



Maintaining discipline with warnings



**LEGAL
MATTERS**

Elmarie Lemmer



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LWO EMPLOYERS ORGANISATION

MAINTEINING DISCIPLINE IN the workplace is vital to maintain productivity, as well as a positive working environment. Just as an employee has certain rights, the employer has the right to take disciplinary action against an employee who is in contravention of the employer's rules, policies or procedures. It is, however, the employer's responsibility to take action and enforce discipline.

When it comes to taking disciplinary action, the focus is on progressive discipline with the aim to take reasonable steps in order to change or correct the behaviour of employees, through the systematical issuing of warnings, as well as holding consultations.

The issuing of warnings in the workplace must be in line with the employer's disciplinary code. A disciplinary code is vital to ensure that there are clear rules and procedures in the workplace to be followed by employees. Ensure that the disciplinary code is relevant and up to date regarding offences and appropriate sanctions. Also ensure that all employees are aware of what the disciplinary code entails. Warnings can range from a verbal to a written, serious written and a final written warning and must be fair, as well as in line with the seriousness of the offence.

WHEN SHOULD A WARNING BE ISSUED?

It is important to handle each case on its own merits, keeping in mind the employer's disciplinary code and the seriousness of the offence. Employers must note that consistency with regards to taking disciplinary action must always be maintained to avoid discrimination in the workplace.

In not so serious offences, the employer can start with holding a consultation with the employee. During this consultation, the employer sets out his/her concerns with regards to the employee's actions. If the employee then does not align his/her actions with the employer's fixed standard in the workplace, the employer can proceed with a more serious sanction in terms of issuing a warning.

HOW TO ISSUE A WARNING

Prior to imposing any sanction, including a warning, the employer must consult with the employee to prove on a balance of probability that the employee is guilty, as well as determine the seriousness of the offence. The employee must also be given the opportunity to present more information and explain the situation from his/her point of view. We advise employers to have a witness present during this consultation and to keep a detailed record of all disciplinary action taken in the workplace.

INFORMATION INCLUDED IN THE WARNING

- The identity of both parties
- The nature and the date of the offence
- The validity period of the warning
- Clear statement of what action is required of the employee to rectify the situation
- Clear statement of the consequences should the employee fail to rectify the situation.

WHAT IF THE EMPLOYEE REFUSES TO SIGN THE WARNING?

Even if the employee refuses to sign the warning, it is still valid. Make sure that the witness present in the consultation

signs the warning to confirm that the warning was issued and explained to the employee.

Most disputes referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) are related to unfair dismissal and/or unfair disciplinary action. A commissioner at the CCMA will always take the following into consideration:

- Was there a rule in the workplace?
- Is there proof that the employee was aware of this rule?
- Did the employee act according to the rule?
- Were there progressive warnings (according to the offence)?
- Was the sanction taken against the employee fair in terms of the seriousness of the offence?

We always advise employers to keep the above in mind and be proactive by ensuring that there are clear rules in the workplace and that all employees are aware of these rules, as well as policies and procedures.

Elmarie Lemmer is a Legal Advisor at the LWO Employers Organisation – registered with the Department of Labour. She completed a certificate in Advanced Labour Law from the University of Pretoria and has more than 10 years' applicable experience in labour law.



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