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## **Disciplinary Procedures and CCMA Risk Toolkit (2026)**

*Prepared by RK Corporate Consulting*

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Every employer in South Africa has a legal obligation to manage discipline fairly and consistently. Disciplinary procedures are not optional internal processes; they are legal requirements that determine whether an employer's decisions will withstand scrutiny at the CCMA.

This toolkit is designed to help employers comply with the **Labour Relations Act 66 of 1995** and reduce the risk of procedurally unfair dismissals. It focuses on the practical steps to follow before and during disciplinary action, particularly when dismissal is being considered.

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### **1. Put a Proper Disciplinary Framework in Place**

- Have a written disciplinary code;
- Ensure the code reflects how discipline is actually applied;
- Train managers on disciplinary procedures; and
- Apply discipline consistently across the business.

#### **Legal Framework:**

Labour Relations Act 66 of 1995, Schedule 8: employers are expected to have fair and consistent disciplinary procedures.

#### **✗ Risk:**

Informal or inconsistent disciplinary practices often lead to procedural unfairness findings and compensation awards.

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## **2. Notify the Employee Properly Before a Hearing**

- Set out allegations clearly and in writing;
- Give reasonable notice of the disciplinary hearing;
- Allow the employee sufficient time to prepare; and
- Appoint an impartial chairperson.

### **Legal Framework:**

Schedule 8 of the LRA requires that employees be informed of the allegations and given a reasonable opportunity to respond.

### **✗ Risk:**

Vague, rushed, or verbal notice is one of the most common reasons employers lose at the CCMA.

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## **3. Conduct a Fair Disciplinary Hearing**

- Allow the employee to state their version;
- Consider evidence objectively;
- Allow mitigation before deciding on a sanction; and
- Keep a written record of the proceedings.

### **Legal Framework:**

*Avril Elizabeth Home for the Mentally Handicapped v CCMA* (2006), disciplinary hearings need not be formal trials, but they must be fair.

### **✗ Risk:**

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A hearing held merely to justify a pre-decided dismissal will not withstand CCMA scrutiny.

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#### **4. Apply Sanctions Fairly and Proportionately**

- Consider the seriousness of the misconduct;
- Take the employee's disciplinary record into account;
- Check consistency with similar cases; and
- Consider lesser sanctions before dismissal.

##### **Legal Framework:**

Labour Relations Act Section 188: dismissal must be both substantively and procedurally fair.

##### **✗ Risk:**

Automatic dismissal without proportionality often results in reinstatement or compensation.

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#### **5. Keep Proper Records and Documentation**

- Retain hearing notices and charge sheets;
- Keep written records or minutes of hearings;
- Record outcomes with reasons; and
- File warnings and disciplinary history.

##### **Legal Framework:**

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At the CCMA, the burden of proof rests with the employer.

**✗ Risk:**

If it is not documented, it cannot be proven, and the employer usually loses.

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**Practical Example: How Employers Lose at the CCMA**

An employee is dismissed for insubordination after refusing a lawful instruction during a heated exchange with management. Several managers witnessed the incident and agreed that the behaviour was unacceptable.

No formal disciplinary hearing is held. Management believes the misconduct is obvious and that a hearing would not change the outcome.

At the CCMA, the commissioner accepts that the employee's conduct was inappropriate.

However, the dismissal is found to be **procedurally unfair** because:

- the employee was not formally notified of the allegations,
- no opportunity was given to respond, and
- no record exists of a fair process being followed.

**Outcome:**

The employer is ordered to pay compensation equivalent to **three months' remuneration**.

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**Why Disciplinary Procedure Matters**

Failing to follow proper disciplinary procedures can result in serious legal and operational consequences, even where misconduct is clear.

Neglecting disciplinary compliance can lead to:

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- CCMA compensation awards of up to **12 months' remuneration**;
- Reinstatement orders that undermine management authority;
- Back-pay liability;
- Loss of credibility in future disputes;
- Increased exposure to repeat claims and grievances; or
- Significant management time spent defending avoidable disputes.

Procedural fairness is often the deciding factor at the CCMA. Once a process is found to be unfair, the merits of the misconduct become secondary.

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## How RKCC Supports You

RK Corporate Consulting assists employers with:

- Disciplinary codes and workplace policies;
- Pre-hearing procedural compliance reviews;
- Guidance during disciplinary hearings;
- Dismissal risk assessments; and
- CCMA dispute support and strategy;

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## Navigating Disciplinary Procedures with Confidence

Are your managers clear on what must be done before dismissal is considered?

Would your disciplinary processes stand up to CCMA scrutiny?

Disciplinary compliance is not about protecting poor behaviour; it is about protecting your business from avoidable legal exposure.

At RKCC, we help employers navigate labour law with practical guidance and hands-on support, ensuring disciplinary decisions are fair, defensible, and sustainable.

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**Book your free 30-minute consultation today.**

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