

IKAMVAYOUTH DISCIPLINARY PROCEDURE AND CODE

Approved by the IkamvaYouth board on *(18 November 2016)*



IKAMVAYOUTH
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1. Definition of key terms

- 1.1. **Discipline** : this is a formal process which is undertaken within the scope of a formal disciplinary procedure and the Labour Relations Act. Discipline is undertaken to address behaviour which is unacceptable within the workplace.
- 1.2. **Progressive discipline** refers to disciplinary action which starts with informal action and verbal warnings and escalates to formal action and formal warnings or termination of services where behaviour is not corrected. This is possible in all but the most serious cases of misconduct.
- 1.3. **Counselling** : Counselling is an informal process which is part of normal day to day management of an employee. It precedes formal disciplinary action, in all but the most serious cases. It is aimed at providing guidance and support.

2. Purpose

- 2.1. To regulate standards of conduct within the organisation;
- 2.2. To correct unacceptable behaviour and adopt a progressive approach in the workplace;
- 2.3. To enable line managers to be consistent and fair when dealing with issues of misconduct in the workplace.

3. Objectives of the disciplinary procedure and code

- 3.1. To maintain harmonious and equitable working relationships in the best interests of the organisation and all its employees;
- 3.2. To ensure a fair consideration of all the facts of the events leading to a disciplinary decision;
- 3.3. To avoid hasty or ill-considered judgements and/or actions by management and to ensure that no employee is disciplined without just cause;
- 3.4. To ensure the correct, fair and acceptable application of discipline to employees at all levels;
- 3.5. To correct and eliminate unacceptable behaviour when corrective discipline has failed or where no alternative corrective action can be considered.

4. Roles, Rights and Obligations

- 4.1. Discipline will be maintained through a system of counselling, verbal and formal written warnings, hearings and investigations that will be conducted in such a way as to ensure that discipline is exercised fairly and consistently in accordance with the rules and standards of the organisation.

4.2. Employer's obligation

The employer, through its Human Resources (HR) department needs to ensure that all employees are aware of the rules and expected reasonable standards of behaviour for the workplace and to act fairly and consistently with regard to application of these.

The line manager is responsible for ensuring that discipline is maintained, in accordance with IYs standards and ethos as well as the Disciplinary Code. Where employees appear to be ignorant of rules and standards, line managers are responsible for ensuring that employees understand what behaviour is acceptable or unacceptable in the workplace.

4.3. Employee's obligation and rights

All employees need to ensure that they are familiar with the relevant standards of conduct of the organisation and that they comply with the disciplinary code and procedure at the workplace.

Employees are entitled to be represented by a fellow employee when undergoing formal disciplinary action.

4.4. Human Resources

The Human Resources Department is responsible for ensuring overall consistency in the application of disciplinary action within IY. This will be done through providing line managers and employees with advice when requested and by keeping a record of previous disciplinary actions, in order to monitor the fair and consistent application across the organisation.

5. Types of disciplinary action

Subject to the nature and gravity of the misconduct and with regard to the relevant circumstances, management may take the following disciplinary action:

- 5.1. Issue a verbal warning;
- 5.2. Issue a written warning;
- 5.3. Issue a final written warning;
- 5.4. Demote an employee as an alternative to dismissal, with the employee's written consent;
- 5.5. Dismiss an employee.

6. Circumstances justifying disciplinary step

- 6.1. Acts in breach of their contract of employment of which this Disciplinary Procedure and the Code of Conduct form part;
- 6.2. Fails or refuses to perform their duties or to carry out any reasonable and lawful instruction;
- 6.3. Executes their duties in such a way that it is in conflict with the generally accepted practice or if it undermines the employee/employer and learner relationship;
- 6.4. Behaves in a fashion that may be regarded (according to the ordinary meaning of the expression) as misconduct;
- 6.5. Engages in conduct which harms or undermines harmonious equitable working relationships/customer relationships;
- 6.6. Engages in conduct which harms or undermines the interest of the organisation;
- 6.7. Engages in conduct which is in conflict with the values of the organisation.

7. Counselling vs Disciplinary Action

7.1. Counselling

Counselling will be appropriate where an employee may be unaware of the rules and expected reasonable standards of behaviour in the workplace and where the misconduct is of a minor nature and can be condoned. Counselling is not part of the formal disciplinary procedure and forms part of normal managerial responsibility.

