

GUIDE ON DISCIPLINARY AND INCAPACITY MATTERS

**GUIDE ON DISCIPLINARY
AND INCAPACITY
MATTERS**

**DEPARTMENT OF PUBLIC SERVICE
AND ADMINISTRATION**

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INTRODUCTION

Discipline is one of the least enjoyable, but one of the most critical aspects of labour relations. It is essential for effective service delivery to have a disciplined workforce. Equally important for service delivery is the ability to effectively deal with incapacity and ill-health problems in the work situation.

Discipline in the public service has been transformed with effect from 1 July 1999. The transformation was done within the ambit of the new management framework that is based on the devolution of power to national and provincial departments.

The transformation culminated in the parties to the Public Service Co-ordinating Bargaining Council (PSCBC) concluding and signing an agreement on a new disciplinary code and procedures for the public service (Resolution 2/99). The agreement was implemented on 1 July 1999.

As part of the transformation process, the PSCBC also concluded two agreements relating to incapacity, namely the Incapacity Code and Procedures for the Public Service (Resolution 10/99) and the Incapacity Code and Procedures in respect of Ill Health (Resolution 12/99). These two agreements became effective on 1 July and 3 December 1999 respectively.

The Codes, to a large extent, address problems that were associated with the application of disciplinary and incapacity measures under the *Public Service Act, 1994*.

The new Codes introduce a shift away from statutory prescription to collective agreement. This lends legitimacy to the Codes and ensures co-ownership between the social partners.

PART A: DISCIPLINARY MATTERS

1

KEY POINTS: DISCIPLINE

In applying discipline you must always keep the following in mind:

Adherence to principles and procedures

- The principles of the Code
- Discipline should be applied as soon as you become aware of the infraction
- Do not discipline in anger
- Never dismiss an employee before a disciplinary enquiry has been held
- In applying discipline, all actions short of dismissal should be explored
- Gather all the facts before deciding to institute disciplinary action
- Follow the correct procedure and make sure that a proper reason exists for taking the disciplinary action

Trade union representatives

- If the employee to be disciplined is a union representative, follow the requirements expressed in item 4.2 of Schedule 8 of the Labour Relations Act, 1995 (LRA)

Natural justice

- Always adhere to the rules of natural justice, meaning –
 - that before taking a decision you must fully inform the employee of the case against him or her and allow the employee a proper opportunity to present his or her case
 - that if you have a personal interest in the outcome of the matter, you should not chair the proceedings (only applicable to disciplinary enquiries)
 - that justice must not only be done but must manifestly be seen to be done particularly in dealing with hearings (there should be no bias from your side)

2

WHAT DISCIPLINARY ACTION TO TAKE

- Transgressions**
- Before instituting disciplinary action, you must be convinced that a transgression took place. A list of transgressions appears in the Annexure to the Disciplinary Code. The list is not exhaustive. Employees may, therefore, also be disciplined for other conduct if they know, or ought to have known that the conduct constitutes grounds for disciplinary action.
- Becoming aware of transgressions**
- You will become aware of a transgression by an employee in one of the following ways:
 - By yourself (seeing, hearing, etc)
 - Through an allegation of misconduct by somebody else
- Options of dealing with transgressions**
- In terms of the Code, you have the following options available to deal with the alleged transgression:
 - Counselling the employee
 - Utilising a system of warnings
 - Holding a disciplinary enquiry
- } Progressive discipline
- Deciding on option**
- In deciding which option to use, you are advised to –
 - Investigate the allegations of misconduct
 - Assess the seriousness of the alleged misconduct by considering -
 - the actual or potential impact of the alleged misconduct on the work of the public service, the employee’s component and colleagues, and the public
 - the nature of the employee’s work and responsibilities
 - the circumstances in which the alleged misconduct took place

3

PROGRESSIVE DISCIPLINARY ACTION

Progressive discipline

- You should not rush into a disciplinary enquiry every time an employee transgresses. Progressive disciplinary action may yield the desired result and have the added advantage of building harmonious relationships. In this regard, you can use any of the following:
 - Corrective counselling
 - Verbal warnings
 - Written warnings
 - Final written warnings

Not mechanistic application

- The corrective steps may be applied progressively, but should not be applied mechanistically. In other words, the steps indicated above, do not necessarily have to build on one another. Depending on the seriousness of the transgression (which you would have to judge) you, for instance, might employ a written warning or a final written warning in the first instance.

Corrective Counselling

When to apply

- The purpose of corrective counselling is to probe causes of misconduct together with the employee and to jointly identify means of correcting the unacceptable conduct. It is normally applied in cases of a less serious nature where there is room for change and improvement and where a trend has developed (e.g. late coming). It would generally not be used in a once-off situation.

