

Policy Title	The Disciplinary Code and procedure for UMEDA
Date of Approval	16 April 2019
Implementation Date	31 May 2022
Review Date	31 May 2022

1. SCOPE

- a. The terms of this agreement shall be observed by all Employees who are employed by uMgungundlovu Economic Development Agency.

2. EXCLUSIONS FROM THIS POLICY

- a. Members of the Board

3. DEFINITIONS

- a. In this policy unless the context clearly indicates otherwise, words and expressions which are defined in the Labour Relations Act 66 of 1995 as amended (the LRA) shall bear the same meaning as the LRA, words importing the masculine gender shall include the feminine and vice versa, and the singular shall include the plural and vice versa.
- b. **Days** – shall be in reference to working days
- c. **Fellow employee** – means an employee employed by uMgungundlovu Economic Development Agency
- d. **Legal practitioner** – means a person who is admitted to practice, and practices as an advocate or an attorney in South Africa.
- e. **Recognized trade union** – means a registered trade union as defined in the LRA
- f. **UMEDA** – uMgungundlovu Economic Development Agency

4. PERIOD OF OPERATION

- a. This Disciplinary Code shall come into effect on the 30th May 2022 and shall remain in force until reviewed and approved by the Management and/or Board.

5. INTENT

- a. The purpose of this Disciplinary Code is to establish a fair, common and uniform procedure for the management of discipline within the uMgungundlovu Economic Development Agency.



6. DISCIPLINARY POLICY

- a. Disciplinary action is not a punitive measure, but a corrective one.
- b. Disciplinary action shall be implemented fairly, consistently, progressively and promptly.
- c. The maintenance of discipline is a responsibility of management and falls within the control function of a supervisory position.
- d. The principles of natural justice and fair procedure shall be adhered to notwithstanding any criminal and/or civil action having been instituted.
- e. Subject to the requirements of substantive and procedural fairness, the Presiding Officer of the Disciplinary Hearing has the right to determine a sanction to be applied having regards to the seriousness of the offence, provided that it is consistent with the provisions set out herein.
- f. The Disciplinary Code shall be published and issued to all employees so that they are made aware, explicitly, of the standard of conduct expected in the workplace.
- g. The Disciplinary Code may be amended and will define the disciplinary process and rights and obligations of management, the Board and the Employees.

7. DISCIPLINARY PROCEDURE

- a. An allegation of misconduct against an employee shall be brought before the Chief Executive Officer or his authorised representative for consideration and decision.
- b. The Chief Executive Officer or his authorised representative shall proceed forthwith, without undue delay, and with due regard to the necessity for disciplinary proceedings to commence promptly. This clause shall be read with Clause 7. (c). and 7. (d) below.
- c. If the Chief Executive Officer or his authorised representative is satisfied that there is *prima facie* cause to believe that an act of misconduct has been committed, he may institute disciplinary proceedings against the employee concerned.
- d. The Disciplinary Hearing shall commence as soon as reasonably possible.
- e. In the event of an act of misconduct by an employee that appears less serious, warranting a sanction less than a final written warning, formal Disciplinary Hearing will not be required. The employee shall be given an opportunity to make either verbal or written representation, either personally or through his representative prior to a determination being made. Proper records shall be kept of the afore-mentioned proceedings
- f. In the event of a misconduct that appears sufficiently serious to warrant a sanction more serious than a written warning, the Chief Executive Officer or

his authorised representative shall institute disciplinary proceedings against the employee and appoint a **Presiding Officer** as follows:-

