

Effective from: 20 June 2018

DISCIPLINARY CODE AND PROCEDURE POLICY

1. GENERAL

To ensure productive operations and to provide the best possible work environment for all employees, LAC expects each employee to follow rules of conduct that will protect the interest and safety of all employees and LAC.

- 1.1 This Disciplinary Code and Procedures are based on the following principles, namely that:-
 - 1.1.1 disciplinary action should in the first instance be educational and then corrective;
 - 1.1.2 punitive action should only be taken when earlier steps have proven ineffectual or where the misconduct is of a very serious nature;
 - 1.1.3 as far as is practicable, similar offences committed in similar circumstances should be treated equitably through the application of similar penalties.
- 1.2 This Disciplinary Code and Procedure will operate in the following three instances:
 - 1.2.1 Misconduct where the reason for disciplinary action relates to the conduct of the employee in question;
 - 1.2.2 Incompetence where the reason for disciplinary action relates to the performance of the employee;
 - 1.2.3 Incapacity where the employee is rendered incapable of continuing with the work he presently performs by some outside agency usually caused by factors beyond his or her control, for example sickness, injury, etc.
- 1.3 Although the procedures to be followed may be similar in many respects there are a number of important differences which, if not adhered to, could have serious consequences. It is therefore of crucial importance to determine the precise nature of the complaint before disciplinary action is instituted.
- 1.4 The Director and/or Manager is responsible for the maintenance of discipline and rely on the co-operation of Coordinators and all staff to ensure that a healthy working environment exists.
- 1.5 Should the Director be charged under this Policy, the Chairperson of the Legal Assistance Trust, or his or her delegate, will lead the investigation and actions under this Policy in place of the Director / Manager.



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2. MISCONDUCT

2.1 Sanctions

Depending on the circumstances of each and every case any one of the following sanctions may be applied to any breach of this Code:

(a) Verbal Reprimands

Reprimands may be given as a caution that if the conduct is repeated a written warning may follow. (*See form A, reprimand note*)

(b) Written Warnings

(i) Warnings may be given in the case of first offences involving, amongst others:

(aa) absenteeism and lateness

(bb) disobedience and related offences

(cc) in terms of paragraph 4 of the Alcohol and Drug Abuse Policy

(dd) any of the offences mentioned in paragraph (c) below.

(ii) Warnings may also be given for repetition of minor offences.

(iii) A warning shall remain in force for a period of six (6) months. (*See form B, Written warning*)

(c) Final Warnings

(i) These may be given when:

(aa) an offence is repeated while a warning is in force

(bb) first offenders involving dishonesty, theft or unauthorised removal or possession of LAC property, including LAC vehicles, fraud, corruption, assault, violence or threats of violence, abuse or misuse of Trust property and property of co-employees, in circumstances where summary dismissal is not appropriate.

(ii) Prior to giving a final warning, the Director and/or Manager shall first give the employee an opportunity of defending himself or herself against the complaint/allegation. In appropriate cases, this may include the presentation of oral/or written evidence.

(iii) All reasons advanced by the employee must be carefully recorded on the appropriate form and the Director and/or Manager's reason



for his or her decision must be similarly recorded (*See form C, Final Warning*).

- (iv) A final warning shall operate for six (6) months from the date of issue.

(d) Alternative Sanctions to Summary Dismissal

Where summary dismissal is not appropriate, the following sanctions may be applied:

- (i) Suspension with or without pay
- (ii) A reduction in benefits
- (iii) Demotion
- (iv) A transfer from one position to another

(e) Summary Dismissal

Summary dismissal shall only be used in cases:

- (i) where other forms of disciplinary action have failed and the employee has been given a final warning; or
- (ii) where an employee on a final warning commits a serious offence; or
- (iii) where the offence committed is so serious that it amounts to a repudiation of the employee's contractual obligations; or
- (iv) involving first offenders, where there is dishonesty, theft or unauthorised removal or possession of LAC property, including LAC vehicles, fraud, corruption, assault, violence or threats of violence, abuse or misuse of Trust property and property of co-employees, in circumstances where summary dismissal is appropriate.
- (v) Where there is continued or regular absence from work, without permission or without good reason, continued disobedience, or repeated abuse of alcohol and drugs which affect the employee's work performance.

(f) Compensation

In appropriate cases, in addition to any sanction imposed, an employee can be ordered to compensate the Centre for loss(es) sustained to the Centre by reason of conduct for which the employee has been found guilty at a disciplinary hearing.

2.2 Schedule of Offences

The Code of Discipline shall include, but shall not be limited to the following acts or omissions:



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1. Absenteeism
 - 1.1 reporting late for work;
 - 1.2 leaving work early;
 - 1.3 extended or unauthorised breaks during working hours;
 - 1.4 unauthorised absence from the workplace during the course of the day;
 - 1.5 failure to produce medical certificates when required.

