



HR PROCEDURES MANUAL

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P-1 RECRUITMENT PROCEDURES AND GUIDELINES

AUTHORISATION

A Personnel Requisition authorised by the Departmental Manager in respect of which section the post is intended, together with a graded job description by the Job Evaluation Committee, must be forwarded to the Human Resources Department who will co-ordinate the recruitment exercise.

The Departmental Manager will check and confirm with Finance Department if the position exists and is budgeted for before forwarding it to the HR Department.

PURPOSE

To regulate the process of recruiting and selection.

Process

1. Request the filling of vacant positions by Departmental Manager
 - 1.1. A written placement request must be forwarded.
2. Processing Request
 - 2.1. In the event of a temporary position the appointment must be sourced through an Employment Agency or MKM database.
 - 2.2. In the event of a permanent position, approval must be obtained from MANCO.
3. Recruitment and Selection of permanent staff
 - 3.1. Advertising
 - 3.1.1. The position must be advertised internally.
 - 3.1.2. If no suitable candidate is identified internally, the position must be advertised in the media and/or
 - 3.1.3. A request must be forwarded to an Employment Agency for placement
 - 3.2. Selection
 - 3.2.1. Applicants must be screened, taking into account MKM's policies and job requirements, and short list must be compiled (by personnel office and Departmental Manager)
 - 3.2.2. The applicants identified on the short list must be interviewed according to a structured interview questionnaire by members of the pane
 - 3.2.3 A recommendation of a suitable candidate together with the requested salary package must be made and forwarded to the MM for consideration
- 4 Appointment of permanent members
 - 4.1. The appointment and salary must be approved by the MM
 - 4.2. A contract of employment and applicable personnel forms be completed and signed by appointed member/MM or Departmental Manager



INTERNAL SOURCING OF STAFF

- MKM will give preference to existing employees through internal and external advertising through the email and notice boards or newspapers.
- It might be necessary to compare internal candidates with external candidates.
- All advertisements will be based on the updated job profile.
- An internal advertisement shall call for applications within 5 working days.
- All internal applications will be screened and short-listed.
- The Human Resources Section will assist in the initial screening to ensure that the candidate meets the required standards.
- Should an internal applicant be accepted, the Human Resources would liaise with both parties to ensure appropriate timing and handover.
- The Human Resources Section will ensure that the “internal transfer/promotion” document is fully completed by:
 - The “Receiving Manager”
 - The “Giving Manager”
 - The Human Resources Manager
 - And authorised by the Head of Section and that the document includes: -
 - The new job position
 - The salary applicable to the job
 - Any conditions applicable i.e. 6-month probation, salary increase and date of next pay review.

EXTERNAL RECRUITMENT:

- If there is no appropriate candidate internally, then the position will be advertised externally through a minimum of three appropriate newspapers or recruitment agencies through Managers etc.
- Alternatively Personnel Agencies who comply with the Recruitment Rooster will be given a mandate to recruit on behalf of MKM.
- The Human Resources Section, together with the line manager will prepare a shortlist based on CV's received from the Personnel Agency or from responses from newspaper advertisements.
- The Human Resources Manager will negotiate a percentage with the Agency.
- The shortlist will be submitted to the MM for approval.

SELECTION / INTERVIEWS

- All required documents must be obtained beforehand for the interviewer/s to study.
- Attention will be given to constitutional requirements and policies pertaining to recruitment e.g. Disablement, Affirmative Action, Gender (Employment Equity Act).

- Experience will be considered in the absence of appropriate educational qualifications (in line with NQF, Employment Equity Act).
- Interviews are conducted with the sole purpose of acquiring the right people in the right places at the right time within a month.
- The Human Resources Section will provide feedback on the outcome of the interviews to all applicants in writing i.e. Regret letters or appointment letters.
- Salary notches will be based on experience, acquired skills, scarcity of skills and educational qualifications and the salary bands set within MKM.

ASSESSMENTS

Once the requirements for a position have been prescribed, it may be necessary to select or develop assessment methods. Assessment methods include interviews, samples of previous work, simulation/ situational exercises, written tests, assessment centres, and the review of past accomplishments and experience. Assessment methods must be able to provide information relevant to all of the characteristics being assessed. The amount of information needed to assess a candidate's competence on a particular characteristic depends on the nature and importance of the characteristic.

Good staffing practices require that the HR department and Managers:

- Develop or select assessment methods which are able to provide all the information relevant to all of the required qualifications;
- Ensure that assessment methods treat all candidates in a fair, equitable and non-discriminatory manner;
- Ensure that selection panel members are competent and able to assess candidates fairly and objectively;
- In the case of a competition, select and place in order of merit, the highest ranking qualified candidates on one or more eligibility lists to provide for the filling of a vacancy or anticipated vacancies;

Reasonable adjustments must be made in assessing candidates who have disabilities. In assessing most qualifications, the process can be enhanced by considering information obtained from different sources or by different methods. This provides a measure of the consistency of a candidate's performance over time and in various situations.

REFERENCE CHECKING

The employment/recruitment agencies are obliged to conduct checks in terms of work history, criminal records and credit checks and qualifications before the potential employee is made an offer.



THE APPLICATION FORM

Each applicant is to complete an application form (Form F-1) in detail. Due to the important role of the application form in the selection process, it is extremely important to know that the applicant did in fact complete the form personally.

Each applicant must leave a contact number or contact person should you wish to contact him or her for an interview.

Application Form Assessment

The following information is to be ascertained from the application form:

- Does the person have the necessary related experience?
- Is the person affordable? (Consider previous salary, experience and budget)
- Does the person have the required education level? (i.e. the mental capacity to do the job). The person's handwriting and ability to complete the form is normally a good indicator of the level of education.
- Does the person have a physical capacity to do the job?
- Any of the information on the application form found to be incorrect or false during the reference check or interview, can be deemed as fraud and the person should not be considered.

SCREENING THE APPLICANT

Phone Head Office HR Section and ascertain if the person has previously been employed with MKM and the reason for leaving. NO PERSON previously DISMISSED from MKM may be re-employed.

It is imperative that whenever possible, two references should be completed before an offer of employment is made.

Be sure to speak to the applicant's previous immediate superior and verify the information on the application form.



THE INTERVIEW

Interviewing job applicants is one of the most important selection techniques. MKM will also use a process called *behavioural interviewing* which enables the interviewer to find out what the applicant has done in the past, and thus, better predict his performance in the job he/she is applying for. The Human Resources Section together with immediate superior shall interview all candidates applying for jobs.

The Interview Guides provide you with a set of appropriate questions, which enable you to obtain the information, needed to make the best selection decision. Remember to use the Interview Guide appropriate to the position you are interviewing for.

P-1.5 THE INDUCTION PROCESS AND PROCEDURES

Induction is a holistic process. It is closely linked to recruitment and selection, coaching and mentorship and the establishment of developmental plans and career planning. Successful induction will ensure that the new employees' initial experience of employment within an organization is productive and long lasting. In essence induction begins even before the employee joins the organization and is on going even during employment at the Organisation.

(1) Pre-employment information

Once the selection process has been finalized a formal letter of appointment congratulating the new employee on being selected for his/her new job stipulating salary, benefits, commencement date, job title, reporting structure, working hours and other relevant conditions of employment.

1.1 First Day

- Once the position has been accepted in writing the newcomer should be sent instructions for the first day.
- The instructions will include the locality of the building.

- The Welcome Pack
- The welcome pack that contains more information on the organization must be sent to the newcomer i.e. Policy Manual / Induction Booklet.
- The newcomer will be supplied with the necessary workstation, uniform, access disk, parking etc.

- Here are crucial questions that any induction programme must address. Questions to be addressed in the induction process are: -

- On day one, what do I do and how do I fit in?
- Intervention developed to address: the job, the relevant manager, and where the person will be working.
- What is my total package?
- Interventions developed to address: basic pay, bonuses, tax implications, medical aid and provident fund benefits.
- What about the longer term?
- Interventions to address: training needs, mentorship, performance management, and career planning.
- How does the health & security work?
- Interventions to address: personal health measures and work security measures.



1.2 Points to be covered about MKM

- General Conditions of Employment, Remuneration, Working hours and Leave.
- Staff benefits
- Grievance Procedure and Disciplinary Procedure
- Retrenchment Procedure

1.3 Points to be covered by the Manager

- Introductions to all staff members and outline their duties and responsibilities.
- Guided tour of the central / regional office.

