

Understanding the Requirements of a Fair Hearing - Misconduct

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INTRODUCTION

A fair disciplinary hearing is a cornerstone of procedural fairness in the workplace. It ensures that decisions to discipline or dismiss employees are based on a fair process. The Labour Relations Act No. 66 of 1995 and the Code of Good Practice: Dismissal 2025 (“**the Code**”) set out a framework that protects employees’ rights while enabling employers to manage workplace discipline fairly and effectively.

While these principles must generally be followed, in exceptional circumstances an employer may be excused from strict compliance where it cannot reasonably be expected to adhere to every procedural step.

The following checklist outlines the key requirements that underpin a fair and lawful hearing.

THE CHECKLIST FOR A FAIR HEARING

Fair Opportunity to be Heard

Before taking disciplinary action, an employer must give the employee an adequate and reasonable opportunity to respond to the allegations. A disciplinary hearing is the mechanism that ensures this right is respected. The employee must also be given sufficient time to prepare.¹

Notice

Employers must give the employee notice of the hearing and the allegations against them, preferably in writing. The notice should be clear, concise, and in a language the employee can understand.² Written notice provides clarity, creates a formal record, and reduces the risk of disputes about what was communicated; however, it is not strictly required.

Where discipline is being taken against a trade union representative or an employee who is an office-bearer or official of a trade union, the trade union must also be informed and consulted.³

Charges

Employees must know the charges they face. Allegations of misconduct should be set out in a straightforward and understandable way to allow the employee to respond effectively.⁴

Timing of the hearing

A hearing should take place as soon as possible after the incident. This ensures that the facts remain fresh in the minds of the parties and witnesses, reducing the risk of distorted and unreliable accounts.⁵

Representation

Employees are entitled to representation during a disciplinary hearing, but this right has limits. Under the Code, an employee may be represented by a fellow employee or a trade union representative. Depending on the seniority of the employee and the seriousness of the matter, an attorney may sometimes appear, but there is no automatic right to legal representation.

Presence at the hearing

Ideally, the employee should be present at the hearing. However, a hearing may proceed in the employee’s absence in certain circumstances — for example, where the employee refuses to attend without good reason or has deserted the position.⁶ Presence is not only physical; the employee must also be able to understand and actively participate. Where reasonably possible, the employer should allow the employee to communicate in a language they are comfortable with, which may require a translator.⁷

In exceptional circumstances, an employer may be excused from strict compliance where it cannot reasonably be expected to adhere to the guidelines.

CONCLUSION

Ultimately, a fair hearing is not about formality for its own sake but rather about ensuring that employees are treated with dignity and that decisions are made on a

sound and balanced basis. When employers follow these principles, they protect both their organisation and their employees' rights. Adhering to the Code's requirements promotes trust, accountability, and consistency in the workplace, while significantly reducing the risk of unfair dismissal disputes. Fairness, properly observed, benefits everyone involved.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.

¹Department of Employment and Labour, 'Code of Good Practice: Dismissal' (Notice 3470 of 2025) Government Gazette 53294, 4 September 2025, clause 11.

²Grogan, J. *Workplace Law*. 14th ed. Cape Town: Juta, 2025. Chapter 13: *Dismissal for Misconduct: Fair Procedure*, para. 3.1 "Adequate notice."

³Grogan, *Workplace Law* (note 2 above) para 3.6

⁴Grogan, *Workplace Law* (note 2 above) para 3.2

⁵Grogan, *Workplace Law* (note 2 above) para 3.4

⁶Grogan, *Workplace Law* (note 2 above) para 3.5

⁷Department of Employment and Labour, 'Code of Good Practice: Dismissal' (Notice 3470 of 2025) Government Gazette 53294, 4 September 2025, clause 11(4)(d)



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