

EMPLOYEE MISCONDUCT AND DISCIPLINARY ACTION

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INTRODUCTION

- ▶ Def: Misconduct: Bad or dishonest management by persons supposed to act on another's behalf or Activity that transgresses moral or civil law, Behave badly or Manage badly or incompetently(World Web Dictionary,2014)
- ▶ Disciplinary action: The act of punishing or Punish in order to gain control or enforce obedience. (World Web Dictionary,2014)
- ▶ Employers can take action, including dismissals, against employees who have been errant or recalcitrant. However, any action taken must follow the proper disciplinary procedure. (World Web Dictionary,2014)

INTRODUCTION cont.

- ▶ **Progressive disciplinary action** is a process whereby an employer takes disciplinary action against an employee in a progressive manner; that is, going from lesser to heavier intensity action.
- ▶ A lesser form of disciplinary action may include counselling the employee and issuing warning letters. Heavier intensity action include the issuance of a letter, suspending the employee, conducting domestic inquiry and finally dismissal.

Objectives

- ▶ The objectives of these procedures are:
- ▶ To give employees the opportunity to improve their conduct or performance.
- ▶ To identify who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action.
- ▶ To identify the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

Informal Action

- ▶ Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

THE INVESTIGATORY STAGE

- ▶ purpose of an investigation is for the employer to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents. The employer will usually appoint an investigating officer to carry out the investigation.

- ▶ Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. The employee does not normally have the right to bring a companion to an investigative interview. However, the employer may allow the employee to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

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The employee must co-operate fully and promptly in any investigation. This will include informing the employer of the names of any relevant witnesses, disclosing any relevant documents to the employer and attending investigative interviews if required

If the employee cannot attend the investigation meeting he/she should inform the employer immediately and he/she will arrange an alternative time. The employee must attend the meeting, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason, (for example for health reasons), the employer may have to reach its conclusions based on the available evidence.

General Principles for the Formal Disciplinary Procedures

The employer expects all its employees to abide by the terms and conditions of their employment and the rules, regulations and standards established by the employer. The procedure for dealing with misconduct, capability and performance comprises a number of levels and the type of disciplinary action taken will depend on the severity and frequency of the misconduct as well as the general circumstances surrounding it. The employer reserves the right at its absolute discretion to invoke any stage of the procedures, depending in the seriousness of the misconduct.

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident.

2. The employee has the right to receive, prior to disciplinary hearings:

- A written statement of the alleged misconduct; and
- Particularly on the basis for the allegation.

3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses to the information provided on the allegation.

4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official.

5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.

6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.

7. The employer will endeavour to ensure that;

All steps under the procedure are taken without unreasonable delay;

- The timing and location of all hearings are reasonable;
- Hearings are conducted in a manner which enables employees to explain their cases; and

Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed.

- ▶ 8. Where a written warning has been issued a copy will be kept but disregarded for disciplinary purposes after a specified period, for example 12 months.
- ▶ 9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
- ▶ 10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.

- ▶ 11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.

- ▶ 12. If a final disciplinary warning has been validly issued and is still current, the employer is entitled to take this into account when considering whether to dismiss for a subsequent act of misconduct, even if the two acts of misconduct are for different matters. The employer will take into account the degree of difference or similarity between the different matters when deciding what sanction to impose.

- ▶ 13. When deciding what sanction to impose, the employer will take into account the factual circumstances giving rise to any previous warnings.
- ▶ 14. If an employee has been issued with a final written warning this normally means that any further misconduct within the duration of that warning may result in dismissal.

- ▶ 15. Precautionary Suspension: In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension **with full pay** whilst an unhindered investigation is conducted.

▶ The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to a temporary transfer to other duties or another work station without loss of pay or the taking of annual holidays to which the employee is entitled. Any action taken will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.

▶ 16. If the employee has difficulty at any stage of the procedure because of a disability, he/she should discuss the situation with their line manager as soon as possible.

Types of misconducts

- ▶ The type of rules/offences which
- ▶ the employer has categorised for each level of misconduct.
- ▶ This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised

MINOR MISCONDUCT

Absenteeism

Poor Timekeeping/lateness

Failure to comply with Absence Notification and Certification Procedure

Careless work and poor effort at work

Minor breach of safety/hygiene/security rules

Extended tea and meal breaks

Failure to maintain a tidy and safe working environment

Misuse of telephone

Misuse of personal mobile phone

- ▶ Excessive time away from the job
- ▶ Failure to wear any protective clothing/equipment provided
- ▶ Failure to wear uniform
- ▶ Wearing unacceptable or inappropriate clothing
- ▶ Failure to complete time, stock or work sheets as instructed
- ▶ Breach of IT Policy