2. Improper Performance at Work

The failure of an employee to perform his or her duties in a proper manner shall be an offence.

3. Sexual harassment
 - 3.1 unsolicited and unwarranted sexual comments directed at someone of the opposite sex or the same sex;
 - 3.2 persistent, unsolicited and unwarranted sexual advances directed at someone of the opposite sex or same sex
 - 3.3 deliberate physical contact with someone from the opposite sex or the same sex, which infringes the person's dignity and bodily integrity.

4. Indiscipline and Disorderly Behaviour
 - 4.1 refusing, alternatively failing, to obey a lawful instruction given by a person in authority;
 - 4.2 non-compliance with established procedures or standing instructions;
 - 4.3 use of abusive language by utterance or any publication which shall include language which has the effect of showing hatred, ridicule or contempt of any person or group of persons particularly with regard to their race, sex, political affiliation, sexual orientation, ethnic group, religion or place of origin;
 - 4.4 threat of violence to person or property;
 - 4.5 assault or attempted assault;
 - 4.6 negligent or wilful loss, damage or misuse of the Centre's property.

5. Alcohol and drugs

Arriving at work under the influence of alcohol and drugs or using or trading with them whilst on duty will be dealt with in terms of the Alcohol and Drug Abuse Policy.

6. Dishonesty



- 6.1 theft of any property irrespective of whether such property belongs to the Centre, an employee or any other person;
- 6.2 bribery and attempted bribery;
- 6.3 inducing or attempting to induce any person to perform any corrupt act;
- 6.4 giving false evidence;
- 6.5 fraud;
- 6.6 falsifying or altering any document for any purpose other than that for which such document was required;
- 6.7 uttering false or fraudulent statements;
- 6.8 misappropriation of any asset, funds or property of the Centre or use of such, asset or property for an unauthorised purpose.

7. Motor Vehicles

Failure to adhere to the Legal Assistance Centre's Vehicle Policy.

8. Safety

- 8.1 any breach of any safety regulation contained in any law;
- 8.2 any act or omission which has or could have the effect of jeopardising the safety of the employee concerned or any fellow employee.

3. INCOMPETENCE

- 3.1 No employee, except an employee on probation, shall be dismissed because of his or her unsatisfactory performance, unless at some prior point in time he or she was informed of the fact that his or her performance was unsatisfactory or defective and thereafter failed to remedy the situation within a reasonable period of time.
- 3.2 Informal counselling should be used for the following:
 - 3.2.1 poor work performance - where the performance of the employee falls short of what can be reasonably be expected of him or her;
 - 3.2.2 carelessness and/or a casual approach to the job;
 - 3.2.3 lack of motivation where same is required;
 - 3.2.4 loafing/laziness - the failure to perform a task within a reasonable period of time;
 - 3.2.5 failure to carry out/complete instructions.
- 3.3 Depending on the complexity of the problem further verbal counselling may take place on an informal basis. However, if the problem is one which could have been easily remedied and was not, then the Director and/or Manager shall issue a Performance Improvement Notice. In serious matters initial counselling will



not be necessary and a Performance Improvement Notice may be issued as a first step.

3.4 If an employee:

3.4.1 fails to remedy his or her performance after being handed a Performance Improvement Notice; or

3.4.2 acts negligently in circumstances where the failure to exercise reasonable care results or could result in the repetition of tasks, the repair of equipment or places the safety of fellow employees at risk; or

3.4.3 has been counselled frequently about unsatisfactory aspects of his or her performance at different times but has not been issued with a Performance Improvement Notice;

an inquiry shall be held or ordered by the Director and/or Manager on the same lines as that preceding a final warning.

3.5 If the employee fails to take the necessary action within the time period stipulated in the Final Warning or, if the action taken by the employee falls short of what is required and is acceptable, or if any employee who has been given a Final Warning performs badly in another area, then an inquiry shall be held to determine:

3.5.1 whether this has actually occurred;

3.5.2 whether there is any good or acceptable explanation for the failure to take action/further unsatisfactory performance;

3.5.3 whether there is any reason why the employee should not be dismissed by virtue of his or her having failed to perform properly.

3.6 The procedure to be followed will be the same as that which applies to disciplinary matters.

3.7 The appeal procedure shall similarly apply.

4. INQUIRY PROCEDURES FOR INCAPACITY

4.1 No employee, except an employee on probation, shall be dismissed by virtue of his or her incapacity to perform his or her work unless

4.1.1 such incapacity has been factually established; and

4.1.2 there is no possibility of the employee taking or being offered an alternative position.

4.2 If it appears that an employee no longer has the capacity to carry out his or her work the matter must first be discussed with him or her in order to ascertain his or her reasons and to advise him or her of the Centre's view. If the employee offers an acceptable explanation, for example, by showing that the incapacity is temporary, the matter need not be taken further. However, if the employee's explanation is not satisfactory or if the position is unclear, the employee must be referred to an expert for a full examination and report.