Counselling steps

- If you decide to counsel an employee, the following steps are recommended:
 - Invite the employee to your office. Inform the employee timeously what the meeting is about
 - Ensure absolute privacy for the meeting and ensure that there are no interruptions
 - Draw the employee's attention to the alleged misconduct and ensure that you both agree that it indeed occurred or is occurring
 - Determine the reasons for the misconduct by asking the employee to explain his or her conduct
 - Request the employee to come up with ways of correcting the behaviour
 - Offer your suggestions and come to a consensus position on how to deal with the untoward conduct
 - After agreeing on how to correct the conduct, agree on each party's role and a return date for assessment of progress
 - Keep a note of the meeting and especially the agreement reached of addressing the employee's conduct
 - On the return date, check on the progress made and whether the employee co-operated or not. If the employee did not co-operate as agreed, then you should consider further disciplinary steps like warnings

Notes:



- 1) **If the employee or the union representative refuses to acknowledge that the transgression has taken or is taking place, terminate the counselling meeting and consider which other disciplinary steps to take.**
- 2) **If, during counselling, it transpires that the transgression is of a more serious nature than initially thought, terminate the meeting and apply one of the other disciplinary steps available.**

Warnings

- When to apply**
- If you are of the opinion that the transgression –
 - requires more serious action than mere counselling
 - BUT
 - is less serious than a transgression for which you want to set up a disciplinary enquiry,
 then you should consider utilising warnings.
- Steps**
- The following steps are recommended when issuing a warning:
 - Invite the employee concerned (and his/her representative if required) to a meeting by way of a written notice (see **Annexure A**).
 - Hold the meeting in private. Keep the meeting as informal as possible
 - Recap the alleged misconduct and allow him/her the opportunity to state his/her side of the story
 - Consider the employee's response and decide on the sanction to be applied
 - Convey your decision to the employee at the conclusion of the meeting or afterwards (if you need more time to consider). See **Annexures B and C** for examples of a written warning and a final written warning
- Severity of warnings**
- A verbal warning is the least severe and a final written warning the most severe form of warning.
 - The type of warning to be issued will be influenced by the alleged misconduct and the employee's response to the allegation. Take into account other valid warnings for the same or similar offence. These will act as aggravating factors in determining the type of warning to be issued.
- Validity of warnings**
- Warnings remain valid for the following periods:
 - Verbal warning : three months
 - Written warning : six months
 - Final written warning : six months
- Placement and removal of warnings**
- Written warnings must be filed on the employee's personal file and be removed and destroyed at the expiry of the period.



Notes:

- 1) **Allow the employee sufficient time to prepare for the meeting.**
- 2) **If the employee fails or refuses to attend the meeting without a valid reason, you should go ahead and issue the warning that you regard as appropriate.**
- 3) **If the employee fails to attend the meeting, but sends a representative, you can continue with the meeting provided the representative has a written mandate from the employee. If not, you should continue as indicated in 2. above.**
- 4) **Do not have the warning typed up before the meeting, because it would mean that you have already decided the outcome before hearing the other side.**
- 5) **Keep a record of warnings issued (date issued, transgression and type of warning). Although actual warnings should be removed from employee's personal file at expiry of validity (not to be used again), the record may be used if the employer in future commits a same or similar offence and then claims to be a first offender.**

4

DISCIPLINARY ENQUIRY

When to apply

- To determine when to opt for a disciplinary enquiry, the following questions should be asked.
 - Is the transgression of such a serious nature that counselling or the issuing of a warning will not suffice?
 - Does the transgression constitute a material breach of the employment relationship?
 - Has the employee repeated a transgression or committed a related transgression during the validity of a warning, especially a final written warning?
 - Could dismissal be an appropriate sanction?

Steps

- Once a decision has been made that a disciplinary enquiry is to be held, the following must be done:
 - Appoint a representative of the employer who should, as far as possible, be the manager of the employee (but must be an officer in the public service)
 - Conduct a thorough investigation into the allegation (advisable that it be conducted by the same person that will represent the employer at the hearing)
 - Ensure that there is enough evidence to sustain the allegation before giving notice to the employee of the disciplinary hearing
 - Appoint a chairperson to conduct the hearing (to be an officer of a higher grade than the representative of the employer, except in the case of a head of department where it could also be a person from outside the public service, should Cabinet or the Provincial EXCO, whichever is applicable, approve)
 - Inform the employee of the disciplinary hearing at least five working days before it is to take place (see example at **Annexure D**)
 - Hold the hearing within 10 working days of having notified the employee of the pending disciplinary procedure

Suspension

- An employee may be suspended for purposes of a disciplinary enquiry. A suspension may take any of the following forms:
 - Suspension on full pay
 - Transfer of the employee (to another section/workplace)
- To suspend an employee, both the following elements have to be prevalent:
 - The employee must have allegedly committed a serious offence
 - The presence of the employee at the workplace might jeopardise any investigation into the alleged misconduct or it might endanger the well-being or safety of any person or state property
- Attached as **Annexures E and F** are examples of a notification to an employee to attend a meeting where his/her possible suspension will be considered as well as a letter of suspension
- Once an employee has been suspended, the disciplinary hearing **must** be held within a month. Only the chairperson of the hearing may decide (following the presentation of arguments by the parties involved) to postpone the hearing, which will entail continued suspension

Decision and sanction

- At the conclusion of the hearing, the chairperson will make a finding of guilty or not guilty. If the employee is found guilty, the chairperson may pronounce any of the following sanctions:
 - Counselling
 - A written warning
 - A final written warning
 - Suspension without pay, for no longer than three months
 - Demotion
 - A combination of the above
 - Dismissal
- The sanction of suspension without pay and demotion may only be applied **as an alternative** to dismissal. It also requires the agreement of the employee. If an agreement cannot be obtained, dismissal will follow.
- The sanction must be conveyed to the employee concerned within five working days of the hearing.

