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Disciplinary Code: Rules regarding Disciplinary Action against Staff Members during COVID19 crisis

1 Introduction

- 1.1 The COVID-19 pandemic and the consequent lockdown of the country has necessitated a change in the way in which the Stellenbosch University (“SU”) operates.
- 1.2 Many of SU’s employees are working from home as a result of the COVID-19 pandemic. It may be that the usual way of working only resumes much later.
- 1.3 SU has conducted a review of its Disciplinary Code: Rules regarding Disciplinary Action against Staff members (IR0152). IR0152 places significant procedural obligations on SU which it is unlikely to be able to fulfil during any lockdown period or where normal activities have not resumed due to the risks posed by Covid-19.
- 1.4 The current situation requires SU to introduce practical measures that will ensure that the University is able to timeously institute disciplinary action against members of staff during these times.
- 1.5 This policy provides a condensed disciplinary procedure that SU will follow when it is required to take disciplinary action against a member of staff. This condensed procedure will be utilised until the resumption of normal activities.

2 Purpose of this document

- 2.1 To regulate the procedure that SU will adhere to when instituting disciplinary action against an employee.

3 Procedure in the case of less serious misconduct

- 3.1 In the event of an act of misconduct being committed, disciplinary action will be taken against the offender.

- 3.2 The precise nature of the disciplinary action to be taken will depend upon the circumstances of each case and, in order to ensure the fair application of discipline, the circumstances of each case will be considered before disciplinary action is taken.
- 3.3 In the case of less serious misconduct where a verbal or a written warning would be an appropriate penalty, no formal disciplinary hearing is required.
- 3.4 The following process is to be followed:
 - 3.4.1 An employee's line manager, in conjunction with a representative from SU's human resources department, will schedule a meeting with the employee in question. The meeting may be conducted by Skype, Zoom or any other platform that that enables the parties to see and communicate with one another.
 - 3.4.2 The line manager must inform the employee of the reason for the meeting and of the allegation/s of misconduct against him or her.
 - 3.4.3 If relevant, the line manager may provide any documentary/audio evidence in support of the allegations of misconduct during the meeting.
 - 3.4.4 The employee must be provided with an opportunity to respond to the allegations of misconduct against him/her.
 - 3.4.5 The employee may request a brief adjournment of the meeting to consider any evidence provided to him/her during the meeting.
- 3.5 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 relevant human resources practitioner, will determine what sanction (if any) should be imposed.
- 3.6 The employee should be informed in writing about the outcome of the meeting and what disciplinary sanction, if any, has been imposed within five working days after the meeting.
- 3.7 The sanction must be communicated to the Human Relations Office in the Division of Human Resources (HR). A copy of the sanction and the aforementioned communication must be entered on the staff member's personnel record.

Appeal

- 3.8 An employee who is not satisfied with the outcome or the sanction may lodge an appeal within five (5) working days with the Chief Director: HR. The appeal must be sent via email and must set out the reasons why the employee disagrees with the outcome or sanction. The Chief Director may deal with the appeal or delegate it to a third party from inside or outside the University. Upon receipt of an appeal, the line manager's response must be obtained. The appeal must ideally be finalised within ten (10) working days of it being lodged.
- 3.9 The Chief Director or his delegee can overturn the outcome or the sanction but may not imposed a harsher sanction.
- 3.10 An employee who is dissatisfied with the outcome of an appeal must refer a dispute to the CCMA within 90 days.

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 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 sender of the notice must ensure that he/she includes a delivery receipt with the email.
- 4.2.2 The notice must record the following:
- 4.2.2.1 The allegations of misconduct against the employee;
 - 4.2.2.2 The date and time at which the enquiry will be held;
 - 4.2.2.3 The social media platform that will be used to convene the enquiry together with any necessary login details (where required);
 - 4.2.2.4 The notice must inform the employee of:

- 4.2.2.4.1 The right to be represented by a fellow employee of his/her choosing.
 - 4.2.2.4.2 The right to the assistance of an interpreter.
 - 4.2.2.4.3 The right to confer with his/her representative during the enquiry and to question any witnesses called to testify against him/her.
 - 4.2.2.4.4 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 a disciplinary enquiry.
- 4.4 Where appropriate, SU may require an employee to prepare written representations in response to any allegations of misconduct against him/her.

Chairperson

- 4.5 The Vice-Rector: Social Impact, Transformation and Personnel or her or his delegate will appoint a disciplinary enquiry chairperson to chair the disciplinary enquiry proceedings and to make a recommendation regarding disciplinary actions or sanctions against the staff member. The chairperson may be an external third party.
- 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 Vice-Rector: Social Impact, Transformation and Personnel regarding the sanction to be applied.
- 4.9 The Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate must consider the chairperson's recommendations. The Vice-Rector or his or her delegate 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 ten working days after completion of the enquiry.

Appeal

- 4.11 An employee who is not satisfied with the outcome or the sanction may lodge an appeal within five (5) working days with the Vice-Rector: Social Impact, Transformation and Personnel .The appeal must be sent via email and must set out the reasons why the employee disagrees with the outcome or sanction. The Vice-Rector may appoint a third party from either inside or outside the University to hear the appeal.
- 4.12 Upon receipt of an appeal, the chairperson of the disciplinary enquiry, assisted by the initiator, must be provided with the appeal and requested to forward a response to the person appointed to hear the appeal. The appeal must ideally be finalised within ten (10) working days of it being lodged.
- 4.13 The appeal will be dealt with on the papers. There will be no appeal hearing.
- 4.14 An appeal does not interrupt the operation of the outcome or sanction imposed. These remain in effect.
- 4.15 An employee who is dissatisfied with the outcome of an appeal must refer a dispute to the CCMA within 90 days where the sanction imposed was one short of dismissal and within 30 days where the sanction imposed was a dismissal.

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 Vice-Rector: Social Impact, Transformation and Personnel or his or her delegate may provisionally suspend a staff member who has been accused of misconduct on full payment for a maximum of ninety days.

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