7.2. Disciplinary action

Disciplinary action will be appropriate (i) where the employee has breached the rules and expected reasonable standards while being aware of them and this cannot be condoned; or (ii) where counselling and guidance has failed to achieve the desired effect.

8. Investigation

- 8.1. When an offence is alleged to have been committed, the immediate line manager concerned will investigate, collect all the relevant evidence and evaluate the nature of the incident. The extent of the investigation will be commensurate with the nature and seriousness of the misconduct. The line manager should consult with the HR Manager for advice on the most appropriate form of action, when required.
- 8.2. As soon as it becomes clear from the investigation that a reasonable case can be made that an offence has occurred, management must, given the seriousness of the matter, decide whether counselling would be appropriate to address the issue.
- 8.3. If counselling does not seem appropriate, given the nature of the offence or if the employee had previously been counselled to no avail, management must initiate disciplinary action.

9. Suspension

An employee may be suspended temporarily pending the conclusion of a disciplinary hearing into a very serious misconduct.

- 9.1. Suspension will take place with payment of salary.
- 9.2. The purpose of suspension is to protect IY and its employees against any further damage that may be caused by the continued presence of such an employee in the workplace.
- 9.3. Suspension is an extreme action, which should only be undertaken in exceptional circumstances. It should not be prolonged beyond 2 weeks, unless there is good reason to not conclude the disciplinary hearing within that timeframe.
- 9.4. After having decided to suspend an employee IY must provide the employee with the reasons for the action in writing. IY must also avail the employee an opportunity to furnish reasons why they are of the opinion that suspension is not warranted.
- 9.5. The disciplinary hearing must take place as soon as reasonably possible after suspension.

10. Informal Disciplinary Action

- 10.1. Informal warnings may be issued for minor transgressions. In this case warnings can be issued by the line manager, without the institution of a formal disciplinary hearing.
- 10.2. The employee will be called in by their immediate line manager and, in the presence of their representative, be asked to give an explanation for the alleged misconduct. If no satisfactory explanation is given, the employee will be given a verbal warning.
Also a clause that says something like, 'No employee will be victimised or unfairly discriminated against as a result of having advised and/or represented any fellow employee at any point during a disciplinary procedure'

11. Formal Disciplinary Action

When an informal verbal warning is deemed to be insufficient, or when the misconduct is of a more serious nature, the line manager will lay a formal charge in writing and in duplicate on the Notification of Disciplinary Form.

Step	Action
1.	The line manager in consultation and with the assistance of the HR Manager shall give the employee the Notification of Disciplinary Form, indicating the charges

	against them, so that they can prepare against the allegations. This notification shall be given 5 working days in advance of the case being heard.
2.	The employee must be informed that she/he may be assisted by a fellow employee. Should the employee require an interpreter present, the organisation may make one available. The line manager must further inform the employee that they may present any pertinent evidence and may call witnesses at the hearing.
3.	The employee must acknowledge receipt of the above in writing on the Notification Disciplinary form. Should the employee refuse to acknowledge, the manager delivering the notification shall note that on the form. Should the employee not be at work, the notification shall be delivered to their last known address and a record kept of who received the notification. In this context, the employer shall also issue the charges and date of hearing to the employee via sms.
4.	Complete records of these proceedings must be submitted to HR and filed on the employee's file.

12. Disciplinary Hearing

- 12.1. The disciplinary hearing will be presided over by a line manager from another department or an independent person, nominated by the HR Manager in consultation with the manager initiating the disciplinary action. The Chairperson must be seen to be as independent and objective as possible.
- 12.2. To support ensuring the independence of the chairperson, all line managers must treat any disciplinary investigations confidentially.

13. Administration & advice

- 13.1. The Human Resources Department will assist in the administration of the disciplinary process by the analysis of individual cases and reporting on disciplinary action taken.
- 13.2. The Human Resources Department will also act in an advisory capacity to line managers to ensure fairness and consistency, and is responsible for monitoring disciplinary action to ensure that laid down standards are being met and that disciplinary action is fair and consistent.
- 13.3. To enable it to fulfil this function, copies of all disciplinary action taken must be forwarded to the Human Resources Department as soon as possible after the outcome of a hearing. Statements, disciplinary forms, disciplinary hearing minutes and other disciplinary records should be retained on the employee's personal file.
- 13.4. Where, in the opinion of the HR Manager, inconsistent and unfair action has been taken by a chairperson, which is detrimental either to IY or to an employee, the HR Manager shall consult the Executive Director, with the view to override the decision of the Chairperson and replacing it with a fair and consistent decision. Such a decision shall lie with the Executive Director, after considering the relevant facts of the case and general practice of the organisation.