Appeal

- An employee found guilty of misconduct may appeal the finding or the sanction or both. The following provisions pertain to appeals:
 - No sanction may be implemented if an employee appeals
 - The executing authority is the appeal authority for all employees below the level of head of department
 - The executing authority may appoint an officer in the public service to act as appeal authority on his/her behalf provided -
 - the employee was not involved in the decision to institute the disciplinary proceedings
 - the employee has a higher grade than the chair of the disciplinary hearing
 - For the heads of provincial departments the relevant Premier acts as appeal authority, whilst for the heads of national departments it is the President
 - Employees must appeal within five working days of receiving notice of the final outcome of the hearing from the chairperson
 - The appeal will normally be considered on documents only, although there could be a rehearing if there was gross procedural irregularity
 - The appeal authority may decide to –
 - uphold the appeal,
 - reduce the sanction
 - confirm the outcome of the disciplinary proceeding
 - The decision of the appeal authority shall be implemented
 - The employee still has a right to declare a dispute if he/she is not satisfied with the outcome of the appeal process – disputes are to be dealt with through the dispute resolution mechanisms of the relevant sectoral bargaining council
- An example of a notice of appeal appears as **Annexure G**

**Notes:**

- 1) **Departments should, by way of a departmental policy, indicate who should decide on the appointment of the representative of the employer and the chairperson for purposes of disciplinary hearings**
- 2) **Employees may also appeal against written and final written warnings issued in terms of the progressive discipline system**

