

FORT COX AGRICULTURE AND FORESTRY TRAINING INSTITUTE

Fort Cox Agriculture and Forestry Training Institute policies will be recorded on the institutional policy catalogue, will be available at the library and on the institute website, (as <http://www.fortcox.ac.za/policies/>) which will be regularly updated. As it is important to provide critical information such as when the policy was introduced, what it aims to achieve and who has responsibility for its implementation and review.

DISCIPLINARY CODE AND PROCEDURE POLICY

POLICY PARTICULARS

DATE OF APPROVAL BY CHAIRPERSON: COUNCIL: 4/11/2019

COMMENCEMENT DATE: 1 January 2019

REVIEW DATE: 1 January 2021

RESPONSIBILITY:

- IMPLEMENTATION & MONITORING: Human Resources together with Managers/Supervisors
- REVIEW AND REVISION: Human Resource in consultation with the Unions and Managers/Supervisors

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Draft: DISCIPLINARY CODE AND PROCEDURES

1. Parties to Fort Cox Agriculture and Forestry Training Institute (FCAFTI) drafted the attached disciplinary code and procedure for its employees.
2. Date of implementation
This draft agreement comes into effect when all the necessary consultation processes took place and replaces Section 20 - 22 in total of the Fort Cox Agriculture and Forestry Staff Service Regulations disciplinary code and procedure.

Draft: DISCIPLINARY CODE AND PROCEDURES FOR FORT COX AGRICULTURE AND FORESTRY TRAINING INSTITUTE

1. PURPOSE AND SCOPE

The purpose of this code and procedures is:

- 1.1 To support constructive labour relations in the FCAFTI;
- 1.2 To promote mutual respect between employees and between employees and employer;
- 1.3 To ensure that managers and employees share a common understanding of misconduct and discipline;
- 1.4 To promote acceptable conduct
- 1.5 To provide employees and employer with a quick and easy reference for the application of discipline;
- 1.6 To avert and correct unacceptable conduct; and
- 1.7 To prevent arbitrary or discriminatory actions by managers towards employees.

2 PRINCIPLES

The following principles inform the code and procedure and must inform any decision to discipline an employee.

- 2.1 Discipline is a corrective measure and not a punitive one.
- 2.2 Discipline must be applied in a prompt, fair, consistent and progressive manner.
- 2.3 Discipline is a management function.
- 2.4 A disciplinary code is necessary for the efficient delivery of service and the fair treatment of FCAFTI, and ensures that employees:
 - a. Have a fair hearing in a formal setting;
 - b. Are timeously informed of allegations of misconduct made against them;
 - c. Receive written reasons for a decision taken; and
 - d. Have the right to appeal against any decision.
- 2.5 As far as possible, disciplinary procedures shall take place in the place of work and be understandable to all employees.
- 2.6 If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.
- 2.7 Disciplinary proceedings do not replace or seek to imitate court proceedings.
- 2.8 The disciplinary code and procedures constitute a framework within which FCAFTI policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.

3 SCOPE OF APPLICATION

This draft code and procedure apply to the employer and all employees falling within the registered scope of FCAFTI.

3.1 Contained in legislation or regulations.

4 CODES, RULES AND STANDARDS

4.1 The code of good practice contained in schedule 8 of the labour relations act, 1995, insofar as it relates to discipline, constitutes part of this draft code and procedure.

4.2 Employee conduct that may warrant a disciplinary action is listed in **annexure A**. this list is not exhaustive. Management may discipline an employee in respect of other conduct, if the employee knew, or ought to have known, that the conduct constituted grounds for disciplinary action.

4.3 In applying **annexure A**, management must assess the seriousness of the alleged misconduct by considering:

- a. The actual or potential impact of the alleged misconduct on the work of the FCAFTI, the employee's component and colleagues, and the public;
- b. The nature of the employee's work and responsibilities; and
- c. The circumstances in which the alleged misconduct took place.

5 Definitions

Employer

Means "Fort Cox Agriculture and Forestry Training Institute" or any member designated to perform the specific action, unless the context indicates otherwise

Fellow employee

It means an employee from the same office/ institute than the employee charged with Misconduct, except full-time shop stewards

Recognised trade union

It means all the unions admitted at Fort Cox Agriculture and Forestry Training Institute as well as any other union that enjoys organisational rights from the Institute

Council

It means Fort Cox Agriculture and Forestry Training Institute board of directors

6 PROCEDURES: DISCIPLINARY ACTIONS

6.1 Corrective counselling. In cases where the seriousness of the misconduct warrants counselling, the manager of the employee must:

- a. Bring the misconduct to the employee's attention;
- b. Determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;
- c. Seek to get agreement on how to remedy the conduct; and
- d. Take steps to implement the agreed course of action.

