

CHECKLIST FOR ALLEGED UNFAIR SUSPENSION DISPUTE

NB: The law does NOT require that each and every factor set out below apply in all cases. The law encourages the minimum of legal formality. This checklist is merely a guide and should be used with care and flexibility.

GENERAL

- 1 Is the reason (or substantive fairness) of the suspension being challenged?
- 2 Is the suspension being challenged on procedural grounds?
- 3 Is the duration of the suspension being challenged?
- 4 What is the date and duration of the suspension?
- 5 Is it alleged that the duration of the suspension is unreasonably long?
- 6 Is the suspension with pay or without pay? (NB: Certain statutes/collective agreements provide for preventative suspension without pay)
- 7 Is this a preventative suspension or punitive suspension?
- 8 Is there a disciplinary code or collective agreement and what does it say about suspensions?
- 9 If there is a disciplinary code or collective agreement: has it been complied with?
- 10 What remedy does the employee seek?

PRECAUTIONARY or PREVENTATIVE SUSPENSION – Substantive Fairness

- 11 Were disciplinary charges being investigated when the employee was suspended?
- 12 What were the charges that were being investigated?
- 13 Was the employee suspended pending the outcome of a disciplinary hearing?
- 14 Did a disciplinary hearing in fact take place?

- 15 Was the employee suspended to prevent interference with, intimidate or influence witnesses?
- 16 Was the employee suspended to prevent the employee from interfering with or destroying evidence?
- 17 Was the employee suspended because the employer feared recurrence of alleged misconduct?
- 18 Did the charges involve dishonesty and was the employee entrusted with the safekeeping of money?
- 19 If the reason for suspension was not one of above, then what was the reason?
- 20 Would the employer have suffered prejudice if the employee was not suspended? Describe alleged prejudice.
- 21 Was there prima facie evidence that the employee had engaged in serious misconduct?
- 22 If the disciplinary code provides for suspension for alleged serious misconduct, is the alleged conduct deemed to be serious?
- 23 Has the suspension prejudiced the self-esteem, self-worth, reputation, dignity, career prospects, advancement, job security or fulfilment of the employee? If so, how?
- 24 Does the employee have a contractual right to be provided with work and is that right based on any particular skill that needs constant exercise?

PRECAUTIONARY or PREVENTATIVE SUSPENSION – Procedural Fairness

- 25 Is there a right to be heard and if so was the employee given that hearing before the suspension to show why he/she should not be suspended?

- 26 Was the employee notified preferably in writing of the suspension, reasons for suspension, conditions of suspension and duration of suspension?
- 27 Did the disciplinary hearing commence within any stipulated period or within a reasonable time? If not, why not?
- 28 If the disciplinary proceedings have not been commenced within the prescribed time period, has the suspension automatically lapsed its collective agreement of statute?
- 29 Has the suspension been extended as a result of any action on the part of the employee? (If so, there is no duty on the employer to pay for the full period of suspension.)

PUNITIVE SUSPENSION – Substantive Fairness

- 30 Was there a disciplinary hearing before the suspension was imposed?
- 31 Was the suspension imposed for a fair reason? Consider the elements of substantive fairness that apply when one is considering the fairness of a misconduct related dismissal in terms of the Code of Good Practice: Dismissal

PUNITIVE SUSPENSION – Procedural Fairness

- 32 Was the suspension imposed in terms of a fair procedure? Consider the elements of procedural fairness that apply when one is considering the fairness of a misconduct related dismissal in terms of the Code of Good Practice: Dismissal
- 33 Did the EE agree, if agreement is required, to the sanction of suspension without pay? (Suspension without pay may be offered to the EE instead of dismissal.)