1.4 Other important points to be covered on the day of commencement of employment

- Discussion of personal training programme.

P-1.6 TERMINATION PROCESSES AND PROCEDURES

A. RESIGNATION AT SHORT NOTICE

- (1) If an employee tenders a short period of notice than the period as prescribed in the letter of appointment i.e. one calendar month, and leaves MKM at short notice, they are in breach of contract of employment and are, in terms of the Basic Conditions of Employment Act, liable to MKM for payment of an amount which is equal to the appropriate salary which would otherwise have been paid to them, had they resigned with the required period of notice. However this requirement may be waived by the MM on valid grounds.
- (2) However an employee's liability as contemplated above may be reduced by an amount that is equal to their salary for that portion of their short notice period that falls within the running period they would have worked had they been given the required period of notice. This implies that, if for instance, an employee has tendered their resignation on 11 October 2007, with their last working day of services as 18 October 2007, the set liability should be reduced by an amount equal to their salary for the period 15 to 18 October 2007. The period 11 to 14 October 2006 falls outside of the required running period and is therefore disregarded for the purposes of reducing the liability.
- (3) In terms of the above mentioned, MKM is also not obliged to pay any monies in respect of compulsory leave standing to the credit of an employee who leaves MKM without having given the required period of notice. However, if the employee has redeemed their obligation as contemplated above, they are deemed to have given and worked the required period of notice and are subsequently entitled to payment of compulsory leave standing to their credit.
- (4) It is important that employee's be informed of these measures in writing when they tender a resignation at short notice.
- (5) The onus rests with the employee to pay MKM any outstanding debt, failing which; the following steps must be instituted:
 - o These monies should be claimed from the employees last payment of salary, provident fund benefits and/or payment in respect of compulsory leave; and
 - o If the money cannot be recovered by any of the foregoing methods, or if doubt exists as to the correct action to be taken, the matter must be reported, together with all available particulars, to MKM attorneys for consideration and advise as to the method to be adopted for recovery of the money.

B. TERMINATION OF CONTRACT WITHOUT NOTICE (ABSCONDING)

The measures contained above apply “mutatis mutandis” to employees who leave MKM without giving notice.

C. RETIREMENT ON OWN REQUEST ON ACCOUNT OF DISABILITY

- (1) An employee, whose “continued disability” prevents them from performing their duties satisfactorily, may submit a written request, to be retired on account of such disability, for consideration.
- (2) The emphasis is placed on “continued and permanent” disability and it follows, therefore that discretion must be exercised and selectively observed before the case is referred to the relevant parties for further attention. All evidence must point to the fact that the work performance of the employee has deteriorated, as a result of irrevocable disability, and that it would be in MKM’s interests to retire the employee. It will be at the discretion of MKM’s life assurers whether the employee may continue to be paid a disability grant.

D. DISCHARGE

- (1) Unless stipulated otherwise in an employees’ contract of employment, MKM may terminate the employees services with one calendar month’s written notice, provided that such period of notice may be shortened by mutual agreement.
- (2) Dismissed can be effected on account of:
 - Actions taken against an employee in terms of the disciplinary code (notice of discharge need to be given in this instance);
 - Employee reductions as a result of rationalisation, economic factors and medical disability;
 - Redundancy, as a result of operational requirements, having due regard to the applicable provisions of Labour Relations Act, 1995; and
 - Fired due to theft, unauthorised usage or removal of MKM assets.
- (3) On termination of employment exit interviews will be given to all employees.

E. ADMINISTRATION OF SERVICE TERMINATION

- (1) On termination and together with his/her final payslip, an employee must receive:
 - A UIF Card correctly completed and stamped with the company stamp. This is done by the HR Section and sent with the termination pay to the employee at the region or forwarding address.



- (2) N.B. Only HR department may issue final payment. The final payment will be by cheque and will be made on the last working day of the month in which the employee resigns from MKM.

F. CERTIFICATE OF SERVICE

- (1) On termination of service, an employee must be furnished with a Certificate of Service showing full names of the employer and employee, the occupation of the employee, dates of commencement and termination of service and the employee's final monthly salary.
- (2) When the termination pay is sent, a Certificate of Service will be sent from Human Resources Section.

G. TERMINATION FORM

In all cases of service termination a completed copy of the Termination Form (F-1.6) or Letter should be sent to HR Section as soon as possible duly signed and dated as accepted by the relevant Manager.



P-2: EMPLOYMENT EQUITY PROCEDURE

1.1 Definitions

Discrimination shall mean any form of direct or indirect treatment against an employee on any arbitrary grounds, including but not limited to: -

- Race
- Gender
- Sex
- Ethnic or social origin
- Colour
- Sexual orientation
- Age
- Disability
- Religion
- Conscience
- Belief
- Political opinion
- Culture
- Language
- Marital status
- Family responsibility

1.2 Implementation

Human Resources will co-ordinate the implementation of the Employment Equity Policy in terms of the guidelines set out in this document.

Line management will be responsible for the implementation of this policy in his/her area of responsibility. Successful performance measured against accepted standards will be considered as an element in each manager's performance.

Set career and succession plans will also be the responsibility of line management. MKM supports the establishment of a representative Employment Equity Steering Committee that will act as a "watchdog" of the policy's implementation.

MKM recommends that the committee be charged with the following key result areas:

- An effective control system for implementation
- Problem and solution identification
- Organisational progress (monitoring, evaluating and publishing)
- Reporting to MKM management.

Advertisements for recruiting purposes will be placed in media directed at a broad range of groups to ensure exposure of the information to previously disadvantaged candidates. Recruitment advertisements shall not indicate that race or sex is a condition for employment.



Special efforts will be made to solicit applications from suitable previously disadvantaged candidates for each vacant post.

Following the application of the initial preference and development policies as outlined above, promotion will be

- Non-discriminatory
- Based on merit
- In line with MKM's employment policy.

1.3 Training

The training needs of new employees will be assessed, especially with regard to designated groups.

Secondly, the placement of candidates in the jobs they are to do will be accompanied by an informal training and support system built around them. Given that most of what managers learn is via experience and relationships at work, much of their development will take place as a result of regular contact with superiors and colleagues at work and socially.

Induction programmes will be developed for and in consultation with Line Management. Critical Performance Areas will be contracted with the incumbents and consistent and frequent counselling and monitoring will take place.



P-5: PROCEDURE FOR MEETINGS

1. All meetings that need a boardroom and preparation must be booked at least two (2) days in advance with the Admin Department.
2. Refreshments will be served as follows:
 - a) External visitors – Where meeting lasts up to three hours.
 - Tea/coffee
 - Cold drinks
 - Biscuits
 - b) External visitors – Where the meeting is longer than three hours.
 - Tea/coffee
 - Cold drinks
 - Juice
 - Biscuits
 - Sweets
 - c) Internal meetings between staff members
 - Tea/coffee
 - d) Internal meetings between staff members from the regions where the meeting is longer than three hours
 - Tea/coffee
 - Cold drinks
 - Juice
 - Biscuits
 - Sweets
 - e) Internal training of staff members (Whole day)
 - Tea/coffee
 - Cold drinks
 - Biscuits
 - Lunch
 - f) Management meetings
 - Tea/coffee
 - Cold drinks
 - Biscuits
 - Lunch
 - Sweets



P-29: PROCEDURE FOR PROMOTIONS

- Cases of promotion may not be advertised.
- All promotions will be discussed with the accountable manager for his/her consideration.
- Short-listed applications will be discussed with the applicant's immediate Manager.
- If the Manager opposes the subordinate's recommendation on the grounds that the promotion will have a negative effect on his/her department, the Manager must discuss the case with the MM, who in conjunction with the Human Resources Department/Manager will make the final decision.
- When an employee is promoted to a higher graded position, he/she will, as from the first day of the next month, be entitled to the change in salary and fringe benefits as applicable to that grade.
- On promotion the new salary of the employee will be determined by the management of MKM as per approved guidelines. Salary increases and staff movements will be effective on the first day of the month, for budget purposes.



P-33: PROCEDURE FOR SEXUAL HARASSMENT

- MKM recognises that an employee who considers that he or she has been subjected to sexual harassment or has been prejudiced by sexual conduct in the workplace, may wish to consult on a confidential basis with a trusted colleague. This procedure is not intended to discourage informal, confidential discussion. However, notwithstanding the discussion with a trusted colleague, all employees must be encouraged to take a more formal course of action where appropriate.
- Allegations of sexual harassment must be dealt with seriously, expeditiously and confidentially, and employees must be protected against victimisation or retaliation for bringing a complaint of sexual harassment. Appropriate disciplinary measures must be taken against employees found guilty of sexual harassment.

