

Progressive Discipline in Labour Relations in South Africa

Outline of presentation

- Progressive discipline
- Learners' fundamental rights
- Incapacity: poor work performance
- Incapacity: ill-health
- Misconduct
- Limitation of rights



Schedule 8, s. 3(3): Labour Relations Act 66 of 1995

- * 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 best and 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 and repeated offences.



FUNDAMENTAL RIGHTS OF CHILDREN

Some rights, as enshrined in the Constitution, are:

- having their best interests regarded of paramount importance in every matter concerning them (section 28(3)), and
- protection from maltreatment, neglect, abuse or degradation (section 28(1)(d)),
- respect and protection of their human dignity and worth (section 10),
- bodily and psychological integrity (section 12(2)),
- education (section 29(1))



INCAPABLE EDUCATORS

Education Laws Amendment Act 53 of 2000 (s.16)

If it is alleged that an educator is

- unfit for the duties attached to the educator's post or
- incapable of carrying out those duties efficiently,
- the employer must assess the capacity of the educator and
- may take action against the educator
- in accordance with the incapacity code and procedures for poor work performance as provided in Schedule 1.



Schedule 1 (s. 1) The employer must assess the degree of incapacity of the educator.

He /she must consider

- the impact that the incapacity has on the work to be done at the school;
- the extent to which the educator fails to meet the required performance standards;
- the extent to which the educator lacks the skills to perform according to the job description;
- the nature of the educator's work and responsibilities; and
- the circumstances of the educator.



ILL-HEALTH OR INJURY

Education Laws Amendment Act 53 of 2000, Schedule 1 (s. 3): the employer may initiate an investigation, or the educator may apply for a discharge.

- A registered medical practitioner must examine the educator.
- This report must indicate the nature, extent and permanency of the incapacity.
- Alternative employment may be considered, or the adaptation of the duties.
Dismissal must be seen as a last resort.
- The abuse of alcohol or drugs: a formal rehabilitation programme at expense of educator.



SERIOUS MISCONDUCT

17. An educator must be dismissed if he or she is found guilty of:

- (a) theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports;
- (b) committing an act of sexual assault on a learner, student or other employee;
- (c) having a sexual relationship with a learner of the school where he or she is employed;
- (d) seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee;
- (e) illegal possession of an intoxicating, illegal or stupefying substance; or
- (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).



CATEGORIES OF MISCONDUCT

Property and finances

Criticism of employer or institution

Misuse of position to promote certain interests

Poor work performance

Improper behaviour

Disregarding safety regulations

Dishonesty

Refusal of counselling or rehabilitation.



MISCONDUCT (1)

18. An educator may be dismissed if he or she is found guilty of:

A: Improper behaviour

- (i) fails to carry out a lawful order or routine instruction without just or reasonable cause;
- (ii) while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner;
- (iii) incites other personnel to unprocedural and unlawful conduct;
- (iv) displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;
- (v) intimidates or victimises fellow employees, learners or students
- (vi) participates in unprocedural, unprotected or unlawful industrial action



MISCONDUCT (2)

B: Dishonesty

- (i) gives false statements or evidence in the execution of his or her duties;
- (ii) falsifies records or any other documentation;
- (iii) commits a common law or statutory offence;
- (iv) commits an act of dishonesty

C: Safety regulations

- (i) in the course of duty endangers the lives of himself or others by disregarding set safety rules or regulations;
- (ii) refuses to obey security regulations



MISCONDUCT (3)

D: Poor work performance

- (i) absents himself or herself from work without a valid reason or permission;
- (ii) performs poorly or inadequately for reasons other than incapacity;
- (iii) without authorisation, sleeps on duty



EASTERN CAPE DEPARTMENT OF EDUCATION

Examples of Misconduct: 1999 – 2000

Assault

Alcohol abuse

Assault on principal

Attend lectures in working hours

Misappropriation of school funds

Manhandled learners

Refusal to cook for children

Failing to take action against a teacher

Found in shebeen in working hours

Refusal to type examination papers

Made a cheque amounting to R50 000 payable to a teacher

Beating learner with belt buckle

Sexual relationship with learner

Sexual conduct

Arson

Insubordination

Inconsistency

Absence from duty

Verbal abuse of principal



FREE STATE DEPARTMENT OF EDUCATION

Level	Cases received	Cases finalised
Head Office	1998 = 15	1998 = 14
	1999 = 4	1999 = 3
	2000 = 12	2000 = 3
Regional office	1998 = 7	1998 = 7
	1999 = 4	1999 = 4
	2000 = 19	2000 = 9
School Management	1998 = 224	1998 = 220
	1999 = 306	1999 = 288
	2000 = 153	2000 = 62



FREE STATE DEPARTMENT OF EDUCATION 1998 - 2000

Nature of Misconduct	A	B	C	D	E	F	G	H
* Fraud	9	3	2	-	-	12	8	34
* Theft	15	1	-	-	-	8	7	31
* Absenteeism	46	6	-	5	11	3	26	97
* Insubordination	1	14	7	2	18	5	4	51
* Corporal punishment	2	2	-	-	4	-	-	8
* Sexual offences	2	-	-	-	-	1	2	5
* Negligence	13	18	5	4	19	-	12	71

A - Dismissal

B - Fined

C - Demotion

D - Suspended

E - Warning

F - Not guilty

G - Pending Cases

H - TOTAL



THE CONSTITUTION OF RSA; BILL OF RIGHTS (Section 36)

LIMITATION OF RIGHTS

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

- a. the nature of the right;
- b. the importance of the purpose of the limitation;
- c. the nature and extent of the limitation;
- d. the relation between the limitation and its purpose; and
- e. less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

