



Province of the
EASTERN CAPE
SOCIAL DEVELOPMENT

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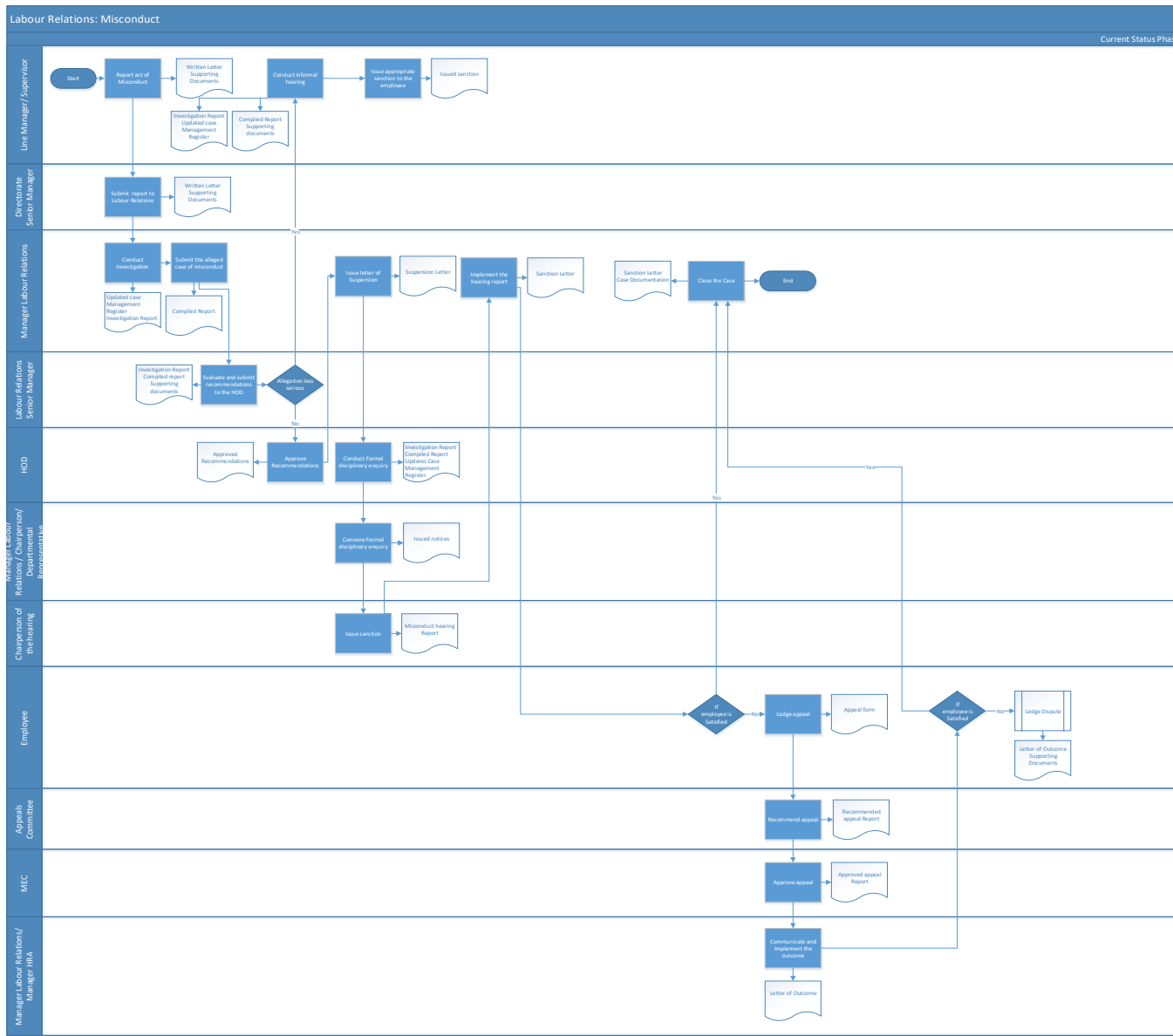
STANDARD OPERATING PROCEDURE: MISCONDUCT / DISCIPLINE

Approval Date	
Commencement Date	
Review Date	
Periodical Review	Annually
Resources	Internal staff, Budget
Intent of SOP	<ul style="list-style-type: none">• To provide support constructive Labour relations in the Department of Social Development.• To promote mutual respect between employee and employer.• To promote acceptable conduct.• To prevent arbitrary or discriminatory actions by managers towards employees.
Scope	This SOP applies to the Department of Social Development inclusive of all Districts.
Objective(s)	To ensure that managers and employees share a common understanding of misconduct and discipline.
Definitions	<p>Act: means all legislations that govern employee relations and are applicable in terms of this policy</p> <p>Aggravating circumstances: these are circumstances usually put before the presiding officer of a</p>

