



EMPLOYEE DISCIPLINARY PROCEDURES IN TANZANIA

The relation created between an employer and an employee is essential since every party depends on another party, as each one has a contribution to the other. An employer depends on an employee to make his undertakings possible also an employee depends on the earnings from the employer to sustain his needs in life. That is why the law does recognize and protect this relationship, regardless formed by a formal contract of employment or by the conduct of the parties. This is with the view of protecting the bond so that development could possible.

Thus, with the effect of the changes made in 2004 the aim was to stimulate and promote economic development and economic justice as provided for under section 3(a) ELRA 2004. . In modernizing Labour law to meet the challenges of the 21st century, the Labour law focused on the work-life balance and encouraged the family friends' type of relationship between the capital and Labour or Capital and Capital or Labour and Labour. It is seen better to resolve the disputes within the enterprise itself because it encouraged and promotes parties to keep the locus of control over the outcomes with themselves and to take the responsibility for resolving their problems.

In the view of protecting the relationship between an employee and employer based on the fact that, an employee is under the supervision of the employer. The law provides for the specific procedure to be observed in case there are misconducts or incapacibilities. Employees' disciplinary procedures are guided and provided by the **Employment and Labour Relations Act, Labour Institutions Act** and **Regulations** thereof.

Firstly it has to be an act done willfully with a wrong intention and conveys the ideas of wrongful intention for it to be misconduct, whereby an act has to be an improper behavior, intentional wrongdoing, or deliberate violation of a rule standard of behavior.

The laws also intend to assist employers and employees to manage any issue of misconduct or poor performance at the workplace. The essential elements of any procedures for dealing with grievance and disciplinary issues are that they must be "**rational**" and "**fair**" that the basis for the disciplinary action is clear.

An employer has to make an investigation over the alleged misconduct; this will give room to understand the root and nature of the alleged misconduct. The disciplinary procedures by and employer should not be taken unilaterally without communicating with employees.



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If the investigation concludes that the employee has the case to answer, the employer should notify the employee in writing of the alleged disciplinary issues and the practical consequences. This notification gives a chance to an employee to respond to the said allegations; this is in respect of rules of Natural Justice that, no one should be condemned unheard. So an employee will have a chance to explain in detail about the alleged misconducts and most probably take action in changing the behaviour.

If the employer is desirous to take action (termination) from the proved misconduct and after notifying an employee, lawful and fair procedures for termination have to have adhered thereof. Whereby, failure to comply with the stipulated procedures will render it to be unfair termination by the employer and consequences will follow the line. The procedures for termination of an employee due to misconduct are listed below;

1. Providing an employee with written notice of termination. Notice is the amount of time between informing an employee in writing that s/he will be terminated and the date upon which the termination will take effect (i.e. the last day that the employee will be paid). An agreement, including an employment agreement, cannot be made with an employee for less than the minimum notice requirement as provided for in employment/labor standards. The law provides for a statutory time limit basing on the nature of employment relation. The notice shall be self-explanatory, as to the reasons for such termination. An employer may choose to have the termination take effect immediately, and pay the employee for the weeks of notice required by the legislation or, if greater than that required by legislation, as agreed to in the employment contract
2. Paying an employee necessary entitlements, the law provides for the amounts to which an employee is entitled after termination has been effected by an employer. The law under section 44 of the Employment and Labour relations Act requires an employee to be accorded with unpaid leave allowances, severance payment, remuneration for work done before the termination, and any transport allowance that may be due under section 43. But also the law requires On termination, the employer to issue to an employee a prescribed certificate of service