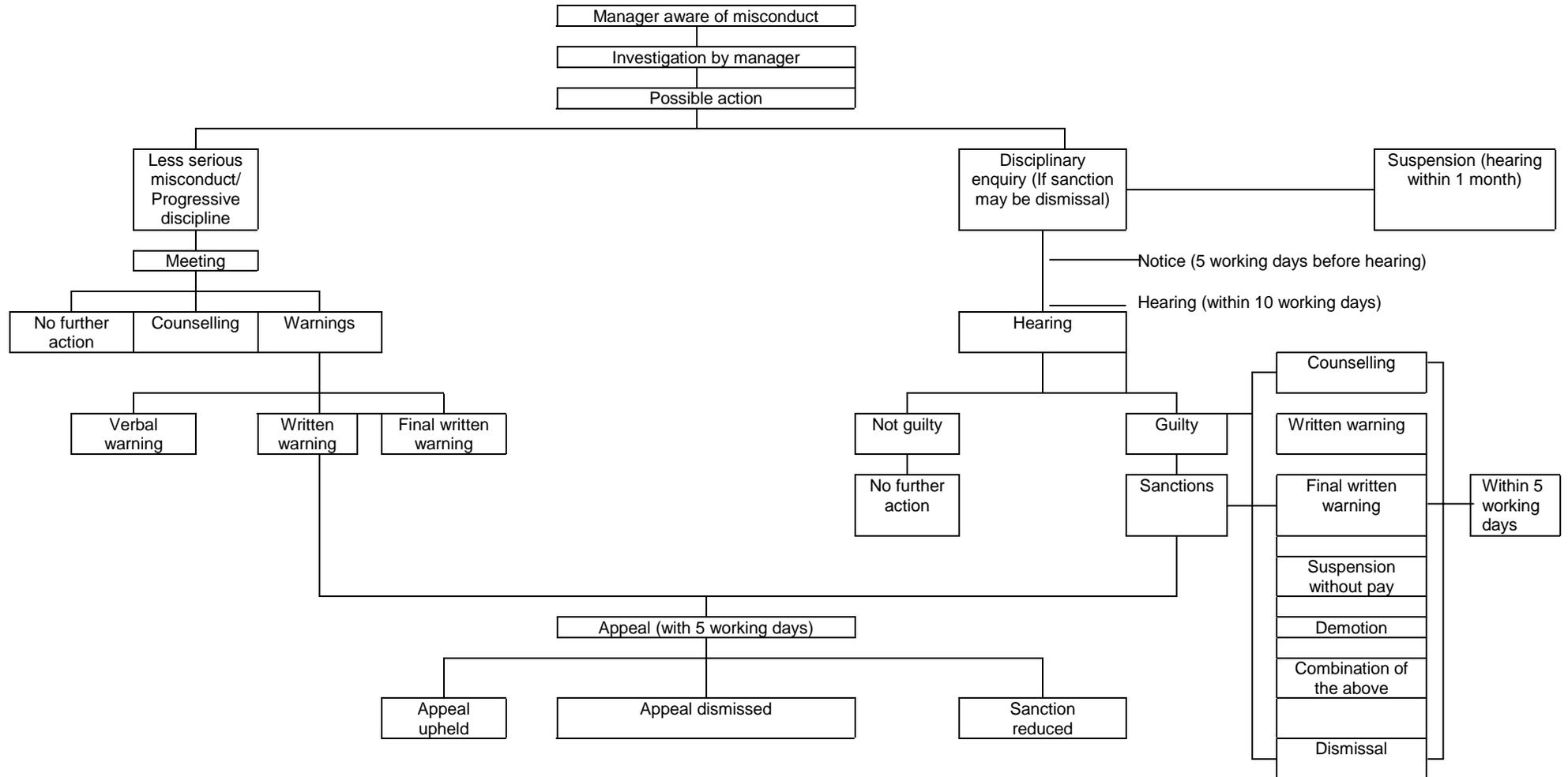
5

FLOW DIAGRAM ON DISCIPLINARY PROCEDURES

The following page contains a schematic illustration of the new disciplinary code and procedures for the public service. From the illustration you will clearly see the different routes that can be adopted when deciding on the disciplinary action to take as well as the steps entailed by each.

You will note that counselling and the system of warnings form one part of the disciplinary system (i.e. progressive discipline system) whilst the formal disciplinary enquiry forms the other part of the system.

NEW DISCIPLINARY CODE AND PROCEDURE FOR THE PUBLIC SERVICE



[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title _____

ALLEGED MISCONDUCT: YOURSELF

It has come to my attention that ... //I am aware that on _____ 2000 you ...

(describe nature of alleged misconduct)

In order to discuss the matter, you are required to attend a meeting in room _____//my office on _____ at _____. Please note that you have the right to representation by your trade union representative or a fellow employee.

Failure to attend the meeting could result in the matter having to be determined by a formal disciplinary enquiry.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

WRITTEN WARNING

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months, the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [NAME] within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

FINAL WRITTEN WARNING

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning. After six months, the written warning will be removed from your personal file and be destroyed.

If you object to the warning, you may direct an appeal to [Name] within five working days.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

NOTICE OF DISCIPLINARY MEETING

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence is:

[A DETAILED DESCRIPTION OF MISCONDUCT MAY BE ATTACHED]

The meeting will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot give reasonable grounds for failing to attend, the meeting will be held in your absence.

A fellow employee or a representative of a recognised trade union may represent you.

You may give evidence to the hearing in the form of documents or through witnesses. You will be entitled to question any witness introduced by the department.

If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Dear _____

POSSIBLE SUSPENSION FROM DUTY: YOURSELF

I am presently conducting and investigating // having an investigation conducted with regard to allegations of misconduct involving you. The allegations pertain to _____.

Due to the seriousness of the allegations, I am considering suspending you from duty. Before taking a decision in this regard, I wish to allow you the opportunity to make representations as to why you should not be suspended.

For the above-mentioned purpose, a meeting will be held in room _____ // my office on _____ at _____. Should you fail to avail yourself of the opportunity to make representations in this manner, you will be given the opportunity to submit written representations to me by close of business on _____.

Yours faithfully,

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Dear _____

SUSPENSION FROM DUTY: YOURSELF

Our meeting of _____ during which you were given the opportunity to make representations as to why you should not be suspended from duty, refers.

I have considered your representations, but am of the opinion that your continued presence in the workplace might be prejudicial to the investigation into the alleged misconduct // might endanger the well-being or safety of staff of this department // might endanger the safety of the property of the state. You are therefore suspended, with full emoluments, with immediate effect pending the outcome of the investigation.

To avoid possible interference with the investigation or potential witnesses, you are not to enter the premises of the department or offices thereof. You are also directed to hand in the following items to _____, before you leave the premises today:

Please note that this suspension does not in any way constitute a judgement on my part. It is merely a precautionary suspension in terms of the disciplinary code and procedure for the public service.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

NOTICE OF APPEAL

[NAME OF APPEAL AUTHORITY]

I, _____ [NAME OF EMPLOYEE] am hereby appealing against a disciplinary action imposed on _____ [DATE] at _____ [PLACE].

I attached a copy of the notice of the disciplinary enquiry and/or written warning. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE:

[PERSONAL DETAILS OF THE EMPLOYEE]

**PART B: INCAPACITY
(POOR PERFORMANCE)**

1

KEY POINTS: INCAPACITY

The following should be kept in mind when utilising the incapacity procedures:

When to use Code

- Use the Code in cases where the employee is **unable to consistently perform** at the expected level.
- Utilise the Code when trend of poor performance has developed, not as the result of once-off poor performance.
- The Code should first and foremost be utilised to improve the poor performance of an employee not to rid the department of the employee.

Performance Management

- The departmental performance management system should provide guidelines as to when the incapacity procedures should be applied.
- Performance assessment should provide evidence as to consistent poor performance.

Adhere to procedures

- Do not dismiss employee on grounds of incapacity before incapacity procedures have been applied.
- Ensure that the provisions of the Code are adhered to.

Applies to probationers

- The Code should also be applied in the case of employees on probation.