6.2 Verbal warnings. In cases where the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning. The manager must inform the employee that further misconduct may result in more serious disciplinary action, record the warning.

6.3 Written warnings. In cases where the seriousness of the misconduct warrants a written warning, the manager may give the employee a written warning. The following provisions apply to written warnings:

- a. The written warning may use the form of **Annexure B**.
- b. The manager must give a copy of the written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the warning was conveyed to the employee.
- c. The written warning must be filed in the employee's personal file.
- d. A written warning remains valid for six months. At the expiry of the six months, the written warning must be removed from the employee's personal file and be destroyed.
- e. If during the six-month period, the employee is subjected to disciplinary action on a same or related offence, the written warning may be taken into account in deciding an appropriate sanction.

6.4 Final written warning. In cases where the seriousness of the misconduct warrants a final warning, the manager may give the employee a final written warning. The following provisions apply to written warnings:

- a. The final written warning may use the form of **Annexure C**.
- b. The manager must give a copy of the final written warning to the employee, who must sign receipt of it. If the employee refuses to sign receipt, the manager must hand the warning to the employee in the presence of another employee, and sign in confirmation that the final written warning was conveyed to the employee.
- c. The final written warning must be filed in the employee's personal file.

- d. A final written warning remains valid for six months. At the expiry of the six months, the final written warning must be removed from the employee's personal file and destroyed.
 - e. If during the six-month period, the employee is subject to disciplinary action on a same or related offence, the final written warning may be taken into account in deciding an appropriate sanction.
- 6.5 For less serious forms of misconduct, no formal enquiry shall be held.
- 6.6 For the purpose of determining appropriate disciplinary actions valid warnings for similar offences by the employee shall be taken into account.

7 SERIOUS MISCONDUCT

If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 5, the employer may initiate a disciplinary enquiry. The employer must appoint an employee as a representative, who as far as possible should be the manager for the employee, to initiate the enquiry.

8 DISCIPLINARY ENQUIRY

8.1 Notice of enquiry

- a. The employee must be given notice at least five working days before the date of the hearing.
- b. The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow employee who shall sign in confirmation that the notice was conveyed to the employee.
- c. The written notice of the disciplinary meeting must use the form of **Annexure D**, and provide:
 - i. A description of the allegations of misconduct and the main evidence on which the employer will rely;
 - ii. Details of the time, place and venue of the hearing; and
 - iii. Information on the rights of the employee to representation by a fellow employee or a representative or official of a recognised trade union, and to bring witnesses to the hearing.

8.2 Precautionary suspension

- a. The employer may suspend an employee on full pay or transfer the employee if
 - i. The employee is alleged to have committed a serious offence; and
 - ii. The employer believes that the presence of an employee at the workplace might jeopardise any investigation into the alleged misconduct, or endanger the wellbeing or safety of any person or state property.
- b. A suspension of this kind is a precautionary measure that does not constitute a judgement, and must be on full pay.
- c. If an employee is suspended or transferred as a precautionary measure, the employer must hold a disciplinary hearing within a month or 60 days, depending on the complexity of the matter and the length of the investigation. The chair of the hearing must then decide on any further postponement.

8.3 Conducting the disciplinary

- a. The disciplinary hearing must be held within ten working days after the notice referred to in paragraph 8.1(a) is delivered to the employee.
 - b. The chair of the hearing must be appointed by the principal and be an employee on a higher grade than the representative of the Institute. However, if this is not possible or desirable, any other suitably qualified person may be appointed.
 - c. The principal or a delegated official shall also appoint a person to be referred to as the initiator to represent the Institute and to serve the function of prosecution. In general a person appointed to serve as initiator should be a person in the employ of the Institute. However, if this is not possible or desirable, any other suitable qualified person may be appointed.
 - d. The employer and the employee charged with misconduct may agree that the disciplinary hearing will be chaired by an arbitrator from the Commission, for Conciliation, Mediation and Arbitration. Appointed by the CCMA. The decision of the arbitrator will be final and binding and only open to review in terms of the *Labour Relations Act, 1995*. All the provisions applicable to disciplinary hearing in terms of this Code will apply for purposes of these hearings. The Institute will be responsible to pay the costs of the arbitrator.
 - e. If the employee wishes, she or he may be represented in the hearing by a fellow employee or a representative of a recognised trade union.
 - f. If necessary, an interpreter may attend the hearing
 - g. In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –
 - i. The employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or
 - ii. The disciplinary hearing is conducted in terms of paragraph 8.3.d.
- For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.
- h. If the employee fails to attend the hearing and the chair concludes that the employee did not have a valid reason, the hearing may continue in the employee's absence.
 - i. The chair must keep a record of the notice of the disciplinary hearing and the proceedings of the meeting.
 - j. The chair will read the notice for the record and start the hearing.
 - k. The representative of the Institute will lead evidence on the conduct giving rise to the hearing. The employee or the employee's representative may question any witness introduced by the representative of the Institute.
 - l. The employee will be given an opportunity to lead evidence. The representative of the Institute may question the witnesses.
 - m. The chair may ask any witness questions for clarification.
 - n. If the chair decides the employee has committed misconduct, the chair must inform the employee of the finding and the reasons for it.
 - o. Before deciding on a sanction, the chair must give the employee an opportunity to present relevant circumstances in mitigation. The representative of the employer may also present aggravating circumstances.
 - p. The chair must communicate the final outcome of the hearing to the employee within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the employee's personal file.