RESPONSIBILITY OF EMPLOYEES

- All employees within MKM must have a role to play in helping to create a climate at work in which women and men respect each other's dignity and assist MKM in combating sexual harassment.
- Employees can contribute to preventing sexual harassment through an awareness and sensitivity towards the issue and by ensuring that standards of conduct for themselves and for colleagues do not cause offence. Employees can do much to discourage sexual harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint.
- An employee shall inform management and/or his or her employee representative through the appropriate grievance procedure and request assistance in putting an end to the harassment.

RESPONSIBILITY OF MANAGERS AND/OR SUPERVISORS

- Managers and Supervisors have a particular duty to ensure that sexual harassment does not occur in work areas for which they are responsible.
- Managers shall take steps to positively promote MKM's sexual harassment policy.
- Managers should also be responsive and supportive to any member of staff who complains about sexual harassment, provide clear advice on the procedure to be adopted, maintain confidentiality in any cases of sexual harassment and ensure that there is no further occurrence of sexual harassment or any victimisation of the complainant or the recipient after a complaint has been resolved.

P-37: THE PROCEDURE FOR ENQUIRY AND HEARINGS; MISCONDUCT & INCAPACITY

DEFINITIONS

‘Management’ or ‘manager’ refers to any employee who is an Executive Director and any employee who is the head of a section or region.

The ‘presiding officer’ shall be a manager or any person who has been duly appointed by a manager to act for and on behalf of such manager and which may include a person who is not an employee of the enterprise to preside over any disciplinary inquiry, hearing or appeal. The presiding officer must have had experience or training in the conduct of such proceedings.

A ‘supervisor’ is any employee employed as such in that capacity.

Any employee disciplined in terms of this procedure or where such an employee is required to attend a hearing for incapacity, may nominate a union representative (shop steward) or any fellow employee to act as a representative during such proceeding.

The ‘complainant’ is any employee who may be called as a witness by the employer representative in order to give evidence against any employee disciplined in terms of this procedure for misconduct or where such employee is required to attend a hearing for incapacity.

The ‘employer representative’ is any employee so instructed by manager or supervisor presents the case against the employee at any disciplinary inquiry or hearing.

The ‘Server’ refers to the person who serves any notification on an employee who must attend an inquiry or a hearing.

The ‘interpreter’ is an employee from the workplace who is elected by the employee to interpret for him at any inquiry or hearing.

A ‘disciplinary inquiry’ refers to an inquiry, which is held in case of misconduct where the accused employee is afforded the opportunity to state his case in response to the allegations.

A ‘hearing’ refers to the hearing which is held in instances of the Incapacity of an employee where such an employee is given an opportunity to state his case in response to the allegations, and after there has been due counselling.

GENERAL PRINCIPLES

- Before the formal grievance procedure is evoked, it is important that the aggrieved employee attempts to find a situation informally, either with the person with whom they are aggrieved or with their immediate supervisor;
- On filing their grievance, the employee must indicate whether they have attempted this, and if not, what their reasons are; and
- The grievance procedure is designed as a tool for consultation and consensus seeking for the good of MKM. Creative solutions must be sought to achieve a win-win solution.

INFORMAL AND FORMAL DISCIPLINARY ACTION: MISCONDUCT

Verbal warning: if management or a supervisor is of the opinion that the behaviour or performance of an employee is unsatisfactory but does not warrant a written, final written warning or dismissal, then a verbal warning will be given. The employee is entitled to a representative, and a record of the warning shall be placed in the employee's personal file.

Written warning: if subsequent to issuing a verbal warning, the employee fails to improve or commits a further offence, or if an employee commits any offence which warrants a written warning, the supervisor or manager shall discuss the nature of the transgression with the employee in the presence of the employee's representative. The employee must be given the opportunity to state his version of the events and lead evidence in mitigation. Should there be a dispute relating to the facts of the case then a formal disciplinary inquiry must be held. A formal disciplinary inquiry may also be held in circumstances where the supervisor or manager feel that it would be expedient in the circumstances to hold one or where the employee requests a formal inquiry. A record of the warning must be placed in the employee's personal file and a copy of the warning must be handed to the employee.

Final written warning: if subsequent to issuing a written warning, the employee fails to improve or commits a further offence, or if an employee commits any offence which warrants a final written warning, the supervisor or manager must make the necessary arrangements for a formal disciplinary inquiry to be held.

Dismissals: if subsequent to issuing a final written warning, the employee fails to improve or commits a further offence, or if an employee commits any offence, which may justify dismissal, then the necessary arrangements shall be made for a formal disciplinary inquiry to be held.

PROCEDURE FOR A FORMAL DISCIPLINARY ENQUIRY: MISCONDUCT

A manager or supervisor complete the form 'Notification of a Disciplinary enquiry.'

The original form must be handed to the accused employee who must sign at the designated place on the form indicating his receipt thereof. A photocopy of the form must be made immediately thereafter and the copy handed to the accused employee. The original must be placed in the accused's personal file. Should the accused employee refuse to sign the form as set out above, and then a witness shall sign the form at the designated area.

The file and all documentation and relevant information must be handed to the employer representative in order to enable him to prepare the case.

The accused employee must be given sufficient time to prepare for the enquiry, which shall be no less than 24 hours and no more than 5 (five) working days. The date and time for the enquiry must be clearly stipulated on the above form.

Management shall indicate at the designated place on the above form whether the accused employee is to continue working, or if the aforesaid employee will be suspended on full benefits until the date of the enquiry. Should the accused employee be suspended, the employee will be required to immediately vacate the employer's premises and not return until the date of the enquiry. The accused employee shall have no contact with clients/customers or employees of the employer and shall immediately return all items and documents as requested by the employer.

The form 'Notification of the penalty' shall be completed and signed by the parties at the conclusion of the enquiry. The aforesaid form shall be used in all cases in order to inform the accused employee of the penalty imposed.

Should the penalty be final written warning or a dismissal, the accused employee shall be notified on his right to appeal.

Where the penalty is a dismissal, the employee shall immediately return the remaining items and documents, which are in his possession or under his control to the employer. The employer shall as soon as possible pay the employee his wages or salary as the case may be up to and including the day on which the enquiry is conducted, together with any other moneys that may be due to the employee.

The employer will provide the employee with a certificate of service.

If an employee is absent from an enquiry without having agreed to another date and time with the employer, the matter will be postponed and the accused employee shall be notified by telegram or per hand of another date on which to attend the enquiry.

At the enquiry the accused employee shall be required to provide the presiding officer with the reasons for his non-attendance. Where appropriate the accused will not be remunerated for the days between the two enquiries.



Should the accused employee or his/her representative fail to attend the disciplinary enquiry; the enquiry will be held in the employee's absence. The employee will thereafter be notified of the penalty in writing which may be submitted either or hand or registered mail. The employee will be required to attend the employer's premises in order to collect any moneys due to him, the certificate of service and to return all remaining items and documents under his control or his possession.

Wherever possible, disciplinary enquiries should be held by the presiding officer during normal working hours.

Should an employee fail to attend work for a period of 3 (three) consecutive working days for whatever reason or cause and without notifying his employer and obtaining his employer's permission to be absent from work, the form 'Notification of a Disciplinary Enquiry' shall be submitted per registered mail or per hand to the last address provided by the employer

Seven (7) days notice shall be given to the accused employee. Should the accused employee fail to attend the enquiry, the enquiry shall take place in the absence of the accused employee. The employee will be notified either per hand or per registered mail of the penalty. Should the accused employee attend the employer's premises at any reasonable time thereafter, the employee shall be allowed to invoke the appeal procedure should he request to do so.

The fact that certain misconduct may result in criminal charges being laid against the accused employee does not prevent the employer from holding a disciplinary enquiry in accordance with its procedure. The enquiry should be concluded where possible prior to the laying of criminal charges.