	<p>disciplinary hearing and are tabled once all evidence has been heard</p> <p>Balance of probability: refers to the process that involves weighing up the evidence from the employer and employee perspective and deciding which version is more likely that could lead to a harsher sanction</p> <p>Consistency: means an equitable treatment</p> <p>Days: refer to working days</p> <p>Disciplinary action: means an action on the part of the authority/management aimed at stopping employee behaviour that threatens to disrupt the functioning of the system</p> <p>Disciplinary code: is a set of rules of conduct that the Department employees must obey and abide by them if it is to function successfully</p> <p>Executing Authority: means the Member of the Executive Council responsible for Social Development portfolio</p> <p>Fairness: means that where an action is conforming with universally accepted standards and if consistency is exhibited</p> <p>Head of Department: means the incumbent of a post for the Head: Social Development and includes any employee acting in such post</p> <p>In limine: is the process generally relate to technical points that must be heard by the commissioner or presiding officer in a disciplinary hearing prior to hearing a matter. A decision must be made regarding the validity of the point being made</p> <p>Mitigating circumstances: these are circumstances usually put before the presiding officer of a disciplinary hearing and are tabled once all evidence has been heard that could lead to a lesser sanction</p> <p>Misconduct: is an act (behaviour) in conflict with the employer's Code of Conduct, known set of rules or the common law. It is an act for which the employee can be held accountable. This could include improper conduct, delinquency, misdemeanour, transgression and wrongdoing</p> <p>Procedural fairness: is the process, approach or method followed when managing a matter. This term is used in many aspects of labour law, including approaches to disciplinary, incapacity, dispute and grievance hearings</p> <p>Reasonable rule: is the rule that does not discriminate unnecessarily between different classes of workers, and is not sprung' on employees out of the blue and it must have an economic rationale</p>
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	<p>Representation (legal): the LRA clarifies circumstances in which legal representation may be used. Restrictions on legal representation were placed in the Act in an attempt to move away from a legalistic and highly adversarial approach</p> <p>Representative: means a fellow employee, a representative or official of a recognised trade union</p> <p>Sanction: is the punishment determined as an outcome of a disciplinary</p> <p>Substantive fairness: refers to fair reasons in managing a matter</p> <p>Valid rule: is the rule that is not contrary to any law or public policy</p>
Key Performance Indicator	Number of HR Practises implemented.
Principles	<p>Certain basic and essential principles will be strictly adhered to in the Disciplinary process. These principles are:</p> <ol style="list-style-type: none"> 1) Discipline is a corrective measure and not punitive one. 2) Discipline must be prompt, fair, constant and progressive manner. 3) Discipline is a management function. 4) Ensure that employees have a fair hearing in a formal or formal setting. 5) Ensure that employees are timeously informed of allegations of misconduct made against them. 6) Ensure that employees receive written reasons for a decision taken. 7) Ensure that employees have the right to appeal against any decision.
Compliance Measures	<ol style="list-style-type: none"> 1) The decision of the chairperson of the hearing must be implemented by HOD. 2) The decision of the Executing Authority on Appeals must be implemented. 3) The time frame for disciplinary process must be adhered to.

Diagram/Business Process Mapping



STEP BY STEP GUID

DISCIPLINARY PROCESS

Nr	Task Name	Task Procedure	Responsibility	Supporting Documentation	Service Standard
1		Report the act of Misconduct Report the act of misconduct to the Senior Manager at District or Head Office in writing.	Line Manager / Supervisor	<ul style="list-style-type: none"> • Written letter • Supporting documents 	immediately
2		Submit the report to Labour Relations Submit the report to Senior Manager Labour Relations.	Senior Manager	<ul style="list-style-type: none"> • Written letter • Supporting document 	
3		Conduct investigation Register the case in a Case Management Register. Collect statement and conduct interviews with witnesses. Compile the comprehensive report with recommendations.	Manager Labour Relations	<ul style="list-style-type: none"> • Investigation Report • Updated case Management Register. 	5 days
4		Submit the alleged case of misconduct Submit the case to Senior Manager Labour relations for evaluation.	Manager Labour Relations	<ul style="list-style-type: none"> • Compiled report. 	2 days
5		Evaluate and submit recommendations to the HOD Evaluate the case and advice the HOD on recommended action to be taken based on the investigation report. If allegations are less serious, submit recommendation for an informal hearing to be conducted by the Line Manager or Supervisor;	Senior Manager Labour Relations	<ul style="list-style-type: none"> • Investigation Report • Updated case Management Register. • Compiled report. • Supporting documents / Evidence 	5 days

		If allegations are serious, submit recommendation for suspension to the HOD.			
6		<p style="text-align: center;">Conduct informal Hearing</p> <p>If allegations are less serious and on recommendation by the HOD; conduct an informal hearing with the alleged employee.</p> <p>Based on the outcome of the informal hearing the following may be issued ;</p> <ul style="list-style-type: none"> - Counselling - Warning - (verbal warning ,written warning and final warning) - No further action. 	Line Manager / Supervisor	<ul style="list-style-type: none"> • Investigation Report • Updated case Management Register. • Compiled report. • Supporting documents / Evidence 	14 days
7		<p style="text-align: center;">Issue Warning to the employee</p> <p>Issue verbal, written or final written warning. Submit a copy of the warning to labour Relations and retain a copy for records Management purposes.</p>	Line Manager / Supervisor	<ul style="list-style-type: none"> • Warning copy 	5 days
8		<p style="text-align: center;">Approve recommendation</p> <p>Approve recommendation for suspension from Labour Relations. If the HOD does not agree with the suspension, the employee may remain at work until the case is finalised.</p>	HOD	Approved recommendation	
9		<p style="text-align: center;">Issue letter of suspension</p> <p>Issue the letter of suspension based on approval by the HOD.</p>	Manager Labour Relations	Suspension letter	
10		<p style="text-align: center;">Conduct formal disciplinary process</p>	HOD	<ul style="list-style-type: none"> • Investigation Report 	5 days depending to