- g. The Chief Executive Officer or his authorised representative shall appoint, in the first instance, a suitably qualified person employed by the uMgungundlovu Economic Development Agency, preferably one or two levels above the employee's position, to serve as the Presiding Officer.
- h. For the purpose of this Clause 7 (f) (i), a suitable qualified person means a person sufficiently competent to preside over a Disciplinary Hearing.
- i. Should it not be possible to appoint a suitably qualified person, employed by the uMgungundlovu Economic Development Agency to serve as the Presiding Officer, due to a lack of suitably qualified persons, or where Presiding Officers are threatened or intimidated, the Chief Executive Officer or his authorised representative may appoint a suitably qualified external person not employed by UMEDA to serve as the Presiding Officer.
- j. The Chief Executive Officer or his authorized representative shall also appoint an Employer Representative to represent the Employer and serve the function of prosecution, as follows:-
- k. The Chief Executive Officer or his authorised representative shall appoint in the first instance a suitably qualified person employed by UMEDA, preferably one or two levels above the person employee's position to serve as Employer Representative.
- l. For the purpose of Clause (g), a suitably qualified person means a person sufficiently competent to serve as Employer Representative and perform the function of prosecution.
- m. Should it not be possible to appoint a suitably qualified person employed by UMEDA to serve as Employer Representative, due to lack of suitably qualified persons, or where Employer Representatives are threatened or intimidated, the Chief Executive Officer or his authorised representative may appoint a suitably qualified external persons, from outside its employ, to serve as Employer Representative.
- n. Neither the Employer nor the Employee shall be entitled to be represented by a legal practitioner in disciplinary proceedings, unless both parties agree, in writing to allow legal representation, or the Presiding Officer, upon receiving an application by any party, determines that it is reasonable to allow legal representation, having regard to the following factors
 - 1. The nature of the question of law raised by the Disciplinary Hearing
 - 2. The complexity of the case
 - 3. The public interest; and



4. The comparative ability of the opposing parties or their representatives to deal with the Disciplinary Hearing
5. The Employer Representative shall within five (5) working days of his appointment, formulate and serve the charges to be brought against the Employee. The charges shall be set out in a Notice of Disciplinary Hearing detailing:-
6. The date, time and venue at which the Disciplinary Hearing will be conducted.
7. A description of the alleged misconduct which shall set out sufficient details or particulars of the alleged offence(s) to allow the Employee a reasonable and fair opportunity to prepare a response to the charges
8. The name of the Presiding Officer and Employer representative and the address at which notices and relevant correspondence may be submitted.
9. The Employee may be represented by a suitably qualified representative of choice who may be a fellow employee, or a representative from a recognized trade union who may be a shop steward or a trade union official if applicable in terms of their employment contract terms.
10. If the Employee or his representative fails to attend the enquiry on the time and date stipulated on the notice without good cause, provided that the Notice of the Disciplinary Hearing has been properly served either by hand or official email, the hearing may be conducted in his absence.
11. The Employer may have the duty to prove that the Notice of the Disciplinary Hearing was properly served on the Employee. The notice shall be deemed to have been served if delivered either by registered mail, facsimile, official email, personal service or witness delivery.
12. The Disciplinary Hearing shall commence within a reasonable time from the date of service of the Notice of Disciplinary Hearing, but not earlier than seven (7) days and no later than fifteen (15) days from the date of service.
13. The time period referred to in Clause 7 *supra* may be amended by mutual agreement between the Employer and Employee or his Representative. If there is no agreement, either party may apply to the Presiding Officer for an amendment of the submissions by the parties and determine a new date for the disciplinary hearing.



8. CONDUCT OF THE DISCIPLINARY HEARING

- a. The Employer has the following rights and obligations at the hearing
 1. The duty to begin as well as the burden to prove each and every allegation of misconduct as set out in the Notice of Disciplinary Hearing, on a balance of probabilities.
 2. The right to call any witnesses and lead any evidence, which may include books, documents or any other relevant materials.
 3. The right to cross-examine any witness called to testify on behalf of the Employee and to have access to any books, documents or relevant materials produced.
 4. The right to re-examine any of its own witnesses.
 5. The right to present argument based on the evidence in support of any submission.
- b. The Employee has the following rights at the hearing
 1. The right to be heard in person or through a representative and to call any witnesses and lead evidence which may include books, documents, or any other relevant material
 2. The right to cross-examine any witness called to testify on behalf of the Employer and to have access to any books, documents or relevant materials produced.
 3. The right to cross-examine any of its own witnesses
 4. The right to present argument based on the evidence in support of any submissions.
 5. The right to make an application, on good cause shown, for the recusal of the Presiding Officer.

9. The Presiding Officer shall;

- a. Determine the appropriate procedure to be followed, but shall conduct the enquiry fairly, expeditiously,
- b. Observe the rules of natural justice in the conduct of the proceedings
- c. Unless otherwise agreed to the parties, conduct the hearing in an adversarial manner.
- d. Discharge his duties impartially with care and diligence.
- e. Refrain from consulting, conferring or having casual contact with any of the parties or their representatives regards the case while handling the matter without the presence or consent of the other party concern.