PROCEDURE FOR CONDUCTING A DISCIPLINARY ENQUIRY

MISCONDUCT

1. Open the proceedings and welcome all present: (this should be under procedures)
 - 1.1 the complainant,
 - 1.2 the accused employee,
 - 1.3 the accused's representative,
 - 1.4 the interpreter, and the
 - 1.5 employer representative
2. State each person's function:
 - 2.1 the complainant: gives evidence against the accused employee,
 - 2.2 the accused: presents his case in defence,
 - 2.3 the accused's representative: assist the accused in the presentation of his case
 - 2.4 the interpreter: interprets for the accused,
 - 2.5 the employer representative: presents the case against the accused employee,
 - 2.6 the presiding officer (does not have to be a member of staff): listens to both, establishes the facts impartially and objectively, delivers the verdict and penalty and ensure that a proper record of the proceedings are kept. The presiding officer must establish whether the employer has proved its case on a balance of probability. This means that the party whose version of the fact is the more probable must succeed.
3. The employer representative presents his case as follows:
 - 3.1 Reads out the charges as per Notification Of A Disciplinary Enquiry
 - 3.2 Presents 'Annexure A' to the accused and confirms that the accused did receive the notification form; where after the original form is handed to the presiding officer.
 - 3.3 Presents a summary of the crisp issues of the matter,

- 3.4 Calls the complainant and any other witnesses one at a time to give evidence and presents documentation where necessary,
 - 3.5 The accused is entitled to cross-examine the complainant and all witnesses to clear up any uncertainties
 - 3.6 The accused's representative is entitled to question the complainant and each witness,
 - 3.7 The presiding officer is entitled to cross-examine the complainant and the witnesses any questions in order to clear up any uncertainties,
 - 3.8 Once the employer representative has presented all his evidence, he informs the presiding officer thereof and closes his case.
4. The accused employee presents his case as follows:
- 4.1 The accused states his case in response by answering the allegations against him or by submitting an explanation of his behaviour or denying the charges against him, giving evidence and presenting documentation where necessary with the assistance of his representative.
 - 4.2 The accused calls his witnesses one at time to give evidence, and presents documentation where necessary,
 - 4.3 The employer representative is entitled to cross-examine the accused employee and each witness,
 - 4.4 The presiding officer is entitled to ask the accused employee and his witnesses any questions in order to clear up any uncertainties,
 - 4.5 Once the accused has presented all his evidence, he informs the presiding officer thereof and closes his case.
5. Each party has the opportunity to present a closing argument.
6. The presiding officer then adjourns the enquiry in order to consider the evidence, and prepares written reasons for his findings.
7. The hearing is reconvened and the presiding officer reads out the reasons for his findings and delivers his verdict. If the accused was found not guilty, the enquiry is concluded and the record thereof is destroyed.
8. If the accused has been found guilty the presiding officer must:
- 8.1 Ask the employer representative to provide him the accused's disciplinary and service record,

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- 8.2 Ask the accused and his representative to address him on evidence in mitigation of sentence, taking into account the transgression, the interests of the employer, the personal circumstances of the employee and their suggestion as to a suitable penalty and their reasons thereof,
- 8.3 Ask the employer representative to address him on the suitability of a penalty and the reasons thereof.
9. The presiding officer shall adjourn the enquiry in order to decide on an appropriate penalty.
10. The presiding officer must take the following factors into account when arriving at the appropriate penalty, which are as follows:
- 10.1 Did the employee contravene a rule that exists, and if so where may this rule be located?
- 10.2 Was there a contravention of the rule?
- 10.3 Was the rule valid or reasonable?
- 10.4 Could the employee have known that a transgression of this rule lead to a dismissal,
- 10.5 Has the rule been consistently applied by the employer,
- 10.6 The extent of the breakdown of the relationship,
- 10.7 The gravity of the misconduct,
- 10.7 Length of service,
- 10.8 The offence itself,
- 10.9 Surrounding circumstances of the transgression,
- 10.11 The nature of the work performed by the employee,
- 10.12 Previous record,
- 10.13 The nature and size of the employer's workforce,
- 10.14 Position and profile in the market,
- 10.15 The impact on the workforce
- 10.16 The nature of the work and services rendered by the employer

- 10.17 The relationship between the employer and the victim,
- 10.18 The size of the employer's undertaking,
- 10.19 Personal circumstances of the employee.
11. The presiding officer must read out his findings of the above and announce the penalty.
12. The accused must be handed 'Annexure C' the original of which must be placed in the accused's personal file.
13. The accused must be advised of his right to appeal where the penalty was that of a final written warning or a dismissal.
14. The presiding officer informs the accused in circumstances where the accused has been dismissed as to the date and time when he/she must collect any moneys due to him and his/her certificate of service, the accused must be advised that he/she is to immediately return all remaining items and documents to the employer, whereafter the presiding officer declares the enquiry closed.

PROCEDURE FOR CONDUCTING A HEARING

POOR WORK PERFORMANCE

1. The presiding officer opens the proceedings and welcomes all present:
 - 1.1 complainant,
 - 1.2 employee,
 - 1.3 employee's representative,
 - 1.4 interpreter' and
 - 1.5 employer representative.
2. The function of each person is explained:
 - 2.1 the complainant: gives evidence against the employer,
 - 2.2 the employee: states his / her side,
 - 2.3 the employee representative: assist the employee
 - 2.4 the interpreter: interprets for the employee
 - 2.5 the company representative: represent the case against the employee,
 - 2.6 the presiding officer: ensures that an accurate record of the proceedings is kept, arrives at a finding as to whether it has been shown that the employee was aware of the required performance standard, whether the employee had been given a fair opportunity to improve, the possibility of alternative employment was considered, whether the performance standard was objective, and the delivery of an appropriate sanction.

3. The employer representative presents his / her case as follows:
 - 3.1 he/she establishes that the employee received the notification form to attend the hearing by showing the original to the employee, reads the content thereof, and hands the original to the presiding officer,
 - 1.1 Calls the complainant and any other witnesses one at a time to give evidence and hands the documentation of the counselling sessions and any other relevant documentation to the presiding officer,
 - 1.2 The employee is entitled to cross-examine the complainant and any other witnesses,
 - 1.3 The employee's representative is entitled to cross-examine the complainant and any other witnesses,
 - 1.4 The presiding officer may ask the complainant and witnesses questions in order to clarify any uncertainties,
 - 1.5 The employer representative closes his case.
4. The employee presents his case as follows:
 - 4.1 The employee with the assistance of his representative gives evidence and hand in documents where necessary,
 - 4.2 He/she calls his/her witnesses one at a time and they give evidence,
 - 4.3 The employer representative is entitled to cross –examine the employee and his witnesses.
 - 4.4 The presiding officer may ask the employee and his witness questions in order to clarify any uncertainties,
 - 4.5 The employee closes his case.
5. The employer representative delivers a closing argument.
6. The employee and his representative deliver a closing argument.
7. The presiding officer adjourns the proceedings in order to make his findings.
8. The presiding officer reconvenes the hearing and delivers his findings. He may refer the matter back to the person who attended to the counselling. A new hearing may be arranged at a later time if necessary and the proceedings are adjourned, or

9. The presiding officer may request the employer representative and employee to address him on the appropriateness of dismissal, taking into account any alternative positions, which were offered, to the employee.
10. The presiding officer shall adjourn the proceedings
11. The presiding officer reconvenes and delivers the outcome together with the reasons therefore and the sanction.
12. The employee is handed the form 'Notification of the Outcome' in the event of a dismissal, and the relevant signatures are obtained. The employee is advised of his right to appeal and the hearing thereafter adjourned.

PROCEDURE FOR CONDUCTING A HEARING Incapacity Due To Poor Health Or Injury

1. The presiding officer opens the proceedings and welcomes the parties
 - 1.1 the complainant,
 - 1.2 the company representative,
 - 1.3 the interpreter,
 - 1.4 the employee,
 - 1.5 the employer,
2. The presiding officer explains the function of each person
 - 2.1 The complainant: gives evidence against the employee,
 - 2.2 The employee representative: assists the employee in the presentation of his case,
 - 2.3 The interpreter : interprets for the employee,
 - 2.4 The employee: presents his case,
 - 2.5 The employer representative: presents the case against the employee,
 - 2.6 The presiding officer; ensures that an accurate record of the proceedings are kept, determines whether in the event of temporary incapacity due consideration has been given to the nature of the employee's job, his period of absence, seriousness of illness and the possibility of a temporary replacement. Where the incapacity is of a permanent nature what alternatives to employment

have been considered and the possibility of adapting the duties of the employee to accommodate his disability. The delivery to the parties of a finding and sanction.

