Short notes on:

**SUSPENSIONS IN THE WORKPLACE - HOW AND WHEN MUST THE EMPLOYER SUSPEND EMPLOYEES**

Introduction

It can be quite daunting for an Employer to suspend an Employee. Many Employers have not followed any procedures when suspending their Employees. The Employer would later regret not seeking any advice as to the correct manner to suspend Employees especially when they must compensate misbehaving Employees due to their oversight. What would the correct process entail? What may an Employer do and what should they refrain from doing?

To answer these questions, a distinction must first be drawn between suspensions that are paid and unpaid suspensions.

Suspension with pay

This type of suspension is used as a precautionary measure by Employers when investigating alleged misconduct in the workplace. The Employee who is suspected of committing the misconduct, will be placed on paid suspension, pending the finalisation of the Employer's investigation. The Employee is removed from the workplace to prevent him from interfering in the investigation and/or to prevent him from intimidating witnesses.

What procedure must be followed when suspending an Employee with pay?

The Employer must issue a Notice of Suspension to the Employee whereby it is indicated that the Employee is suspended, pending the finalisation of the investigation. It must furthermore be explained to the Employee that he is suspected of committing serious misconduct (e.g. theft, fraud and/or dishonesty etc.). He must be given a valid reason for his suspension, i.e. that the investigation cannot be conducted with him present and/or it is feared that he might influence and/or intimidate witnesses when present at the workplace whilst the investigation is ongoing.

It is important to note that the Employee must be given an opportunity to make submissions to the Employer as to why he should not be suspended. Failure by the Employer to grant the Employee
this opportunity may render the suspension an unfair labour practice in accordance with Section 186 (2) (b) of the Labour Relations Act.¹

The Employee must be given a reasonable time to make these submissions. What will be reasonable will depend on the circumstances and merits of the matter.

The Employer must explain to the Employee when they should leave the premises and what belongings must be returned to the Employer, should the Employee be in possession of keys and/or other belongings of the Employer.

A copy of the Notice of Suspension must be handed to the Employee, whilst the Original will be placed on the Employee’s file for record purposes.

Should the Employer’s investigation determine that the suspended Employee did commit the alleged misconduct, the Employee must be issued with a Notice to Attend a Disciplinary Hearing whereby the allegations of misconduct will appear as charges, that he must defend at the said Hearing.

It should however be noted that an Employee may not be suspended for an unreasonably long period of time whereby the Employer intentionally delays the finalisation of the investigation. This may be deemed to constitute an unfair labour practice.² The suspension will also be deemed unfair if it is unpaid. The Employee may refer a dispute to the Commission for Conciliation, Mediation and Arbitration and/or Bargaining Councils to request that the suspension be uplifted and/or to request compensation for the unfair labour practice.

If the investigation is inconclusive, then the Employee’s suspension must be uplifted, and the Employee must report for duty as soon as is reasonably possible in the circumstances.

**Unpaid suspension**

An Employee will be placed on unpaid suspension as punitive disciplinary action. This means that the Employee must have been taken to a Disciplinary Hearing. Due to the seriousness of the misconduct committed by the Employee, his disciplinary record and any other relevant factors, he could have been dismissed, upon being found guilty by the Chairperson at the Disciplinary Hearing.

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¹ 66 of 1995, as amended.
² Section 186(2)(b) of the Labour Relations Act, 66 of 1995, as amended.
However, the Chairperson recommended that the Employee be suspended without pay as an alternative to dismissal. The Employee will be given one last opportunity to remedy his behaviour.

It should be noted that unpaid suspensions must be used sparingly by Employers. It may furthermore only be used when all other disciplinary actions such as numerous Final Written Warnings have failed to achieve the desired result, i.e. correct the Employee’s behaviour.

**What procedure must be used when suspending an Employee without pay?**

The sanction may only be given to the Employee as an alternative to dismissal after a Disciplinary Hearing has been conducted. The Employee must be handed a Notice of Unpaid Suspension (as an alternative to dismissal) whereby it must be explained to him that he is suspended without pay for a week. The Employer must explain to him when he must leave the workplace, what items must be returned and when he must report for duty again (i.e. when the suspension will be uplifted).

It is furthermore important that the Employee is made aware of the fact that this sanction will be valid for a period of 12 (twelve) months. Should he transgress one more time in the following 12 (twelve) months, he will be taken to a Disciplinary Hearing and be dismissed. The Employee should take note of the seriousness of the sanction.

If the Employer does not follow the correct procedures when suspending an Employee without pay, the Employee may refer a dispute to the appropriate Forum as mentioned above.3

**Conclusion**

Employers should suspend Employees when the circumstances dictate that such drastic disciplinary action be taken. The suspensions must however be done in accordance with provisions of Section 186(2)(b).4

It should be emphasized that suspensions with pay and unpaid suspensions can be quite technical and complicated. It is therefore advisable to approach an Attorney specialising in Employment matters for assistance.

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3 Section 186 (2)(b) of the Labour Relations Act, 66 of 1996.

Should you need any more information about this, contact SchoemanLaw Inc at www.schoemanlaw.co.za for expert advice on Employment matters or visit our SME Self-Service Desk TM where you can purchase notices for paid and unpaid suspensions.