- f. Be entitled to put questions of clarity to the parties or their witnesses on any relevant issue, provided that it shall not amount to cross-examination.
- g. Make such interim determinations or rulings of law as deemed necessary;
- h. Be entitled to ratify and approve any settlement reached by the Parties in the disposal of the whole or a portion of the issues
- i. Make a finding of fact after having considered and analyzed the evidence.
- j. Invite and hear any evidence or plea in mitigating, aggravating or extenuation prior to deciding on the sanction to impose, with due regard to the rule of law.
- k. Impose, amongst others, any one of the following sanctions;
 - 1. Written Warning
 - 2. A final written warning
 - 3. Suspension without pay for a maximum of ten (10) days as referred to in Clause 2.5 of Annexure A
 - 4. Withholding of any salary increment for a period not exceeding twelve months.
 - 5. Demotion, with or without financial loss, to a post that is one level below the post which the Employee occupied before the findings of guilt, or
 - 6. Dismissal
- l. Presiding Officers shall within ten (10) days of the last day of the Disciplinary Hearing, confirm in writing the findings of fact and sanction imposed. In the event that the Employee was found guilty and the reasons is support thereof. The Presiding Officer shall provide a copy of the determination to the Chief Executive Officer or his authorised representative and to the Employee or his representative.
- m. The determination of the Presiding Officer cannot be altered by the Chief Executive Officer or any other structure of UMEDA and shall be final and binding on the Employer and Employee, subjected to remedies permitted in law and in this procedure.
- n. An Employee may not be re-charged at a subsequent Disciplinary Hearing for the same alleged misconduct, unless for circumstances permitted in law.

10. PLEA AGREEMENTS

- a. If the Employee wishes to plead guilty to the charge or charges the Employee or his representative and the Employer representative may enter into a plea agreement on a sanction to be imposed.
- b. The plea agreement shall be in writing signed by the Employer representative and the employee or his representative and is subjected to approval by the Presiding Officer.



- c. The Presiding Officer shall consider and approve a plea agreement having consider all relevant circumstances. If the plea agreement is approved by the Presiding Officer a sanction shall be imposed on the Employee in accordance with the plea agreement. In the absence of such approval the Disciplinary Hearing shall proceed as if the Employee has pleaded not guilty.

11. RIGHT TO TERMINATE SERVICE

- a. An Employee who receives a Notice of Disciplinary Hearing shall be entitled to resign, retire or terminate his employment on any other grounds permitted in his contract of employment with immediate effect provided that:
 - 1. The Employee does so prior to the handing down of a findings by the Presiding Officer
 - 2. The Employee consents in writing to deductions of amounts owing by him to the Employer, including but not limited to retirement fund monies arising out of or in connection with termination of service.
 - 3. If the Employee's resignation, retirement or termination of employment meets the requirements and conditions set out in Clause 11 (a) *supra* the Disciplinary Hearing shall not proceed.
 - 4. Such termination of employment does not prohibit any criminal proceedings being instituted against the Employee should the need arise and circumstances dictate as such.

12. DEALING WITH ABSCONDEMENT

- a. An employee who has absented himself for a period longer than 5 (FIVE) days without formal notification to the Employer shall be deemed to have absconded from duty.
- b. The Employer shall attempt to establish the whereabouts of the employee at the address provided in their personal file and shall inform the employee, in writing by letter of his alleged abscondment and the consequences thereof. If the Employee cannot be located or has not responded to communication, the Employer shall immediately proceed with the Disciplinary Hearing in his absence.
- c. If the Employee reports for duty after the steps referred to in Clause 12 (a) and (b) above have already been taken the Employee shall be afforded the opportunity to make verbal or written representations, either personally or through a representative, to the Chief Executive Officer or his authorised representative as to why he should be reinstated.
- d. The Chief Executive Officer or his authroised representative may after considering the Employee's representations either reinstate him or confirm



the dismissal. The decision to reinstate or confirm the dismissal shall be in writing and communicated to the Employee within five (5) days after it has been made.

- e. Should the dismissal be confirmed, the Employee may appeal the decision utilizing the appeal process set out in Clause 17 below.