		<p>In case the HOD recommends Disciplinary enquiry or suspension, the following steps are to be taken:</p> <p>In cases of serious misconduct and where the presence of the alleged employee at the work place might jeopardise any investigation or endanger the wellbeing or safety of any person or state property, the HOD may issue a suspension or transfer.</p> <p>Appoint chairperson of the Hearing and Employer representative. Write letters of appointment to the chairperson and employer representative. Issue a notice to the employee with the details of the hearing 5 days before the date of the hearing.</p>		<ul style="list-style-type: none"> • Updated case Management Register. • Compiled report. • Appointment letters Supporting documents / Evidence • Appointment letters • Signed notice 	the availability of the signatory.
11		<p style="text-align: center;">Convene formal disciplinary enquiry</p> <p>Convene formal disciplinary enquiry lead by appointed chairperson and relevant representatives within 10 days after issuing the notice.</p>	Manager Labour Relations Chairperson / Departmental representative	<ul style="list-style-type: none"> • Issued notices 	10 days
12		<p style="text-align: center;">Issue sanction</p> <p>After completion of the proceedings, the final outcome might be Counselling, written warning, final written warning, and suspension without pay (max- 3 months), demotion, combination of the above and dismissal.</p>	Chairperson of the hearing	<ul style="list-style-type: none"> • Misconduct hearing Report 	5 days
13		<p style="text-align: center;">Implement the hearing report</p> <p>Issue letter with the relevant sanction to the employee as stipulated in the hearing report. In case the Employee is satisfied with the sanction outcome; close the case.</p>	Manager Labour Relations	Sanction letter	

14		<p style="text-align: center;">Lodge appeal</p> <p>In case the Employee is not satisfied with the outcome, complete the appeal form and submit to the Executing Authority within 5 working days. The employer must finalize the appeal with within 30 Days failing which; suspended employees resume duties and await outcome of the appeal while on duty.</p>	Employee	<ul style="list-style-type: none"> • Appeal form 	5 days
15		<p style="text-align: center;">Recommend appeal</p> <p>Convene session and make recommendations on the appeal to the MEC.</p>	Appeals Committee	<ul style="list-style-type: none"> • Recommended Minutes / Report • Appeal form 	15 days
16		<p style="text-align: center;">Approve appeal</p> <p>The recommended report is submitted to MEC for Approval. The approval is based on the following:</p> <ul style="list-style-type: none"> • Uphold Appeal • Reduce sanction • Confirm the outcome of the disciplinary hearing. 	MEC	<ul style="list-style-type: none"> • Approved Report 	15 days
17		<p style="text-align: center;">Communicate and implement the outcome</p> <p>Communicate the outcome of the appeal to the appellant. Where the sanction is reduced / the outcome of the disciplinary proceedings, the sanctions would be implemented by the Employer from the current date.</p>	Manager Labour Relations / Manager HRA	<ul style="list-style-type: none"> • Letter of Outcome 	
18		<p style="text-align: center;">Lodge a dispute</p> <p>Should the employee be dissatisfied with the outcome, they are entitled to lodge a dispute with Bargaining Council within 30 days after dismissal. If the employee is satisfied with the outcome; Manager Labour relations close the case.</p>	Employee	<ul style="list-style-type: none"> • Letter of Outcome • Supporting documents 	30 days

PROCESS RISKS

Process Name	Risk Description	Probability (H/M/L)	Impact (H / M / L)	Control Description	System / Manual
MISCONDUCT	Non-compliance to timeframes	H	H	To train Presiding Officers within the Department.	Manual

LEGISLATION, POLICIES, PROCEDURES, LEGISLATION & OTHER DOCUMENTATION (i.e. SOPs)

Document Name	Section Description	Effective Date (if applicable)
Public Service Act 30		1997
Labour Relations Act 66		1995
Basic Conditions of Employment Act 75		1997
Employment Equity Act 55		1998
Collective Agreement		
Employment Relations Policy		
Department of Social Development Sexual Harassment policy		2008

AUTHORISATIONS

Authorization:	Name:	Signature:	Date:
Quality Checked By Director : MIS	N.A.Mazizi		
Recommended by Acting Director : Employee Relations & Employee Wellness	Z.Sam		
Recommended by Chief Director: Corporate Services	F.Myburgh		
Approved by Superintendent General	S.Khanyile		
Distribution and Use of SOP	District Managers, Corporate Service Managers, Service Managers, Area Managers, Assistant Managers		