8.4 Sanctions

- a. If the chair finds an employee has committed misconduct, the chair must pronounce a sanction (within the period referred to in clause 8.3.p), depending on the nature of the case and the seriousness of the misconduct, the employee's previous record and any mitigating or aggravating circumstances. Sanction consists of:
 - i. Counselling;
 - ii. A written warning valid for six months;
 - iii. A final written warning valid for six months;
 - iv. Fine;
 - v. Transfer to another position either with or without financial loss;
 - vi. Suspension without pay, for no longer than three months;
 - vii. Demotion;
 - viii. A combination of the above; or
 - ix. Dismissal.

8.5 Breathalyser Test for Alcohol and Urine Testing for Drugs

- a. The Institute has 'Zero tolerance' on alcohol or drugs
- b. This requires that employees come to work free from the influence of alcohol or drugs, the rule to be applied consistently at all Institute premises
- c. In practice the rule implies that a reading of 0% is required when an employee is tested.
- d. If an employee is tested after reporting on duty and found to be above the limit, the sanction is dismissal.
- e. The employer has a prerogative to conduct random testing of Breathalyser or Urine testing for drugs at any given time at the workplace

9 Appeal

- 9.1 An employee or the principal may appeal a finding or sanction by completing **Annexure E**.
- 9.2 The appeal authority is the Council of the Institute.
- 9.3 The employee or principal must, within five days of the receiving notice of the final outcome of a hearing or other disciplinary procedure, submit the appeal form to his or her Council, or to his or her manager, who shall forward it to the appeal authority.
- 9.4 The appeal authority may, on good cause shown, condone the late lodging of an appeal.
- 9.5 The appeal authority, who shall consider the appeal, shall be:
 - a. The Council of the Institute; or
 - b. An employee/ or any other suitably qualified person appointed by the council, who
 - i. Was not involved in the decision to institute the disciplinary proceeding, and

ii. Has a higher grade than the chair of the disciplinary hearing.

10 If the person referred to in paragraph 8.5 requires a hearing, she or he shall notify the employee of the date and place.

11 The appeal authority may

- a. Up hold the appeal, and/or
- b. Reduce the sanction to any lesser sanction allowed in terms of clause 8.4.a of the code, or
- c. Confirm the outcome of the disciplinary proceeding.

8.8 The Institute shall immediately implement the decision of the appeal authority. Where the appeal authority decides to reduce the sanction or to confirm the outcome of the disciplinary proceedings (e.g. dismissal cases), the sanctions will be implemented by the Institute from a current date.

8.9 The college must finalise appeals within 30 days, failing which, in cases where the employee is on precautionary suspension, he/she must resume duties immediately and await the outcome of the appeal while on duty.

Note: The employee or principal retains the right to utilise dispute settlement mechanisms provided under the Labour Relations Act.

10 Right of resignation

10.1 An employee who receives a notice of misconduct shall be entitled to resign from employment or retire, if eligible, in terms of the retirement fund rules, provided that;

- a. The employee does so prior to the handing down of determination;
- b. Monies owed by the employee to the college be recovered before resignation processes are finalized.
- c. In such an occurrence the disciplinary enquiry shall not proceed.

11 Abscondment

11.1. a. An employee who fail to avail himself or herself from his or her official duties without permission of his or her Principal, Office or Institute for a period exceeding one calendar month, shall be deemed dismissed from the Institute on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.

b. It means that in all cases where an employee is absent without permission for a period longer than a calendar month he or she is dismissed by **operation of law**. It does not matter what the reason for the absenteeism might be.