2

DECISION TO UTILISE CODE

Before deciding to apply the Code to an employee, you should have clarity on the following:

- | | |
|---|--|
| Awareness of expected level of performance | <ul style="list-style-type: none"> • Was the employee aware of the level or standard of performance expected of him or her? |
| Proof | <ul style="list-style-type: none"> • Do you have proof that the employee in fact under-performed? • Has the poor performance been tracked over a period of time? • Does the employee's performance assessment support your view that the employee is performing poorly? • Has any other steps been taken (e.g. training courses) to address the employee's poor performance? |
| Inability vs deliberate under-performance | <ul style="list-style-type: none"> • Are you convinced that the employee's poor performance is the result of inability to perform at the required standard or does the employee have the ability to perform at that standard, but deliberately under-performs? [In the latter case, the misconduct procedures must be applied.] |
| Paragraph 3.2 of Code | <ul style="list-style-type: none"> • Also assess the following: <ul style="list-style-type: none"> ▪ Impact on public service, component, colleagues and public ▪ Extent to which employee fails to meet standard ▪ Extent to which employee lacks necessary skills to perform job ▪ Nature of employee's work and responsibilities ▪ Circumstances of employee |

3

PROCEDURE TO BE FOLLOWED

Not once-off event

The incapacity procedure is not a once off event like a disciplinary hearing, but involves a series of events. It is largely based on the counselling approach referred to in Part A.

If you decide to invoke the incapacity procedure, the following steps need to be taken:

Steps

- **Step 1 – Initiate procedure**
 - Inform employee in writing of reasons that necessitate the incapacity procedure to be invoked in his/her case.
 - Arrange a meeting with the employee to discuss the matter. (see **Annexure A for example**).
- **Step 2 – Counsel employee**
 - Allow employee (or his representative) to state his/her position on the alleged poor performance.
 - Depending on employee's response, do the following:
 - If employee agrees to poor performance, move on to other actions under this step
 - If employee denies poor performance, give employee warning (preferably in writing) that continued poor performance will lead to more serious action in terms of disciplinary procedure
 - Assess and establish timeframe required for improvement.
 - Identify appropriate training to be given to employee, if required.
 - Agree on ways to deal with external factors affecting performance.
- **Step 3 – Monitoring**
 - Monitor effect of strategy for improvement throughout identified timeframe period
 - At end of the monitoring period, assess whether the employee has improved or not, and depending on the finding, do the following:
 - If the employee remedied the poor performance, inform him/her and terminate the procedure;
 - If the employee failed to remedy the poor performance, he/she must be given a written report on the outcome of the procedure and step 5 should be proceeded with.
- **Step 4 – Follow-up consultation meeting**
 - Call employee to meeting (see **Annexure B for example**) – this can form part of a letter under cover of which written report is forwarded to employee).
 - Consult with employee by explaining outcome of the procedure (i.e. discuss written report with employee) and measures to be taken to address any problems indicated in the report.

- **Step 5 – Decision**

- Following consultation with employee, decide on appropriate action to take, which could be one of the following:
 - Continue with further counselling cycle (steps 2 and 3 and 4 and 5 [if required])
 - Embark on mentoring programme
 - Place the employee in a more appropriate job
 - Dismiss the employee.

Grant employee hearing

- Before implementing the option of placement in an alternative job or dismissal, the employee must be given a hearing to establish failure to meet the requirements (**see Annexure C for example**).

Employee to agree

- If placement in a different job entails lower pay, the employee's agreement must be obtained.

Implement

- Exercise the option decided upon.