- 13.5. Disciplinary action against the Executive Director shall be dealt with by the Chairpersons of the HRGC and Board, who shall be responsible for ensuring that the matter is investigated and that a Chairperson is appointed to preside over the case.
- 13.6. Disciplinary action against the HR Manager shall be dealt with as per this policy, provided that the line manager shall consult the Executive Director on the appointment of an appropriate chairperson.

14. Industrial Action

- 14.1. Notwithstanding anything contained herein, any employee who allegedly breached his conditions of employment by participating in unprotected collective industrial action such as strikes, boycotts, go-slows or overtime bans, or who incites other employees to participate in such unprotected collective industrial action, need not be dealt with in terms of this Disciplinary Procedure, and may be summarily dismissed.
- 14.2. Management will issue an ultimatum that will clearly state what is required of the employees concerned, and what sanction will be imposed if they fail to comply with the ultimatum. The employees will be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it.

15. Penalties – Factors to be considered

- 15.1. The action to be taken in disciplining an employee will depend not only on the seriousness of the offence, but also on the disciplinary record of the employee. Furthermore, certain factors might either aggravate or mitigate an offence.
- 15.2. The probable consequences of the offence should be considered. For example, negligence in respect of duties by employees responsible for the safety or health of others should be regarded as more serious than negligence which has no particular safety or financial consequence.
- 15.3. The Chairperson hearing the case must take cognisance of all the facts and circumstances before making a final decision. A note to this effect must be made on the case record. The HR Department should be consulted with, where necessary, to ensure fair and consistent action.

16. Sanctions

All warning and dismissal letters will be issued by the HR manager based on the decision of the Chairperson of the disciplinary hearing. The employee will be informed accordingly in writing in this regard within a reasonable time period. Acknowledgement of receipt must be signed by the employee, failing which a witness will be required to sign. A copy of the document must be forwarded to the HR Manager, which will be retained on the employee's file.

16.1. *Verbal Warnings*

If an employee fails to comply with the conditions of employment, commits a minor misconduct, or renders poor work performance, the line manager will issue a verbal warning, if in the line manager's opinion, the misconduct or poor work performance does not warrant a formal written warning.

Although the verbal warning constitutes an informal process, a record of verbal warnings will be kept. Verbal warnings are valid for a period of 3 months from the date of issue.

16.2. *Written warnings*

A written warning is issued for less serious misconduct, which, in the opinion of the immediate line manager warrants a stronger disciplinary measure than a verbal warning, or for repeated minor misconduct.

Written warnings are valid for a period of 6 months from the date of issue.

16.3. *Final Written Warnings*

Where an employee has been issued with one or more written warnings during a period of 6 months preceding the further misconduct or in the case of a serious misconduct, or poor work performance warranting such action, the disciplinary hearing Chairperson concerned may recommend a final written warning.

Final written warnings are valid for a period of 12 months from the date of issue.

16.4. *Dismissals*

Where an employee has

- been issued with progressive warnings within the same category;
- shown continuous poor work performance;
- committed further misconduct;
- committed a serious misconduct;
- committed misconduct warranting the summary dismissal of the employee; or
- committed several such offences

the disciplinary hearing Chairperson concerned, may recommend dismissal of the employee after a formal hearing.

If a valid warning exists against an employee when he / she is found guilty of an offence, the existing warning for the same or similar offence, will be taken into account when the disciplinary measure is imposed. An existing warning may thus have an aggravating effect on a following disciplinary measure.

If the disciplinary Chairperson decides after the conclusion of the hearing to dismiss the employee, the employee must be informed accordingly and will receive an official letter in this regard within a reasonable time period.