3. The company representative presents his case as follows:
 - 3.1 Shows the notification form to attend the hearing to the employee, reads out the content thereof and hands the original form to the presiding officer,
 - 3.2 Calls the complainant and his witnesses one at a time, in order that they may give their evidence. Documentation is presented and is handed to the presiding officer,
 - 3.3 The employee is entitled to cross-examine the complainant and witnesses,
 - 3.4 The employee's representative is entitled to cross-examine the complainant and witnesses,
 - 3.5 The presiding officer asks the complainant and witnesses questions to clear up any uncertainties,
 - 3.6 The company representative closes his case.
4. The employee presents his case follows:
 - 4.1 The employee gives evidence assisted by his representative and hands in any relevant documentation,
 - 4.2 The employer representative is entitled to cross examine the employee,
 - 4.3 The presiding officer may ask the employee questions in order to clear up any uncertainties.
 - 4.4 The employee calls his witnesses one at a time in order that they may give their evidence and presents relevant documentation,
 - 4.5 The employer representative is entitled to cross-examine the employee's witnesses,
 - 4.6 The presiding officer may ask the witnesses questions in order to clear up any uncertainties,
 - 4.7 The employee closes his case.
5. The employer representative and the employee present their closing arguments.
6. The presiding officer adjourns the proceedings in order to consider the evidence.

7. The presiding officer reconvenes and delivers his findings. The presiding officer may refer the matter back to the person to attend the counselling and if necessary a new hearing maybe held at a later time, or
8. The presiding officer may request the employer representative and the employee to address him on an appropriate penalty which address by the employee shall include evidence in mitigation of sentence and his personal circumstances.
9. The presiding officer adjourns the hearing in order to consider the appropriate penalty and writes out his reasons thereof.
10. The presiding officer reconvenes the hearing and delivers his findings.
11. The notification of penalty form in the event of a dismissal is handed to the employee and the relevant signatures obtained.
12. The presiding officer advises the employee of his right to appeal and thereafter closes the hearing.

PROCEDURE FOR AN APPEAL HEARING: MISCONDUCT AND INCAPACITY.

Right to appeal:

- 1.1.1. An employee has the right to appeal under the following circumstances against a final written warning or dismissal for misconduct or where the employee was dismissed following a hearing concerning his incapacity:
 - The procedure was not adhered to,
 - New evidence or a witness is now available which may materially influence the decision taken at the enquiry or hearing,
 - Findings on the facts in that the evidence presented at the disciplinary enquiry does not support the presiding officer's findings that on a balance of probabilities the infraction did indeed occur,
 - The incapacity was not proved at the hearing,
 - The penalty imposed was not commensurate with the offence,
 - The penalty of dismissal was not the appropriate penalty.
- 1.1.2. Should the former employee wish to appeal then he shall appeal within 3 (three) working days from the date of having been informed of the penalty. The form lodging an Appeal must be completed by the employee and submitted to the employer representative.
- 1.1.3. Management or the supervisor shall notify the former employee in any manner, which may be expedient in the circumstances of a date and time as to when the appeal hearing will take place.



- 1.1.4. The former employee is entitled to a representative of his choice, which may include any person from outside the workplace including an attorney. The cost of such representation will be to the their own account.
- 1.1.5. Someone other than the presiding officer who conducted the initial disciplinary enquiry or hearing must conduct the appeal hearing.
- 1.1.6. Where the employee appeals in accordance with sub-paragraph 1.1.1 hereof, the presiding officer may hold a full re-hearing where he is of the opinion that the irregularities were so grave that they caused prejudice to the accused employee. Should the irregularities not be serious, then the presiding officer may hear arguments on the alleged irregularities.
- 1.1.7 Where the former employee appeals in accordance with sub paragraph 1.1.2 hereof the presiding officer must hear the new evidence.
- 1.1.8. Where the employee appeals in accordance with sub paragraph 1.1.3 or 1.1.4. hereof, a review of the evidence will suffice supported by arguments from both sides, providing that an accurate record of the hearing is available. The presiding officer has the discretion to re-hear any evidence.
- 1.1.9 Where the employee appeals in accordance with sub-paragraph 1.1.5 or 1.1.6 hereof, a full re-hearing of the penalty imposed must be held.
- 1.1.10. The former employee must be notified in writing of the presiding officer's findings and the reasons for the findings within (7) (seven) working days calculated from the date of the conclusion of the appeal hearing.
- 1.1.11 The presiding officer is competent to attend or ratify the penalty imposed by the presiding officer of the disciplinary enquiry or hearing.

COUNSELLING

When an employee transgresses MKM's standards and regulations, they are breaching the Contract of Service. MKM therefore has the right to take disciplinary action against them.

Before taking any form of action against an employee, the following will be considered:

- Has the employee been properly informed of the requirements and why they are in place or should the employee be aware thereof?
- Does the employee have a clear understanding of the consequences of the transgression?
- To what extent has the employee been counselled in the past concerning the behaviour or performance complained of?
- What possible casual factors have led to the point where disciplinary intervention has become appropriate?

1. Objectives Of Counselling

Managers must at all times remember that counselling is primarily a process of problem-solving and not a way to impose punitive sanction on an employee. At this stage of the disciplinary process, the Manager is trying to avoid formal disciplinary measures and the primary objective is to identify and address the cause (that which is causing the outward behaviour or performance) and not be misled by the symptom (behaviour itself).

2. Process For Counselling

A counselling interview is likely to incorporate the following: -

- A statement of MKM's standards;
- Identification and description of the shortcoming or symptom and its impact;
- An explanation sought and underlying issues explored;
- Solutions which are mutually discussed and agreement sought thereon;
- The solutions is to be recorded;
- A follow-up discussion to examine progress towards the solution must be set; and
- Representation by a fellow employee where chosen by the employee.

3. Record Of Counselling

This record may be on the "Record of Counselling Form" (which may be obtained from the relevant Human Resources representative) and will be placed on the employee's file and a copy issued to the employee.

POOR PERFORMANCE

This is understood to involve an employee who is willing to perform, but through incapacity is unable to comply with the needs of MKM. It is recognised that such persons need to be carefully counselled and ways explored to help the employee meet the needs of their job. Employees should recognise the need for an efficient MKM operation and if they are unable to improve their performance their services can be terminated.

It is recognised that the employees who do not want to perform in line with MKM's needs should be handled differently from those employees who find that they are unable to perform.

PROCEDURE FOR CONDUCTING A HEARING

POOR WORK PERFORMANCE

1. The presiding officer opens the proceedings and welcomes all present:
 - 1.1 complainant,
 - 1.2 employee,
 - 1.3 employee's representative,
 - 1.4 interpreter' and
 - 1.5 employer representative.

2. The function of each person is explained:
 - 2.1 the complainant: gives evidence against the employer,
 - 2.2 the employee: states his / her side,
 - 2.3 the employee representative: assist the employee
the interpreter: interprets for the employee
the company representative: represent the case against the employee,
 - 2.6 the presiding officer: ensures that an accurate record of the proceedings is kept, arrives at a finding as to whether it has been shown that the employee was aware of the required performance standard, whether the employee had been given a fair opportunity to improve, the possibility of alternative employment was considered, whether the performance standard was objective, and the delivery of an appropriate sanction.

3. The employer representative presents his / her case as follows:
 - 3.1 he/she establishes that the employee received the notification form to attend the hearing by showing the original to the employee, reads the content thereof, and hands the original to the presiding officer,

calls the complainant and any other witnesses one at a time to give evidence and hands the documentation of the counselling sessions and any other relevant documentation to the presiding officer,

the employee is entitled to cross-examine the complainant and any other witnesses,

the employee's representative is entitled to cross-examine the complainant and any other witnesses,

the presiding officer may ask the complainant and witnesses questions in order to clarify any uncertainties,

the employer representative closes his case.

The employee presents his case as follows:

4.1 the employee with the assistance of his representative gives evidence and hands in documentation where necessary,

he/she calls his/her witnesses one at a time and they give evidence, the employer representative is entitled to cross-examine the employee and his witnesses.

The presiding officer may ask the employee and his witness questions in order to clarify any uncertainties,

The employee closes his case.