B MAJOR MISCONDUCT

- ▶ Excessive absenteeism
- ▶ Failure to comply with the Holiday Request Procedure
- ▶ Workmanship or performance of duties below the acceptable standard
- ▶ Constant misuse of the telephone
- ▶ Failure to adhere to Rules and procedures
- ▶ Failure to report any loss or damage to company property
- ▶ Dangerous physical horseplay
- ▶ Neglect causing damage to or loss of employer's, customer's or other employee's property/ equipment/tools
- ▶ Serious neglect of safety/hygiene/security rules
- ▶ Smoking in the workplace

- ▶ Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- ▶ Entry into any unauthorised areas
- ▶ Wilful or excessive wastage of material
- ▶ Unsatisfactory attitude to customers
- ▶ Use of foul language
- ▶ Gambling on the premises
- ▶ Insubordination

C GROSS MISCONDUCT

- ▶ Gross Misconduct by an employee entitles the employer to summarily dismiss without notice or payment in lieu of notice and without entitlement to any accrued holiday pay. The following matters will be deemed by the employer to constitute gross misconduct. Such matters are by way of example only and are not exhaustive.

- ▶ Breach of professional confidence or disclosure of confidential information.
- ▶ Violent, willful or reckless behavior which does, or could, result in damage to the person or property of the employer, its employees, clients or other persons with whom it has dealings.
- ▶ Possession of, or being under the influence of, alcohol or drugs on company premises save for any drugs prescribed by a qualified medical practitioner.
- ▶ Acts of indecency, sexual harassment or other similar misconduct with or towards another employee, client or person with whom the employer has dealings.
- ▶ Persistent or unexplained absence from work.

- ▶ Serious neglect of the employee's duties resulting in actual or likely loss, damage or injury.
- ▶ Use of threatening, abusive or insulting language to other employees, clients or persons with whom the employer has dealings.
- ▶ Breach of the employer's Equal Opportunities Policy
- ▶ Breach of any statute, regulation, code of practice or other relevant provision governing the range of services provided by the employer
- ▶ Breach of the Health and Safety at Work (NI) Order 1978 or serious infringement of health and safety rules
- ▶ Submission of false references

- ▶ Failure to disclose any criminal convictions
- ▶ Actions likely to result in damage to the employer's image or reputation in the community or to the employee's image or reputation
- ▶ Refusal to carry out reasonable work instructions
- ▶ Wilful damage to or gross neglect of employer's, client's or other employee's property
- ▶ Undertaking work in competition
- ▶ Falsification of records
- ▶ Leaving the employer's premises or site without consent

- ▶ Unauthorised use of employer's vehicle
- ▶ Gross misuse of the company's internet/email system
- ▶ Serious act of insubordination
- ▶ Harassment or bullying
- ▶ Physically violent behaviour

▶ **NOTE:**

- ▶ **Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure.**

Minor Misconduct

- ▶ If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:
- ▶ **Stage 1** You will be given a verbal warning. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 6 months, provided your conduct improves.

- ▶ **Stage 2** If there is a repetition of the misconduct or breach or in the case of more serious misconduct or breach within 6 months you will be given a **first written warning**. It will be recorded and retained on your personal file but will not be considered for disciplinary purposes after 12 months, provided your conduct improves.
- ▶ **Stage 3** In the case of continued misconduct or breach, or very serious misconduct or breach within 12 months you will be given a **final written warning**. This will contain a clear notice that any further offence within 12 months may result in dismissal.

Stage 4 In the event of further misconduct or breach within 12 months you may be **dismissed**.

Major Misconduct

- ▶ If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you will receive a final written warning which will contain clear notice that any other offence within 12 months may result in dismissal.

Gross Misconduct

- ▶ If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you may be **dismissed** summarily i.e. without notice and without pay-in-lieu of notice.

Alternatives to dismissal

- ▶ As an alternative to dismissal, the following sanctions may be considered: a final written warning, and if allowed for in the contract or mutually agreed, disciplinary suspension without pay, demotion, transfer to other duties.

Disciplinary Authority

- ▶ In the event of a breach of the employer's rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows in 4 stages
- ▶ **Stage 1 (Verbal Recordings)**
- ▶ **Stage 2 (First written)**
- ▶ **Stage 3 (Final written)**
- ▶ **Stage 4 (Dismissal)**

THE RIGHT TO BE ACCOMPANIED

- ▶ As detailed above the employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official. The employee must tell the employer who their chosen companion is, in good time before the hearing.
- ▶ A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- ▶ See the Labour Relations Agency Code of Practice in relation to the right to be accompanied.

STATUTORY MODIFIED DISMISSAL AND DISCIPLINARY PROCEDURE

- ▶ There may be some limited and very exceptional situations involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply.
- ▶ These situations will be where:
- ▶ Dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter;
- ▶ The employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice; and
- ▶ The employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

- ▶ In these very exceptional situations the following **modified procedure** will apply:
- ▶ ***Step 1***
- ▶ ***Statement of grounds for action***
- ▶ The employer will provide the dismissed employee with:
- ▶ a written statement of the alleged misconduct which led to the dismissal, and written particularly on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct, and a written confirmation of his/her right of appeal against the dismissal.