Notes



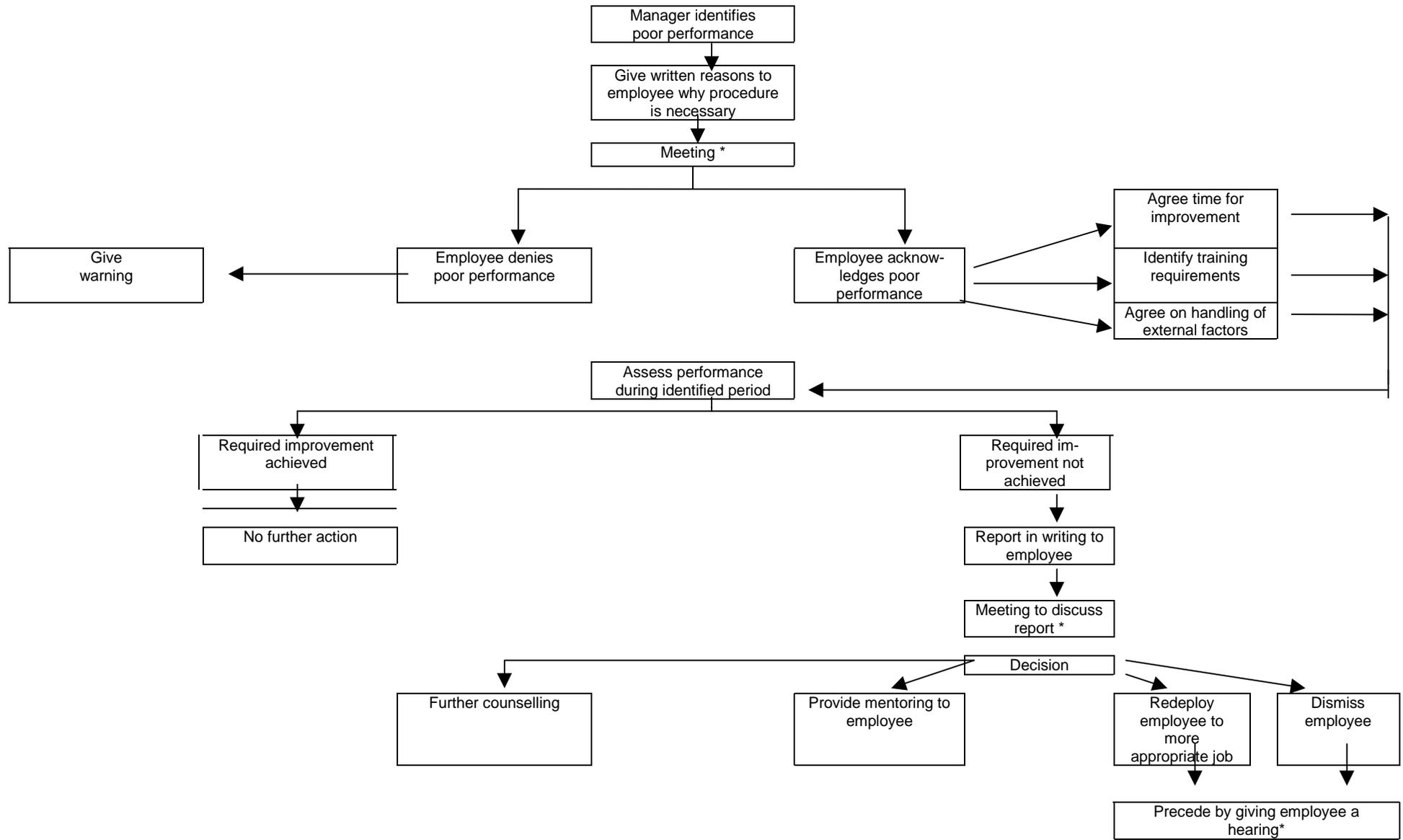
- 1) **The employee may be assisted in all meetings in terms of this procedure by a co-employee or trade union representative.**
- 2) **It is advisable to bring a witness into the meeting where the employee is confronted with the decision of placement in an alternative job or dismissal.**
- 3) **If the employee does not agree to accept a placement in a different job where it entails lower pay, the option of dismissal will probably have to be reconsidered.**

4

FLOW DIAGRAM ON INCAPACITY PROCEDURES (POOR PERFORMANCE)

The following page contains a schematic illustration of the new incapacity code and procedures (poor performance) for the public service. The illustration will allow you to follow the procedure at a glance. The illustration highlights the main moments of the procedure.

INCAPACITY CODE AND PROCEDURES IN RESPECT OF POOR PERFORMANCE



* Representation by co-employee or trade union representative allowed

ANNEXURE A

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title

POOR PERFORMANCE: YOURSELF

Since _____ [date] it has been brought to your attention that your performance has not been meeting the required standard. The following are examples of where you failed to meet the standard:

Your performance assessment of _____ [date] supports the above-mentioned position. Due to the fact that there has been no improvement in the situation, I have no option but to invoke the provisions of the incapacity code and procedures for the public service (Resolution No. 10/99 of the Public Service Co-ordinating Bargaining Council).

In line with the provisions of the Code, you are requested to attend a meeting in room ____ // my office on _____ [date] at _____ [time] where the matter will be discussed. Please note that you may be represented by a co-employee or a trade union representative in the meeting.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title

APPLICATION OF INCAPACITY CODE AND PROCEDURES: REPORT AND CONSULTATION MEETING

During our meeting of _____ [date] in terms of the incapacity code and procedures for the public service, we *inter alia* agreed that you be allowed [MENTION TIMEFRAME AGREED] to remedy your poor performance.

The above-mentioned period lapsed on _____ [date]. Attached please find a report on the outcome of the procedure. In order to discuss the report, you are requested to attend a meeting in room ____ // my office on _____ [date] at ____ [time]. Please note that you may again be represented by a co-employee or a trade union representative.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title

ACTION IN TERMS OF INCAPACITY CODE AND PROCEDURE

During our meeting of _____ [date] where we discussed the report on the outcome of the incapacity procedure in respect of yourself, I indicated to you that I would consider which appropriate action to take.

I am considering terminating your services // placing you in a post of _____ [job title]. In terms of the code I, however, need to give you a further opportunity to address me on your failure to meet the required standard and on why I should not terminate your services // place you in a post of _____ [job title].