5. The employer representative delivers a closing argument.

6. The employee and his representative deliver a closing argument.

7. The presiding officer adjourns the proceedings in order to make his findings.

8. The presiding officer reconvenes the hearing and delivers his findings. He may refer the matter back to the person who attended to the counselling. A new hearing may be arranged at a later time if necessary and the proceedings are adjourned, or

9. The presiding officer may request the employer representative and employee to address him on the appropriateness of dismissal, taking into account any alternative positions, which were offered, to the employee.

10. The presiding officer shall adjourn the proceedings

11. The presiding officer reconvenes and delivers the outcome together with the reasons therefore and the sanction.

12. The employee is handed the form 'Notification of the Outcome' in the event of a dismissal, and the relevant signatures are obtained. The employee is advised of his right to appeal and the hearing thereafter adjourned.

COUNSELING FOR POOR PERFORMANCE

The manager or supervisor may in his discretion elect to counsel for poor work performance instead of taking disciplinary action where appropriate in the circumstances.

Poor work performance is where an employee is performing poorly at work and his not meeting the required standards.

A newly hired employee may be placed on probation for a reasonable period of time that will depend on the nature of the job and the time it takes to determine the suitability for continued employment.

A permanent employee must be given a fair opportunity to improve which will vary in accordance with the facts of each case. During this period the employer must hold counselling sessions with the necessary evaluation, instruction, training, guidance or counselling.

The employee must be aware of the required standard and be given a fair opportunity to improve. Dismissal should be the last resort and the employer should offer alternative employment to the employee at the counselling session providing that such alternative employment is available.

Should the employee fail to improve during this period then management or a supervisor shall complete the form 'Notification to attend a hearing'. The presiding officer may not be the same person who attended to the counselling sessions.

The appeal procedures as set out above shall apply. 'Notification of the outcome' shall be handed to the employee at the conclusion of the hearing should the outcome be that of a dismissal.

COUNSELLING FOR TEMPORARY OR PERMANENT ILL HEALTH OR INJURY

If the incapacity is temporary, management or the supervisor shall hold a counselling session with the effected employee in order to investigate the extent of the incapacity.

Where the incapacity is of a permanent nature, counselling sessions shall be held with the effected employee in order to consider the possibility of alternative employment within the organisation of possibility of adapting the employee's duties.

In both instances the form "record of counselling" to be utilised. Dismissal should be the last resort and must be preceded by a hearing.

A manager must hand the employee a form “Notification to attend a hearing”.

The form “Notification of the outcome” shall be handed to the employee at the conclusion of the hearing. Should the outcome be that of a dismissal, the appeal procedure as set out above shall apply.

DISMISSAL BASED ON OPERATIONAL REQUIREMENTS – (RETRENCHMENT)

When an employer contemplates dismissing one or more employees for reasons based on the employer’s operational requirements, the employer must consult:-

- a) any person whom the employer is required to consult in terms of a collective agreement;
- b) if there is no collective agreement that requires consultation, a workplace forum, if the employees likely to be affected by the proposed dismissal are employed in a workplace in respect of which there is a workplace forum;
- c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissal are employed, any registered trade union whose members are likely to be affected by the proposed dismissals;
- d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.

The consulting parties must attempt to reach consensus on:-

- a) appropriate measures:
 - i) to avoid the dismissals;
 - ii) to minimise the number of dismissals;
 - iii) to change the timing of the dismissals; and
 - iv) to mitigate the adverse effects of the dismissals;
- b) the method for selecting the employees to be dismissed; and
- c) the severance pay for dismissed employees.

The employer must disclose in writing to the other consulting party all relevant information, including, but not limited to:-

- a) the reasons for the proposed dismissals;
- b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;

- c) the number of employees likely to be affected and the job categories in which they are employed;
- d) the proposed method for selecting which employees to dismiss;
- e) the time when, or the period during which the dismissal are likely to take effect;
- f) the severance pay proposed;
- g) any assistance that the employer proposes to offer to the employees likely to be dismissed; and
- h) the possibility of the future re-employment of the employees who are dismissed.

STEPS THAT CAN BE CONSIDERED TO ACHIEVE THE EFFECT NEEDED.

- 1.1 Stop recruitment and overtime
- 1.2 Internal promotions to replace staff that leave.
- 1.3 Non-replacement of employees who leave (natural attrition)
- 1.4 Re-skilling, retraining and transfers.
- 1.5 Reduce, freeze increases on other items of budget for a fixed period.
- 1.6 Reduce daily or weekly working hours.
- 1.7 Reduce daily manning levels, maintaining full service but with lower staff levels (rotating short time).
- 1.8 Extend capital equipment replacement cycles
- 1.9 A wage freeze in exchange for job security
- 1.10 Lay-off (unpaid leave)
- 1.11 Seek other sources of supplementary income, which do not involve significant new expenditure.

MINIMISING RETRENCHMENT

Any of the above and,

- 1.12 Early retirement (on full pension?)

1.13 Voluntary redundancy

1.14 Job-seeking/job creation project combined with re-skilling

1.15 Selection criteria like Last In First Out (LIFO) which cost more are used

GRIEVANCE OR DISCIPLINARY PROCEDURES RELATING TO SEXUAL HARASSMENT

- An employee who believes that he or she has been sexually harassed or has been prejudiced by sexual conduct in the workplace (the complainant) should report the alleged act immediately or at the earliest available opportunity to his or her manager. If the alleged harasser is the complainant's line supervisor, then the complaint must be referred to the next senior person in the management structure. The person receiving the complaint shall endeavour to investigate the matter within 48 hours of receiving the complaint.
- The complainant's name will not be disclosed by MKM except where it is necessary to settle the complaint or where the complainant agrees to same or where the requirements of fairness require MKM to divulge the complainant's name.
- The manager shall conduct an internal investigation of any complaints received with sensitivity and with due respect for the rights of the complainant, the recipient and the alleged harasser. The line supervisor receiving the complaint shall interview the complainant and the alleged harasser independently in an attempt to establish the facts surrounding the alleged act.
- Once the manager receiving the complaint has completed his internal investigation, he shall within 72 hours of receiving the complaint or at a further date agreed to with the complainant and alleged harasser convene a meeting with the complainant and the alleged harasser.
- The complainant, recipient and the alleged harasser shall each have the right to be assisted at the meeting by a co-employee if this is required.
- At the meeting, the line supervisor receiving the complaint or to his/her appropriate person shall attempt to resolve the matter with the parties.
- The line supervisor receiving the complaint or other appropriate person duly authorized thereto by the employer shall have the power to remove any person who willfully interrupts the meeting or misbehaves in any manner during the meeting or insults, discourages or belittles any party to the meeting.
- Minutes shall be kept of all the meetings convened by the manager receiving the complaint.



- The above procedure is appropriate where the complainant believes that it may be possible and sufficient for the line supervisor receiving the complaint or other appropriate person, to explain to the alleged harasser engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends the complainant or recipient or makes them uncomfortable and that it interferes with their work. This procedure is not suited for complaints where the complainant and their supervisor find the alleged harasser's conduct to be serious, unacceptable, repetitive and regards disciplinary action/procedure as the most appropriate mechanism in resolving the matter.
- The steps that will be adopted by MKM from this stage onwards will be equivalent to those applied in respect of serious misconduct in terms of the employer's disciplinary code (Refer to Policy manual 37).
- Where the alleged harasser is found guilty at the disciplinary hearing of behaviour amounting to harassment, the alleged harasser will be treated as having committed misconduct and will be subject to appropriate disciplinary action.
- Further, it will be considered a disciplinary offence to victimise or retaliate against an employee for bringing a complaint of sexual harassment in good faith. Similarly the offender may be subject to appropriate disciplinary action, which may include dismissal.

GUIDELINES FOR DISCIPLINARY ACTION

The various forms of disciplinary action are:

- Warning/severe warning; and
- Dismissal or action short of dismissal.

WARNINGS

Where counselling has not met its objectives or is inappropriate then a formal process of warning(s) can be utilised:

- Written advance notice of the meeting;
- Confirmation of the standard;
- An indication of the shortcoming and its impact of MKM;
- Opportunity to explain or defend the action or omission resulting in the shortcoming;
- A clear understanding of why the action is being taken by management;
- The right to appeal against the decision to management; and
- Representation by a colleague.

A warning will remain current for a maximum period of six (6) months unless it is clearly indicated as a “final” or severe warning in which case it remains current for twelve (12) months.