11. 2 The following procedure must be followed to communicate with an employee who is absent from duty without permission:

- a. After 7 days of absence, the manager of the respective employee must forward a letter per **registered mail** to the employee's last known address, pointing out the consequences of which might follow, should the said employee be absent for a period exceeding one (1) calendar month (see Annexure F). Provision of 5 days of receipt of the letter should be made for the employee to respond.

- b. Should no response be forthcoming from the person absent without permission. A **reminder** should be forwarded on the 21st day of absence (Annexure G); and the employee's **salary must be frozen** on the 21st day at the salaries Administration by **HR- PAY ROLL**. Failure to do so will be treated as negligence and consequence management will apply to the relevant employee responsible for the failure.
- c. On expiry of one (1) calendar month the employee will be notified in writing by the **Principal** that his or her services has been terminated by virtue of operation of law.

11.3 If an employee who is deemed to have been so dismissed, reports for duty at any time after the expiry of the period referred to in paragraph (10.1.a), the relevant appeal authority may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the Institute in his or her former or any other post or position, and in such a case the period of his or her absence from official duty shall be deemed to be absence on vacation leave without pay as the said appeal authority may determine.

11.4 Paragraph 11.3 implies that an employee who has been discharged due to abscondment, may NOT be allowed to resume his/her duties, but such employee must submit representation in the form of a letter, accompanied with relevant documents and information, addressed to the Council.

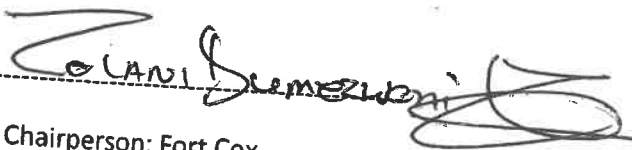
12 Policy Review

The policy will be reviewed every three years in consultation with all relevant stakeholders, from the date of implementation to determine whether they will contribute to the achievement of the overall objectives of Fort Cox Institute

13 Approval

This policy has been developed through a consultative process and the following stakeholders were represented:

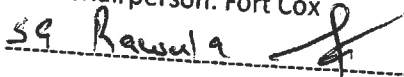
Signed:



NEHAWU Chairperson: Fort Cox



PSA Chairperson: Fort Cox



Fort Cox Institute Representative

October 2018

Date

October 2018

Date

October 2018

Date

It is recommended that the Institute Principal and Chairperson of Council approve this Policy for implementation with effect from 1 January 2019

RECOMMENDED/ NOT RECOMMENDED



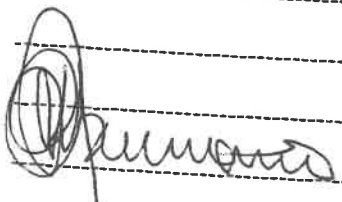
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04/11/2019

Dr PJ Masika: Principal

Date

APPROVED/ NOT APPROVED



Dr P Lupuwana

Date

ACTS OF MISCONDUCT

ANNEXURE A

- An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):
- Fails to comply with, or contravenes an Act, regulation or legal obligation.
 - Wilfully or negligently mismanages the finances of the Institute.
 - Without permission possesses or wrongfully uses the property of the Institute, another employees and/or a visitor.
 - Wilfully, intentionally or negligently damages and or causes loss of Institute property.
 - Endangers the lives of self and others by disregarding safety rules or regulations.
 - Prejudices the administration, discipline or efficiency of the Institute.
 - Misuses his or her position in the Institute to promote or to prejudice the interest of any political party.
 - Steals, bribes or commits fraud.
 - Accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the Institute.
 - Fails to carry out a lawful order or routine instruction without just or reasonable cause.
 - Absents or repeatedly absents him/herself from work without reason or permission.
 - Commits an act of sexual harassment.
 - Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.
 - Performs poorly or inadequately for reasons other than incapacity.
 - Without written approval from her or his supervisor, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.
 - Without authorisation, sleeps on duty.
 - While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol.
 - While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.
 - Assaults, or attempts or threatens to assault, another employee or persons while on duty.
 - Incites other personnel to unprocedural and unlawful conduct.
 - Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.
 - Intimidates or victimises fellow employees.
 - Prevents other employees from belonging to any trade union or body.
 - Operates any money lending scheme for employees for own benefit during working hours or from the premises of the Institute.
 - Carries or keeps firearms or other dangerous weapons on Institute premises, without the written authorisation of the employer.
 - Refuses to obey security regulations.
 - Gives false statements or evidence in the execution of his or her duties.
 - Falsifies records or any other documentation.
 - Participates in unprocedural, unprotected and/or unlawful industrial action.
 - Commits a common law or statutory offence while on Institute premises.