17. Abscondment

- 17.1. An employee will be deemed to have absconded the employ of **IY** if they are absent from duty for a period exceeding 5 working days without notification to the employer.
- 17.2. On the third day of absence, the immediate line manager will conduct an investigation into the employee's absence and in conjunction with the HR Manager, send a hand delivered letter to the last known address provided by the employee, instructing the employee to return to work or contact their immediate line manager within 3 working days on receipt of the letter, to provide an explanation for their absence. The same communication shall be sent via sms to the employee.
- 17.3. Should an employee fail to respond within the time frame stipulated, and should **IY** have failed to locate the employee, **IY** may terminate the services of the employee on the grounds of having absconded. This shall be done in writing and delivered to the last known address of the employee.
- 17.4. Should an employee return to work either before or after a termination notice has been sent, the employee may be subject to formal disciplinary action, depending on the reason provided for the absence.

18. Appeals

- 18.1. Should an employee feel that a disciplinary measure has for any reason been unfairly issued, or that they have for any reason been unfairly dismissed, they shall be entitled to appeal to the next more senior level of management to that involved in the disciplinary action. The appeal must be lodged in writing on the Appeal Form, within 3 working days of the warning being issued or the dismissal. No employee shall appeal against a verbal warning. Any appeal lodged shall clearly set out the employee's grounds for appeal.
- 18.2. The employee or his representative shall be entitled to have access to all the documents and records pertaining to the hearing including the records of previous warnings.
- 18.3. The next more senior level of line management to that involved in the disciplinary action shall consider the appeal within 5 working days of the lodging of the appeal.
- 18.4. In the event of an appeal against a written or final warning, the appeal shall take the form of a review of the records of the disciplinary hearing, and consideration shall be given to the written grounds of appeal submitted by the employee concerned. In this case the HR Manager shall respond in writing to the employee.
- 18.5. An appeal hearing shall not be conducted unless the chairperson of the appeal hearing deems it necessary.

- 18.6. In the event of an appeal against a dismissal, an appeal hearing will be conducted at the employee's request, at which the employee shall be entitled to be present. The employee may elect to be represented by a representative. In respect of such an appeal hearing the record of the disciplinary hearing appealed against shall be submitted to the appeal hearing and evidence presented at the disciplinary hearing shall be regarded as evidence in the appeal hearing. Additional evidence may be submitted.
- 18.7. The manager appealed to shall furnish the appeal decision with reasons, within 5 working days after the completion of the hearing/review.
- 18.8. Clause 12.4 shall not be invoked if an employee has submitted a formal appeal.

19. Disciplinary Code

- 19.1. The Disciplinary Code serves as a guideline and the facts and circumstances of each case should be considered when deciding on appropriate action and sanction.
- 19.2. The Code lists those offences which are more serious and would trigger formal disciplinary action on the first offence. The list is not exhaustive and disciplinary action may be taken against an employee in terms of any other behaviour which, self-evidently, an employer can reasonably expect from an employee within the employment relationship.
- 19.3. Minor transgressions will become serious transgressions if they are repeated, notwithstanding counselling or verbal warnings. Serious transgressions will become very serious if they are repeated notwithstanding written or final written warnings.
- 19.4. Serious misconduct (may be dismissed on first offence if found guilty) includes:
- theft, bribery, fraud or an act of corruption;
 - committing an act of sexual assault on a learner, student or other employee
 - having a sexual relationship with a learner;
 - seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee
 - illegal possession of an intoxicating, illegal or stupefying substance; or
 - dishonest
- 19.5. Misconduct requiring formal disciplinary action
- in the course of duty endangers the lives of himself or herself or others by disregarding set safety rules or regulations
 - fails to carry out a lawful order or routine instruction without just or reasonable cause;
 - repeatedly absents himself or herself from work without a valid reason or permission;
 - unfairly discriminates against other persons on any grounds prohibited by the Constitution
 - performs poorly or inadequately for reasons other than incapacity;
 - while on duty, is under the influence of an intoxicating, illegal, unauthorised or stupefying, including alcohol,

- while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner
- assaults, or attempts to or threatens to assault, another employee or another person
- intimidates or victimises fellow employees, learners or students
- carries or keeps firearms or other dangerous weapons, without the written authorisation of the employer
- refuses to obey security regulations
- falsifies records or any other documentation
- Doing the homework of learners (whether for personal gain or not)
- Misuse of information unique to IY or any of its clients and/or which is regarded as confidential by IY (whether for personal gain or not)

20. Amendments to this Procedure and Code

20.1. Amendments to this procedure will be communicated to all employees by IY provided that the procedure is not in conflict with the provisions of the Labour Relations Act, 2001 and amendments thereto.