DISMISSAL

Dismissal may not take place without a disciplinary hearing unless this cannot be expected of MKM in the circumstances:

- A formal letter of notification will be issued, explaining the charges and the rights of the employee;
- Administrative arrangements will be detailed;
- The hearing will be chaired by the Human Resources Manager or Consultant of MKM’s choice;
- The findings (guilty or not guilty) of such a hearing will be issued in writing together with reasons, prior to debate over the appropriate sanction; and
- The resultant sanction will be issued in writing together with reasons.

RIGHT TO APPEAL

An employee may appeal against any formal disciplinary action taken by management regarding that employee’s standards of conduct or performance. Any appeal must be in writing, and must reflect the reasons for the employee’s disagreement with the stipulated action. An Appeal Form (obtainable from Human Resources) may be used for this purpose. Such appeal must be received by MKM within three (3) working days of issue of the action.

The appeal will be sent to the relevant Manager who will review the decision in light of the employee's reasons. The Manager will act to expedite the matter in whatever manner they consider appropriate, but must deal with the merits with minimum legal formality.

Should, in their assessment, there be prima facie evidence that the matter has not been handled correctly, they may act to rectify specific irregularity. Such action includes, but will not be limited to (where a creative option is more appropriate):

- Overturning the action;
- Calling an appeal hearing; and
- Referring the matter back to a complete rehearing under a new chairperson.

Where no such ground is established, they will communicate in writing to the employee, rejecting the grounds of the appeal with reasons.

DISPUTE HANDLING

Where an appeal has been rejected or results in an outcome that is unsatisfactory to the employee, the employee retains the right to refer the matter to MKM for Conciliation, Mediation and Arbitration (CCMA).

GRIEVANCE AND DISCIPLINARY PROCEDURES RELATED TO HIV/AIDS

MKM will treat an employee with HIV/AIDS with respect and with the same rights as other employees.

MKM may, as in all other cases, enforce disciplinary procedures against the employee where there is evidence of an infringement of their employment contract.

MKM will regard refusal to work with an HIV/AIDS employee, or discrimination against such an individual, in a serious light and such actions will be considered as a breach of contract. MKM will therefore have the right to terminate employment contracts of such people who refuse to work with HIV/AIDS co-workers.

GRIEVANCE HEARING GENERAL PROCEDURAL GUIDELINES

1. The Chairperson must greet and introduce himself/herself.
2. The Chairperson must state the purpose of the meeting.
3. The Chairperson must ask the participants to introduce themselves and state their roles.
4. The Chairperson must ask both the Grievant and the Respondent if they have any problems with him/her chairing the grievance hearing.

- N/B If either party has a problem, they must motivate their reasons and Human Resources will provide guidance.
5. The Chairperson will read the rights of both the Grievant and the Respondent viz:
 - a) The right to state own case.
 - b) The right to a representative.
 - c) The right to call witnesses.
 - d) The right to cross-examine witnesses.
 - e) The right to an interpreter.
 6. The Chairperson will read the grievance and ask the Grievant to lead his/her case or relate to the Chairperson what aggrieved him/her.
 7. The Grievant will call witnesses to support his/her allegations.
 8. The Respondent will be allowed to ask the Grievant questions and to cross-examine the Grievant's witness.
 9. The Respondent must be allowed to state his/her own case and call witnesses.
 10. The Grievant must be allowed to ask the Respondent questions.
 11. The Grievant must be allowed to cross-examine the Respondent's witness.
 12. The Chairperson must be at liberty to ask either party questions to clarify issues.
 13. The Chairperson must adjourn the grievance hearing to summarise issues and give the outcome.

PROCEDURE FOR INDIVIDUAL/GROUP PROBLEM SOLVING/GRIEVANCE

1. The purpose of this procedure is to enable an employee of MKM who raises a grievance to have that grievance addressed in a fair and expeditious manner.
2. The employee lodging a grievance must do so by filling in the Grievance Form. The employee lodging the grievance should, if possible, provide written supporting information.
3. The employee must lodge the grievance with the person he/she reports to.
4. The person responsible must meet with the employee within five (5) working days to establish the facts and to resolve the matter.



5. Any employee lodging a grievance has the right to be assisted or represented by a fellow employee or by a representative of a recognised staff association, if any, from the same office.
6. If the grievance concerns the person that the employee reports to, the employee may proceed directly to the next level of authority.
7. The person responsible for hearing the grievance must keep a record regarding the handling of the grievance and the outcome, and forward records to the Human Resources Department.
8. If the grievance remains unresolved, the employee may refer the matter to the next level of responsibility for resolution until the grievance reaches the MM level.
9. An employee who is still not satisfied with the outcome at the end of the above procedure, may declare a dispute with the CCMA.

P-49 CODE OF GOOD PRACTICE

1. Introduction

- 1.1 *This code of good practice* deals with some of the key aspects of *dismissal* for reasons related to conduct and incapacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of *employees* employed in an establishment may warrant a different approach.
- 1.2 *This Act* emphasises the primacy of *collective agreements*. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of *collective agreements* or the outcome of joint decision-making by an employer and a *workplace forum*.
- 1.3 The key principle in this Code is that employers and *employees* should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of the business. While *employees* should be protected from arbitrary action, employees are entitled to satisfactory conduct and work performance from their *employees*.

2. Fair reasons for dismissal

- 2.1 A *dismissal* is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a *dismissal* is for a fair reason is determined by the facts of the case, and the appropriateness of *dismissal* as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.
- 2.2 This Act recognises three grounds on which a termination of employment might be legitimate. These are:
 - the conduct of the employee;
 - the capacity of the employee and
 - the operational requirements of the employer's business .
- 2.3 This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade unions. or if the reason is one of those listed in section 187. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.
- 2.4 In cases where dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was affected in accordance with a fair procedure, the dismissal is unfair.

3. Misconduct

3.1 Disciplinary procedure prior to dismissal

All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules

3.1.1 will obviously vary according to the size and nature of the employer's business. In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate.

3.1.2 The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employee's behaviour through a system of graduated disciplinary measures such as counseling and warnings.

3.1.3 Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the most effective way for an employer to deal with minor violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offences.

3.2 Dismissal for Misconduct

3.2.1 Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or willful damage to the property of the employer, willful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements section 188.

3.2.2 When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringements itself.

3.2.3 The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

4. **Fair procedure**

Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to reasonable time to prepare the response and through the assistance of the trade union representative or fellow employee. After the enquiry, the employer should

- 4.1 communicate the decision taken, and preferably furnish the employee with written notification of that decision.
- 4.2 Discipline against a trade union representative or an employee who is an office-bearer of official of a trade union should not be instituted without first informing and consulting the trade union.
- 4.3 If the employee is dismissed, the employee should be given the reason for dismissal or reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement.
- 4.4 In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. **Disciplinary records (FOR HOW LONG)**

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6. **Dismissal and industrial actions**

6.1 Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including:-

- a) the seriousness of the contravention of this Act;

- b) attempts made to comply with this Act
- c) whether or not the strike was in response to unjustified conduct by the employer.

6.2 Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum. The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. Guidelines in cases of dismissal for misconduct

Any person who is determining whether a dismissal for misconduct is unfair should consider:-

- a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- b) if a rule or standard was contravened, whether or not
 - i) the rule was valid reasonable rule standard;
 - ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - iii) the rule or standard has been consistently applied by the employer; and
 - iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

8. Incapacity: Poor work performance

8.1 A newly hired employee may be placed on probation for a period that is reasonable given the circumstances of the job. The period should be determined by the nature of the job, and the time it takes to determine the employee's suitability for continued employment. When appropriate, an employer should give an employee whatever evaluation, instruction, training, guidance or counseling the employee requires rendering satisfactory service. Dismissal during the probation period should be preceded by an opportunity for the employee to state a case in response and to be assisted by a trade union representative or fellow employee.

8.2 After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has

- a) given the employee appropriate evaluation, instruction, training, guidance or counseling; and
- b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactory.

8.3 The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.

8.4 In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

9. Guidelines in cases of dismissal for poor work performance

Any person determining whether a dismissal for poor work performance is unfair should consider:

- a) whether or not the employee failed to meet a performance standard; and
- b) if the employee did not meet a required performance standard whether or not
 - i) the employee was aware, or could reasonably be expected to have been aware of the required performance standard;
 - ii) the employee was given a fair opportunity to meet the required performance standard; and
 - iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. Incapacity; ill health or injury

10.1 Incapacity on the grounds of ill health or injury maybe temporary or permanent. If any employee is temporary unable to work in these circumstances, the employer should investigate the extent of the incapacity or injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstance of the employee to accommodate the employee's disability.