13. RECORDING OF PROCEEDINGS

- a. The proceedings of the Disciplinary Hearing shall be recorded by means of an electronic device.
- b. The electronic recording of the proceedings shall be kept in safe custody by the Employer.
- c. Upon request the Employer shall provide a copy of the electronic recording free of charge to the Employee or his representative.

14. NON-ATTENDANCE

- a. Should an Employee fail to appear, either in person or through his representative at the place and time set for the Disciplinary Hearing or Appeal Hearing, without good cause, and forty five (45) minutes has lapsed from the time set for the start of the hearing, and it has been established that the Notice of Disciplinary Hearing or Appeal Hearing was properly served on the Employee, the Disciplinary Hearing or Appeal Hearing may be conducted in the absence of the Employee and discipline effected or the appeal determined as the case may be.
- b. Should the Employee Representative not be able to attend a Disciplinary Hearing or an Appeal Hearing the Employer Representative shall notify the Employee or his representative and the Presiding Officer prior to the hearing of the change in circumstances.

15. RIGHT OF REPRESENTATION

- a. An Employee may be represented at any enquiry by a fellow Employee or a representative from a recognized trade union, who may be a shop steward or a trade union official if applicable in terms of their employment contract

16. PRE-CAUTIONARY SUSPENSION

- a. An employer may suspend the Employee or utilize him temporarily in another capacity pending an investigation into alleged misconduct if the



Chief Executive Officer or his authorised representative has reasonable cause to believe that the Employee at the workplace may-

1. Jeopardize any investigation into alleged misconduct
2. Interfere with potential witnesses; or
3. Commit further acts of misconduct

- b. If the Chief Executive Officer or his authorised representative intends to suspend an Employee, he shall give written notice of such intention and afford the Employee 48 hours to make representation as to why he should not be suspended. The Chief Executive Officer or his authorised representative shall make a determination within five (5) days as to whether the Employee concerned shall be suspended or not, after having considered the representation.
- c. Notwithstanding Clause 16 (a) and (b) above, should the Chief Executive Officer or his authorised representative have reasonable cause to believe that the Employee's continued presence at the workplace poses a danger to the well-being or safety of any person or UMEDA property; or be detrimental to stability in the organization; or demonstrates the potential to damage or tamper with evidence; the Chief Executive Officer or his authorised representative may, in the notice of intention to suspend the Employee, also require the Employee to vacate the premises with immediate effect and invite the Employee to make representation within 48 hours as to why the suspension should not be confirmed. The Chief Executive Officer or his authorised representative shall make a determination within five (5) days as to whether the Employee concerned shall be suspended or not; after considering the representations.
- d. The suspension or utilization of the Employee in another capacity shall be fixed and pre-determined period and shall not exceed a period of three (3) months from the date the Chief Executive Officer or his authorised representative is satisfied that there is a *prima facie* case that an act of misconduct has been committed. However, where circumstances prohibit the conclusion of the Disciplinary Hearing within the afore-stated timeframes, such suspension or utilization in another capacity can be extended for a further three (3) months.
- e. Any suspension shall be on full remuneration
- f. Prior to such suspension the Chief Executive Officer or his authorised representative shall consider the written submissions by the Employee or his representative and make a final determination regarding the suspension of the Employee.

17. APPEALS

- a. The Employee has the right to appeal against any disciplinary finding and/or sanction, which has been imposed at a Disciplinary Hearing. The Employee may waive his right to an appeal and the Employee may proceed to directly refer a dispute as provided for in the LRA.
- b. Subject to Clause 17 (a) above an appeal shall be lodged on the prescribed form within seven (7) days of receipt of written notification of the findings and sanction of the Disciplinary Hearing.
- c. The grounds of appeal shall be clearly set out in the Employees Notice of Appeal, provided that the failure by an Employee to raise a ground of appeal shall not preclude him from subsequently raising it before the Disciplinary Appeal Hearing.
- d. The Presiding Officer of the Disciplinary Appeal Hearing shall fix the time and date of the hearing. The Disciplinary Appeal Hearing shall commence within reasonable time from the date of service of Notice of Appeal but shall take place not earlier than five (5) days and not later than ten 10 days from the date that the Notice of Appeal was lodged.
- e. The time period referred to in Clause 17 (d) above may be amended by mutual agreement between the parties in consultation with the Presiding Officer of the Disciplinary Appeal Hearing. Failing agreement between the parties, either party may apply to the Presiding Officer of the Disciplinary Appeal Hearing for an extension of the time period. A new date for the Disciplinary Appeal Hearing shall in this instance be determined by the Presiding Officer of the Disciplinary Appeal Hearing to a mutually convenient time, date and place for the Disciplinary Appeal Hearing to take place.
- f. In the case where the sanction imposed was a maximum of final written warning, an appeal shall be heard by a management level above that of the Presiding Officer of the Disciplinary Hearing. In the case where the sanction imposed as a dismissal or a suspension without pay, an appeal shall be heard by a higher level of management who does not exercise direct management control over the affected employee.
- g. An appeal shall be heard by an objective arbitrator who has not been involved in the initial hearing by any means and will be appointed by UMEDA
- h. The appeal shall be heard on the grounds of an appeal submitted by the Employee and any amendments thereto, by having regards to the record of the Disciplinary Hearing proceedings and the submissions and arguments of the parties based thereon.
- i. The appeal shall not entail the rehearing of the matter afresh.



