner. The misbehaving Employee could be issued a warning.

Dishonesty, Theft, Fraud, Gross negligence and Gross insubordination are usually considered to be serious misconduct which necessitates that a disciplinary hearing be held. This is not an exhaustive list. The specific circumstances will determine the seriousness of the misconduct. Repeat misconduct of an initially less serious nature such as coming late for work could later require that the Employee be taken to a disciplinary hearing. It should, however, be noted that the Employee should have been reprimanded for every instance that he/she reported late for duty. Progressive discipline should have been followed by the Employer.
Furthermore, it is important to note that the misbehaving Employee should be charged of the alleged misconduct before being taken to a disciplinary hearing.

**What must be included in the charge sheet and when must it be given to the Employee?**

The charge sheet could clearly indicate the misconduct that the Employee is accused of committing. The date(s), time, where and how the alleged misconduct should be clearly stipulated. It is important that the Employee be placed in a position to answer to the allegations against him/her. If the charges are vague and/or ambiguous, it may lead to a postponement of the disciplinary hearing. The charge sheet will have to be redrawn to clear up any ambiguities. The date, time and venue of the disciplinary hearing should also be indicated on the charge sheet.

The charge sheet should be given to the Employee at least 48 hours before the scheduled disciplinary hearing. Disciplinary codes may have longer periods than 48 hours. Should the charges be of a more complex nature, logic dictates that 48 hours will not be enough time for the Employee to prepare for the disciplinary hearing.

**Who must chair the disciplinary hearing?**

Legislation do not dictate who are allowed or disallowed to chair the disciplinary hearing. However, the person chairing the disciplinary hearing should be objective. It would therefore be imperative that the Employer should not conduct the hearing himself/herself. The Employer should rather request the HR Manager or another Manager to chair the disciplinary hearing. Some Employers outsource the chairing of disciplinary hearings at their businesses.

**How the disciplinary hearing should be conducted**

The Chairperson should preside over the proceedings in a fair manner. There are no rules as to how the hearings should be conducted. However, the Employee must be given an opportunity to cross examine the evidence lead by the Employer and his/her witnesses. The Employee must furthermore be given an opportunity to state his/her case and to lead evidence on his/her behalf. The process should be conducted in a fair manner.

It would be advisable to keep minutes of the disciplinary hearing. Furthermore, it is advisable that the hearing not be held out in the open i.e. open-plan office, but it could be conducted in someone’s office and/or the board room. Do not conduct the hearing in the parking lot outside the Employer’s premises.
If the Employee is a member of a Trade Union, the Employee may then be represented at the disciplinary hearing by the Shop Steward. If the Employee is the Shop Steward, then there needs to be a consultation with the Trade Union before the Shop Steward can be charged and/or even taken to a disciplinary hearing.

If the Employee does not belong to a Trade Union, the Employee may then be represented by a colleague.

Furthermore, if the disciplinary hearing is going to be conducted in a language that is not the Employees’ mother tongue, it would be prudent to arrange for an Interpreter to be present at the hearing. It is of paramount importance that the Employee understands the proceedings and that he/she may also lead evidence whilst speaking his/her mother tongue.

After all the evidence has been led, the Chairperson can decide to give his/her findings on the guilt or innocence of the Employee. The matter may also be adjourned to a later date to enable the Chairperson to consider the evidence.

Should the Employee be found guilty by the Chairperson, the Employee must be given an opportunity to submit mitigating factors on his/her behalf. The Employer will be given an opportunity to submit aggravating factors to the Chairperson.

The Chairperson must consider both mitigating and aggravating factors when recommending an appropriate sanction. Once the sanction has been recommended, the Employer may choose to accept or reject it.

Should the sanction of summary dismissal be accepted by the Employer, it must be given to the Employee in the form of a Notice of Summary Dismissal.

The Employee should be explained that he/she usually has 7 (seven) days to appeal his/her dismissal. It should also be indicated to the Employee when he/she will receive their last salary, Salary advice, Certificate of Service and UI19 (to claim UIF).

**Conclusion**

It is important that the correct process should be followed when charging a misbehaving Employee. It is furthermore of paramount importance that both the Employee and the Employer gets an
opportunity to state their respective cases at the disciplinary hearing. At SchoemanLaw Inc., we can assist you to ensure that your risks as an Employer is curtailed and that your rights are protected.