10.2 In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.



- 10.3 The degree of incapacity is relevant to the fairness in any dismissal. The cause of the incapacity may also be relevant. In case of certain kinds of incapacity, for example alcoholism or drug abuse, counseling and rehabilitation may be appropriate steps for an employer to consider.
- 10.4 Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury

Any person determining whether a dismissal arising from ill health or injury is fair should consider:-

- a) whether or not the employee is capable of performing the work; and
- b) if the employee is not capable
 - i) the extent to which the employee is able to perform the work;
 - ii) the extent to which the employee's work circumstances might be adapted to accommodate disability or, where this is not possible, the extent to which the employee's duties might be adapted; and
 - iii) the availability of any suitable alternative work.

P-50 PROCEDURE: UTILIZATION OF VEHICLES

PURPOSE

To regulate the utilization of vehicles by MKM officials

PROCESS

1. Issuing of MKM vehicle by MKM member
 - 1.1. If a travel plan is authorized it must be attached to an application form as outlined in the policy.
 - 1.2. Or else the vehicle application form must be completed
2. Returning of MKM vehicle by responsible officer
 - 2.1. On return the vehicle must be:
 - 2.1.1. Refueled
 - 2.1.2. Clean
 - 2.1.3. Parked in its allocated parking bay
 - 2.1.4. Carefully inspected for any defects, which must be reported to the Operations Department
 - 2.2. The logbook must be completed
3. Services and repairs to MKM vehicles by Operations Department
 - 3.1. For any services or repairs (other than body damage or damage caused by an accident), vehicles must be taken to an AA approved garage.
 - 3.2. Costs must be paid for upon collection using the ABSA petrol card after verifying that the invoice is in accordance with the work done
 - 3.3. Should the costs exceed the ABSA petrol card limit, an approved purchase order must be obtained from the Finance Department.
 - 3.4. All documentation regarding the repair must be forwarded to Finance Department.

An appointed dealer must repair vehicles still under manufacturer warranty in order to meet the warranty requirements. In the case of insurance claims, the claim form together with the quotations must be submitted to the relevant insurance company for authorization of the repairs
4. Registering and licensing of MKM vehicles
 - 4.1. All MKM vehicles must be properly registered and licensed.
 - 4.2. The normal procurement and payment policies must be followed when paying for registration and licensing
 - 4.3. Registration plates must be affixed to a MKM vehicle before it can be used
 - 4.4. All licence clearance certificates must be attached to the MKM vehicles by no later than the last working day of the month in the year it is due.



5. Duplicate keys (Operation Department)
 - 5.1 All duplicate keys to be kept in a locked cabinet
 - 5.2 A register of all duplicate keys must be kept
 - 5.3 Written request must be made motivating the need to use duplicate keys
 - 5.4 The duplicate key register must be updated with the member's details when issuing a duplicate key
 - 5.5 On return of the key, the register must be signed and dated

6. Accident, theft and hijacking
 - 6.1 In the case of an accident made by member of MKM:
 - 6.1.1 A police or traffic officer must be called to the scene
 - 6.1.2 Alternatively, it must be reported to the nearest police station within twenty-four hours
 - 6.1.3 The following particulars must be obtained:
 - o Registration number, make and type of the other vehicle(s)
 - o Name and address of the driver and of the owner(s) of the vehicle(s)
 - o The name of the driver's insurance company
 - o A diagram of the accident scene
 - 6.1.4 The name, address, estimated age of any person involved or injured; name and address of each witness including occupants of other vehicle(s) involved; the CR number issued by the police department.
 - 6.1.5 The accident must be reported to the Cost Center Manager and the Operations Department
 - 6.1.6 An insurance claim form must be completed
 - 6.1.7 Copies of the relevant documentation must be kept
 - 6.2 Theft/Hijack
 - 6.2.1 The accident must be reported to the Operations Department
 - 6.2.2 The accident must be immediately reported to the police by member of MKM

7. Petrol Cards
 - 7.1 All slips generated using petrol card must be retained by MKM member
 - 7.2. On return slips must be forwarded to the Finance Department
 - 7.3. Petrol card slips must be filed in date order per vehicle
 - 7.4. Monthly reports generated by Bankfin must be reconciled to the petrol card slips handed in.
 - 7.5. Reconciliation must be reviewed by Finance Manager

P-51 PROCEDURE: STUDY LOANS

PURPOSE

To regulate the granting and administration of study loans to members of MKM

PROCESS

1. Application for a study loan

- 1.1. A quotation, detailing the fees to be incurred, must be obtained from the institution at which the study is anticipated.
- 1.2. An application must be forwarded to Personnel Department with the quotation referred to in 1.1 recommendation

2.Recommendation of study loan by Personnel Department

- 2.1 The application must be scrutinised to ensure that it is in line with laid down policy
- 2.2 If the application is in line with the policy then the application must be signed and recommended
- 2.3 A contract must be completed
- 2.4 A repayment schedule must be prepared and attached to the contract
- 2.5 The contract, together with the recommended application and the repayment schedule, must be forwarded to the Finance Manager to ascertain availability of funds
- 2.6 All the documents mentioned in 2.5 above together with the Finance Manager signature must be forwarded to the MM for final approval of the application and signing of the contract

3. Administration of study loan

- 3.1 The approved application and signed contract must be filed in the member's personnel file and a schedule reflecting all study loans must be maintained by the personnel department
- 3.2 A staff debtor must be raised in the accounting records by the salaries clerk
- 3.3 Instalments, in terms of the repayment schedule, attached to the contract, must be deducted from the member's salary
- 3.4 A payment request form must be completed by MKM member and supported by an invoice from the relevant institution
- 3.5 The payment request must be approved and forwarded to the creditors section for payment to be made to the relevant institution
- 3.6 A reconciliation of the study loan must be completed on a monthly basis

P-52: PROCEDURE FOR DRAFTING AND ISSUING OF POLICIES

1. Objective

This document lays down the procedure to be adopted in issuing policy and procedure documents.

2. Need for Policy and Procedure

There may be several sources for which the need for a policy and procedure may emanate.

Such sources may be (but are not limited to),

- An individual's idea/belief/concern,
- The outcome of a resolution from a Board of EXCO or policy committee meeting (Employment Equity Committee) or,
- The outcome of departmental, regional or senior managers meetings.

Whatever the source, the idea of the policy or procedure shall be submitted to the MM for consideration.

3. Submission of the Principle

The submission of the need for the policy/procedure should include as much detail and/or motivation as possible and may even include a proposed draft of the document. The MM, in consultation with the appropriate management shall then decide upon;

- a) the desirability of the policy/procedure
- b) the appropriateness of the policy/procedure and
- c) the details required to be included in the policy/procedure document.

4. Approval/Rejection

Should the MM determine that a policy and procedure is both appropriate and desirable he/she shall,

- a) Request a relevant person to draft the policy/procedure and submit the document for review or,
- b) Draft the policy/procedure personally

5. Implementation Procedure

Once drafted and approved by the MM, which may include consultation, the MM shall;

- a) Circulate the draft policy and procedure to the Senior Management team for comments,
- b) Give a reasonable time for comments to be received,



- c) Hold consultations with commentators as appropriate in order to either reject, modify or incorporate into the policy/procedure document, any appropriate comments and if necessary,
- d) Draft a revised policy and procedure document.

Thereafter;

- 5.1 The MM will submit any policy document to a sub committee or Executive Committee as appropriate, in order to obtain acceptance of the policy and visa versa.
- 5.2 Once approved by the Committee, the minutes of the approval will be kept and the document issued as an approved policy, bearing the MM's signature and date.

Alternatively, should the document be of a procedural nature not requiring approval from such committees, the document will then be circulated as an approved procedure, bearing the MM's signature and date.

6. Amendments

Policies may require amending from time to time as circumstance demand. Should it be considered necessary to amend any policy or procedure, the provisions of paragraphs 2 or 5 will apply with any necessary revisions.

7. Record

The MM and HR/Administration department shall keep a full set of policies and procedures at their offices at all times and shall supply Departments with HR Policies and Procedures.

Departmental Heads and Managers are obliged to ensure that all staff members are fully aware of all policies and procedures relevant at any given time. New staff members shall be issued with a copy of all relevant HR Policies and Procedures upon employment.