- j. The Presiding Officer of the Disciplinary Appeal Hearing shall have the power to confirm or set aside any decision, determination or finding and to confirm, set aside or reduce any sanction imposed by the Presiding Officer of the Disciplinary Hearing.
- k. A party shall deliver to the opposing party and to the Presiding Officer a brief statement of case at least two (2) days prior to the date of the Disciplinary Appeal Hearing. No further pleading shall be exchanged unless otherwise agreed.
- l. The statement of case shall concisely set out the facts upon which a party relies, the conclusions of law upon which a party relies and the relief that a party seeks.
- m. The Disciplinary Appeal Hearing shall be conducted in whatever manner and procedure that is deemed necessary by the arbitrator.
- n. The Disciplinary Appeal Hearing shall consider whether the findings and/or sanction imposed by the Disciplinary Hearing or procedure was fair and correct. The Presiding Officer of the Disciplinary Appeal Hearing shall be entitled to make an order in line with Clause 17 (j) above.
- o. The determination of the Presiding Officer of the Disciplinary Appeal Hearing cannot be altered by the Chief Executive Officer or any structure of UMEDA and shall be binding on the Employer subject to any remedies permitted by law.

18. COLLECTIVE MISCONDUCT

- a. Where Employees embark on an unprotected strike or picket the Employer shall inform the trade union and or issue a formal notice to all staff and display it on the notice boards and allow them a period of 24 hours to stop the unprotected strike or picket.
- b. Ultimatum
 1. If the officials do not return back to work the trade union if applicable will be issued with a formal notice requesting them or to indicate within a period of 24 hours why an ultimatum should not be issued to Employees to return to work or be dismissed. If the trade union does not exist in UMEDA the said notice will be issued to all staff and placed on the notice boards.
 2. The Employer shall consider the written submissions from the trade union or employees and if not persuaded the Employer shall again indicate its intention to issue the ultimatum.
 3. The Chief Executive Officer or his authorize representative shall issue the ultimatum. The ultimatum must be clear and allow the Employees 3 hours to return back to work.



4. Those employees who fail to return to work after the time stipulated in the ultimatum shall together with their trade union be informed in writing of the charges against them and shall be given the opportunity to make any written submission (either personally or through their representatives) to the Chief Executive Officer or his authorised representative within ten (10) days from receiving the charges,
5. The Chief Executive Officer or his authorized representative shall appoint an independent Presiding Officer to consider the submissions by the Employees and come to a finding on the charges by taking into consideration the length and duration of the unprotected strike, the reasons thereof, aggravating or mitigating circumstances and compliance (where applicable) with any ultimatum and may further decide whether having regards to all the afore-going, different sanctions should be applied to any Employees involved.
6. The findings of the Presiding Officer shall be issued to the Employee within ten (10) days of receipt of the submissions by the Employee.
7. The Employees or their representatives shall be invited to submit any written mitigating or aggravating circumstances within ten (10) days or receiving the findings from the Presiding Officer.
8. The Presiding Officer shall consider the written mitigating circumstance submitted by the Employees or their representatives and shall issue his sanction within ten (10) days from receiving the submissions on mitigating circumstances from the Employee.

NAME	SIGNATURE	DESIGNATION	DATE
Sihle Ntshonye		Chairperson	07/06/2022