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Revised Disciplinary Code applicable during the national lockdown and any reintegration period thereafter

1 Introduction

- 1.1 The COVID-19 pandemic and the consequent lockdown of the country has necessitated a change in the way in which Stellenbosch University (“SU”) operates.
- 1.2 Many of SU’s employees are working from home as a result of the COVID-19 pandemic. While the lockdown has been scheduled to end on 30 April 2020, it may not signal a return to normality and organisations, including SU, will have to undertake a period of gradual reintegration.
- 1.3 The Disciplinary Code: Rules regarding Disciplinary Action against Staff members (“the Disciplinary Code”) places significant procedural obligations on SU which are not possible to comply with during the lockdown period and any period of reintegration.
- 1.4 The current situation requires SU to introduce practical measures that will ensure that the University is able to effectively and fairly institute disciplinary action against members of staff during the lockdown period and any period of reintegration.
- 1.5 This document sets out a revised disciplinary procedure that SU will follow when it is required to take disciplinary action against a member of staff. This procedure will be utilised until the Institutional Committee for Business Continuity (“the ICBC”) decides that full reintegration has been achieved.

2 Purpose of this document

- 2.1** To regulate the procedure that SU will adhere to when instituting disciplinary action against an employee during the lockdown period and any period of reintegration.

3 Procedure in the case of less serious misconduct

- 3.1** In the case of misconduct where a verbal or a written warning would be an appropriate sanction to address the matter, no formal disciplinary enquiry is required.
- 3.2** The following process is to be followed:
- 3.2.1** An employee's line manager, supported by the human resources practitioner for the environment, will schedule a meeting with the employee in question. The meeting may be conducted telephonically, via Skype, Zoom, Teams or any other platform that enables the parties to communicate with one another.
- 3.2.2** The line manager must inform the employee of the reason for the meeting and of the allegation/s of misconduct against him or her at least 48 hours prior to the intended meeting.
- 3.2.3** The employee must be provided with an opportunity to respond to the allegations of misconduct against him/her. The employee can elect to respond in writing before the intended meeting.
- 3.2.4** Where relevant, the line manager may provide any documentary/audio evidence in support of the allegations of misconduct during the meeting.
- 3.2.5** The employee may request a brief adjournment of the meeting to consider any evidence provided to him/her during the meeting.

- 3.3 The employee's line manager will consider the employee's representations (if any) in response to the allegations of misconduct. The line manager, in consultation with the human resources practitioner, will determine what sanction (if any) should be imposed.
- 3.4 The employee should be informed in writing of the outcome of the meeting and what disciplinary sanction, if any, has been imposed within five working days after the meeting.
- 3.5 A copy of the sanction and the aforementioned communication must be entered on the employee's personnel record.

Appeal

- 3.6 There is no provision for an internal appeal against the sanction. An employee aggrieved by any disciplinary action short of dismissal may refer an unfair labour practice dispute to the Commission for Conciliation, Mediation and Arbitration ("the **CCMA**").

4 Procedure in the case of serious misconduct

- 4.1 In the case of serious misconduct where a final written warning or dismissal would be an appropriate sanction, the procedure recorded below is to be followed.

Preliminary Investigations

- 4.2 If necessary, SU may conduct a preliminary investigation into any allegations of serious misconduct against an employee.

Procedure

- 4.2.1 The Chief Director: Human Resources will appoint any person from within or outside the University to act as the initiator at the disciplinary enquiry.
- 4.2.2 The employee must be provided with a notice to attend a disciplinary enquiry, by email, at least five working days prior to the disciplinary enquiry. The initiator must ensure that he/she includes a delivery receipt with the email.

4.2.3 The notice must record the following:

4.2.3.1 The allegations of misconduct against the employee;

4.2.3.2 The date and time at which the enquiry will be held;

4.2.3.3 The social media platform that will be used to convene the enquiry together with any necessary login details (where required);

4.2.3.4 The notice must inform the employee of:

4.2.3.4.1 The right to be represented by a fellow employee of his/her choosing.

4.2.3.4.2 The right to the assistance of an interpreter.

4.2.3.4.3 The right to confer with his/her representative during the enquiry and to question any witnesses called to testify against him/her.

4.2.3.4.4 That, should he/she fail to attend the hearing without good reason, the hearing may proceed in his or her absence.

4.3 The employee must be provided all relevant documentary evidence together with the notice to attend the disciplinary enquiry.

4.4 Where appropriate, instead of convening a disciplinary enquiry, SU may require an employee to present written representations in response to any allegations of misconduct against him/her.

Chairperson

4.5 The Chief Director: Human Resources may appoint any person from within or outside the University to chair the disciplinary enquiry, to report on the findings of the enquiry and to make a recommendation regarding disciplinary actions or sanctions against the staff member.

4.6 The chairperson will determine the procedure to be followed during the disciplinary enquiry.

Legal Representation

4.7 Neither party is entitled to legal representation at a disciplinary enquiry.

Sanction

4.8 If a staff member is found guilty of misconduct, the enquiry chairperson must make a recommendation to the Chief Director: Human Resources regarding the sanction to be applied.

- 4.9 The Chief Director: Human Resources must consider the chairperson's recommendations and may ratify the recommendations or amend them.
- 4.10 The employee should be informed in writing of the outcome of the disciplinary enquiry and what disciplinary sanction, if any, has been imposed within five working days after completion of the enquiry.

Appeal

- 4.11 An employee has no internal right of appeal against the sanction imposed by the Chief Director: Human Resources. An employee aggrieved by the outcome of the disciplinary enquiry may either refer an unfair labour practice dispute or unfair dismissal dispute to the CCMA.

5 Precautionary Suspensions

- 5.1 As confirmed by the Constitutional Court in *Long v South African Breweries (Pty) Ltd and Others* [2018] ZACC 7, where a suspension is precautionary (pending an investigation - and is not punitive), there is no requirement that an employee be given an opportunity to make representations prior to the suspension being implemented.
- 5.2 The Chief Director: Human Resources may provisionally suspend a staff member who has been accused of misconduct on full payment for a maximum of ninety d