- 4.3 The choice of the expert shall as far as possible be made by mutual consent but if no agreement is reached the Director and/or Manager's choice shall prevail subject to the proviso that the employee may obtain a second opinion at his or her (the employee's) expense.
- 4.4 The Centre shall pay the costs of the examination and the report.
- 4.5 If the finding of the expert is that the employee in question no longer has the capacity to do the work in question, an enquiry shall be held or ordered by the Director and/or Manager along the same lines as a disciplinary enquiry to determine whether or not the employee can continue with his or her work, whether the employee can be offered alternative employment or whether the employee's contract should be terminated by virtue of such incapacity.
- 4.6 A copy of the report shall be furnished to the employee together with the notice of the enquiry. Unless the parties otherwise agree, the expert who formulated the opinion shall be required to give evidence at the hearing and explain the basis of his or her decision.
- 4.7 The appeal procedure shall similarly apply.
- 4.8 In each case of dismissal, consideration must be given to the question of severance payment.

5. INQUIRY PROCEDURES FOR MISCONDUCT

- 5.1 Prior to the dismissal of an employee, for any reason whatsoever, an inquiry shall be held to determine:
 - 5.1.1 whether the conduct complained of actually took place, and
 - 5.1.2 the appropriate sanction to be imposed having regard to all the circumstances of the offence and the employee himself or herself.
- 5.2 The enquiry shall be conducted by the Director or Manager or two employees delegated by the Director which members shall not be the direct complainant.
- 5.3 An employee shall be given at least FORTY-EIGHT (48) hours' notice of the holding of the inquiry and shall also be informed as to the nature of the complaint against him or her together with the such additional details as may be reasonably necessary to enable him or her to prepare his or her defence (*See form D, Attendance of enquiry into conduct*).
- 5.4 An employee may be represented at the inquiry by a fellow employee of his or her choice. An employee may not be represented by any other person at the inquiry except where the Centre has consented thereto.
- 5.5 The inquiry shall be held in camera and the proceedings shall remain confidential unless otherwise agreed by the parties or where the Director is of the opinion that it is in the best interest of the Centre and the majority of its employees that the findings and decision be made public.
- 5.6 The inquiry shall be kept as informal as possible and shall follow the rules of natural justice as far as is practical. The employee shall be presented with all evidence against him or her and shall then have an opportunity of contesting



such evidence either by questioning any persons giving evidence against him or her by placing evidence to the contrary before the inquiry. The Centre shall likewise be entitled to test the employee's evidence.

- 5.7 The test for accepting or rejecting the evidence shall be that of a balance of probabilities;
- 5.8 If there is no evidence to support the charges or a lesser charge, the employee shall be discharged and the proceedings closed. If the evidence is sufficient to support an alternative charge, and not the original charge, then it shall be competent for the employee to be found guilty of contravening that alternative charge.
- 5.9 When ruling on the charge, full reasons for the decision must be given. If the employee is found to have committed the offence, he/she shall be allowed to lead evidence in mitigation. The employee must also be informed of any aspect of his or her service record which will be taken into account in determining an appropriate penalty and he or she must be given an opportunity of making representations regarding it.
- 5.10 Similarly, full reasons for the penalty imposed must be given.
- 5.11 The presiding officer may postpone the proceedings to consider the charge or the penalty before arriving at his or her decision.
- 5.12 All hearings shall be minuted.
- 5.13 Any party shall be entitled to adjourn the proceedings in order to obtain further information, provided however, such information is relevant and that the adjournment is made in the interest of justice and fairness.
- 5.14 The Centre shall be entitled to suspend any employee pending the holding and or outcome of an inquiry to determine whether or not such employee shall be dismissed provided that such employee's wages are not deducted for the period of suspension.

6. APPEALS

- 6.1 Every employee shall have the right to appeal against any written warning, final warning or decision to dismiss him or her for breach of this Code. An employee shall appeal within seven (7) days of such decision to the Director.
- 6.2 In the case of an appeal against a dismissal, such hearing shall be held within seven (7) days of the employee notifying the Director that he or she intends appealing.
- 6.3 In the case of an appeal against a final warning, such appeal shall be held within fourteen (14) days of such warning having been given.
- 6.4 Any Trustee of the Centre, excluding the Director if he or she participated in the Disciplinary Inquiry or the Trustee's nominee shall be competent to hear an appeal.
- 6.5 The appeal hearing shall be minuted and shall take the form of representations by the employee to the Trustee or Director.



- 6.6 In the event of the employee producing new evidence which could alter the initial decision, the cases shall be referred back to the Committee which heard it.
- 6.7 An employee shall be entitled to be represented at the appeal by a fellow employee of his or her choice.