▶ *Step 2*

▶ *Appeal*

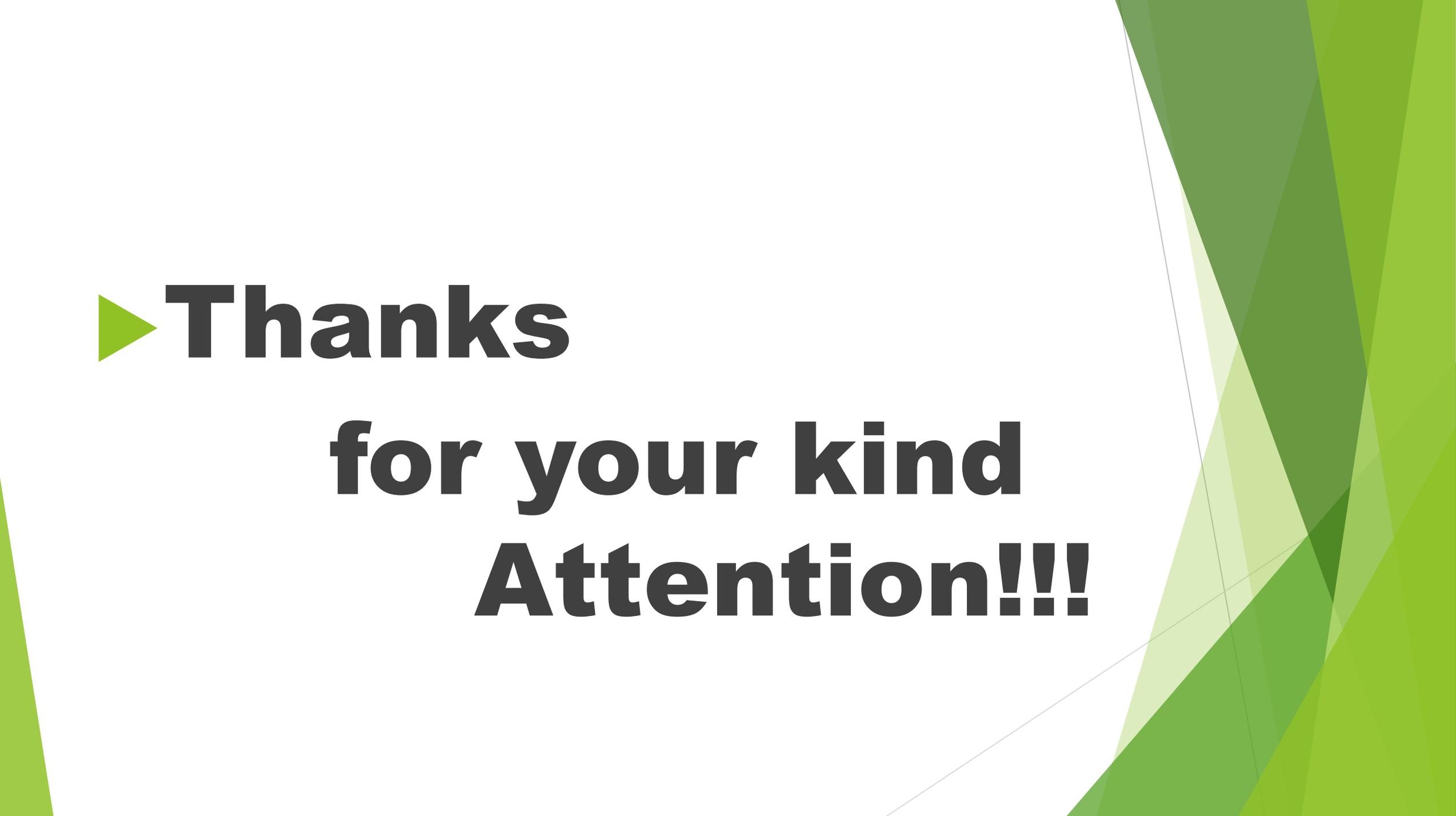
- If the employee wishes to appeal he/she must inform the employer within 5 working days.
- All appeal requests must be made to **(Manager of the institution)**.
- Appeal hearing shall be heard usually within 5 working days of receipt of the request.
- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.

conclusion

- ▶ It is but normal that in any Institution , the Manager uses his/her Dicipinary power to correct any misconduct in order to maintain a balance or smooth running of the Institution.

REFERENCES

- ▶ APPENDIX 18A - EMPLOYERS' HANDBOOK
- ▶ **DISCIPLINARY PROCEDURES STAF'109** SLLC Disciplinary Policy sept.2011
- ▶ ACAS Guidance on Discipline and Grievance and Code of Practice
- ▶ SLLC Managers' Handbook on Handling Discipline (Revised July 2009)
- ▶ visit www.nhrc.com.my
- ▶ The SA Labour Guide manual . **The 2018 edition of the Labour Law and Employment Manual**



▶ **Thanks**

**for your kind
Attention!!!**