You are requested to attend a meeting in room ____ // my office on _____ [date] at ____ [time]. You are reminded that you may be represented by a co-employee or a trade union representative in the meeting.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

**PART C: INCAPACITY IN
RESPECT OF ILL-HEALTH
OR INJURY**

1

KEY POINTS: INCAPACITY: ILL-HEALTH

The following key points must be borne in mind when the ill-health procedure is utilised:

- | | |
|---|--|
| Management instrument | <ul style="list-style-type: none">• The procedure is a management instrument to be invoked by the employer, not the employee;• The principle to protect employment as far as possible should be adhered to – in other words, it is not a tool that an employee can use, if he/she does not want to work any longer. |
| Direct link with ill-health/injury | <ul style="list-style-type: none">• The procedure is only to be used in cases of poor performance or non-performance that are directly linked to ill-health or injury.• Not to be used in cases where there is apparent abuse of sick leave (this constitutes misconduct).• Only to be used in cases of alcohol or drug abuse where it can be linked to ill-health (i.e. where a pattern of constant intoxication or drug dependency is clear) – otherwise to be dealt with in terms of the disciplinary code. |
| Medical evidence | <ul style="list-style-type: none">• Evidence by a medical practitioner is critical in deciding how to deal with an employee in terms of this procedure. |
| Not punitive | <ul style="list-style-type: none">• It is not a tool to punish an employee but to assist him/her. |

2

WHEN TO UTILISE THE CODE

The incapacity code on ill-health should obviously not be invoked every time an employee takes sick leave. The following factors should guide you in deciding whether to invoke the code:

- | | |
|--------------------------------|---|
| Link to sick leave | <ul style="list-style-type: none">• Has the employee exhausted his/her sick leave for the specific sick leave cycle for the same or related ailment?• Has disability leave (in terms of the new leave provisions) repeatedly been granted to the employee for the same or related ailment? |
| Chronic illness | <ul style="list-style-type: none">• Are you aware or do you suspect that the employee is suffering from a chronic illness? |
| Accident | <ul style="list-style-type: none">• Has the employee been involved in a serious accident? |
| Alcohol/drug dependency | <ul style="list-style-type: none">• Are you aware or do you suspect that the employee is suffering from alcohol or drug dependency? |
| Performance link | <ul style="list-style-type: none">• Has the employee's performance suffered as a result of his/her illness? |

3

PROCEDURE TO BE FOLLOWED

The Code prescribes the following steps to be followed if an employee is found not to be performing or to be performing sub-standard as a result of poor health or injury:

Steps

- **Step 1 – Investigation**
 - Conduct an investigation to determine the extent of the employee’s poor health or injury.
 - Obtain relevant medical evidence on the employee’s condition (e.g. from his/her medical practitioner or an independent medical practitioner).
 - Allow the employee or his/her trade union representative to state the employee’s case and to give inputs on all issues being investigated or considered (**see Annexure A for example**).
 - Determine whether the nature of the ill-health or injury is temporary or permanent
 - For purposes of the investigation, the following must be considered:
 - nature of the job
 - likely period of absence
 - seriousness of illness or injury
 - remuneration of employee during period of absence
 - possibility of securing temporary replacement.
- **Step 2 – Report**
 - Provide employee with a written report on the investigation (**see Annexure B for example**).
 - Set out results of investigation in report.
- **Step 3 – Action**
 - If the outcome of the investigation points to **temporary** incapacity, decide on how to cover for expected period of absence of employee (e.g. temporary appointment, secondment of another officer, assigning work to another officer(s), etc). The granting of further disability leave also needs to be considered at this point.
 - If ill-health or injury proves to be of a **permanent** nature, consider the following:
 - secure alternative employment for the employee
 - adapt the employee’s work circumstances to his/her disability
 - offer boarding on grounds of ill-health or injury.
 - If the ill-health proves to be the **result of alcohol or drug abuse**, consider any of the following actions:
 - counsel employee
 - encourage employee to attend rehabilitation
 - establish formal rehabilitation programme which employee is to follow
 - terminate employment of employee after fair procedure (if behaviour is repetitive)

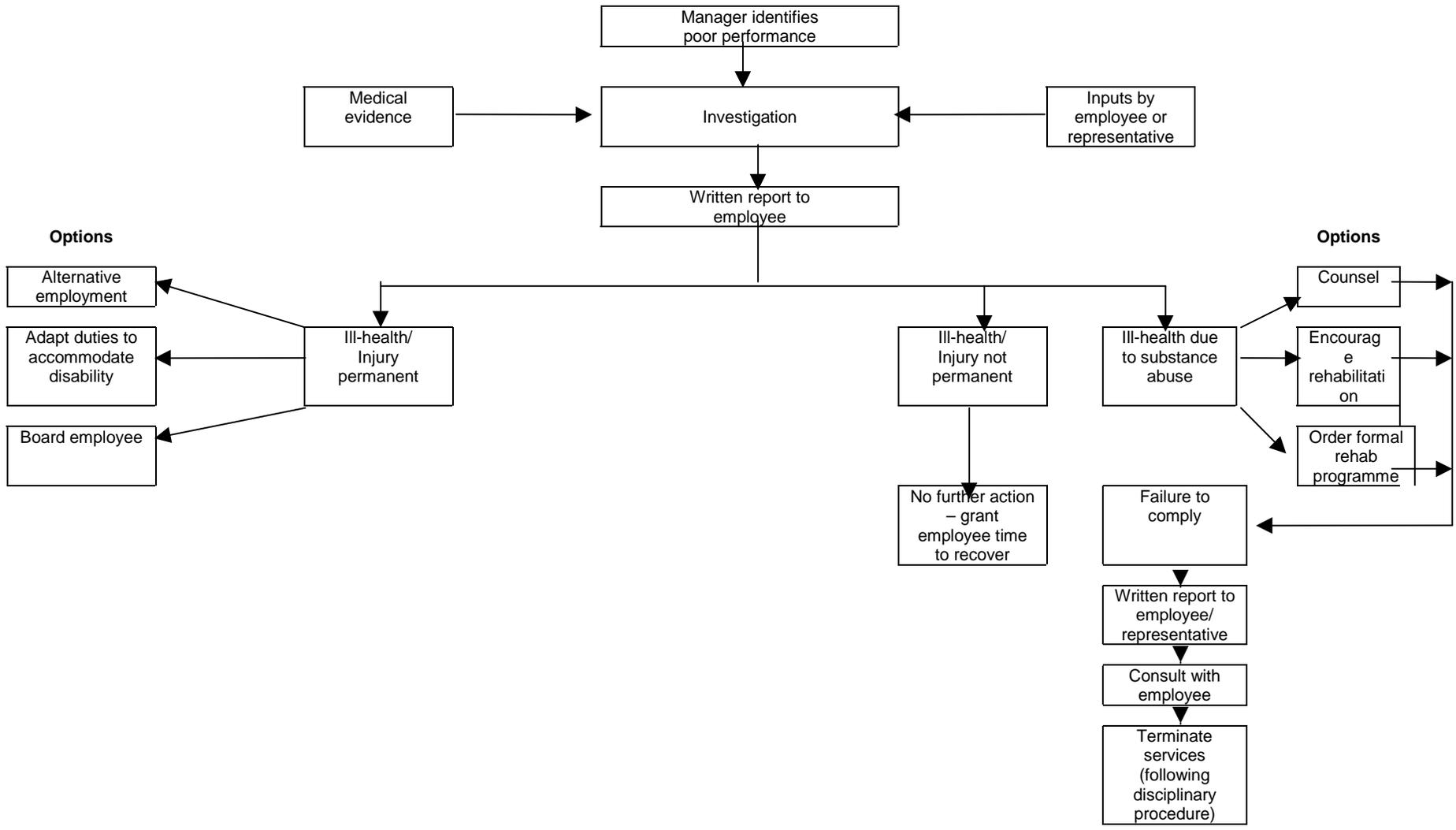
- In cases where the employee fails to follow the formal programme or attend rehabilitation or address the problem of alcohol or drug abuse he/she (or his/her representative) must again be given a written report and be consulted (**see Annexure C for example**). Should termination of the employee's services as a result of his/her non-co-operation be considered, the normal disciplinary process needs to be followed.

4

FLOW DIAGRAM ON ILL-HEALTH AND INJURY PROCEDURES

Attached is a flow diagram that indicates the various steps in the ill-health procedure. The diagram deals with the scenarios of temporary ill-health/injury, permanent ill-health/injury, and ill-health due to substance abuse.

INCAPACITY DUE TO ILL-HEALTH



[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title

INVESTIGATION INTO INCAPACITY DUE TO ILL-HEALTH/INJURY: YOURSELF

As a result of the fact that you have been granted _____ days sick/disability leave over the past _____ months, an investigation into your incapacity has been launched in terms of the incapacity code and procedures in respect of ill-health for the public service (Resolution No. 12/99 of the Public Service Co-ordinating Bargaining Council).

The issues being investigated are the following:

It would be appreciated if you could state your case as far as this matter is concerned and provide me with inputs on the issues mentioned above by _____ [date]. Your trade union/representative or a co-employee is welcome to act on your behalf in this matter.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title

REPORT ON INVESTIGATION INTO INCAPACITY DUE TO ILL-HEALTH/INJURY: YOURSELF

In my letter dated _____, you were invited to submit inputs to me on the investigation into your incapacity due to ill-health/injury.

The investigation has now been concluded. Attached, please find a report on the matter, containing the results of the investigation.

A decision regarding your case will be taken soon, after which you will be informed of the outcome.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Mr/Ms

**REHABILITATION IN TERMS OF INCAPACITY CODE AND PROCEDURES: ILL-HEALTH/
INJURY**

In our meeting of _____, you were counselled to address your alcohol/drug abuse problem // we agreed that you would attend rehabilitation to assist you in addressing your alcohol/drug abuse problem // you were informed of and requested to follow the formal rehabilitation programme that had been established to assist you in addressing you alcohol/drug abuse problem.

You have, however, failed to address the problem // attend rehabilitation // follow the formal programme. Attached, please find a report on the matter.

In order to discuss the matter, you are required to attend at meeting in room _____ // my office on _____ at _____.

SIGNATURE OF MANAGER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE: