

Collective Bargaining Agreement: for the Textile Manufacturing
Industry

IT is hereby notified, in terms of section 80 of the Labour Act [Chapter 28:01], that the Minister of Labour and Social Welfare has approved the publication of the Collective Bargaining Agreement set out in the Schedule, which has been registered in terms of section 79 of the Labour Act.

SCHEDULE

EMPLOYMENT CODE OF CONDUCT FOR THE TEXTILE
MANUFACTURING INDUSTRY

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Preamble

In this Code, any reference to the masculine gender shall include the feminine gender and vice versa.

1. (1) Disciplinary behaviour and related rules and regulations are essential for the protection of the employees and employers alike and for the successful functioning of the industry.

(2) For this reason the importance of good industrial relations, based on humanitarian principles between the employers and the employees in every establishment, cannot be over-emphasised. Therefore this Code must be uniformly administered to ensure that all employees are treated in a fair and consistent manner.

(3) Disciplinary action should be regarded initially as educational and corrective. Only when both educational and corrective

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action has proved ineffectual should punitive action be instituted as a matter of procedure, unless the offence is so serious as to warrant dismissal.

(4) When an employee breaks the terms and conditions of his contract of employment, or behaves in an unacceptable way, he or she must be disciplined in accordance with the procedure set out in the Code without undue delay. The offender should be dealt with fairly, firmly, promptly and without bias or prejudice.

(5) Since this Code cannot cover every specific case that can occur, officials administering it must use discretion when exercising their right to take disciplinary action, having due regard for the spirit and intention behind it when dealing with such cases.

That is—

- (i) Non personalization of disciplinary issues that compromises justice delivery system hence the need to handle emotions.
- (ii) Need for thorough investigations before corrective or punitive measures are taken thus avoiding pre-judging the case as well as the need to comply with the laid down disciplinary procedures.
- (iii) Neutrality and impartiality either by management or worker's representatives.
- (iv) Need for prompt disciplinary action, justice delayed is justice denied.
- (v) Fairness and consistency that is interested parties should be recused.

(6) It should be noted that every employee has a right to a fair hearing on any issue which involves an entry on his or her disciplinary record.

Application

2. (1) This Code shall apply to all employees, both management and workers alike regardless of race, tribe, place of origin, political opinion, colour, creed, sex, or any like consideration. In the absence of a managerial workers committee the alleged offender shall have the right to choose a representative of own choice.

(2) Failure to comply with the provisions of the Code shall constitute an unfair labour practice in terms of section 8 and 9 of the Labour Act [*Chapter 28.01*] (“the Act”) as amended.

(3) The Code of Conduct Appeals Board established in terms of the Code section 3.5.7 shall investigate all failures to comply with the Code and deal with them in such a manner as the Board may, in its discretion considered being appropriate in the circumstance.

3.—

PART I

CODE OF CONDUCT DISCIPLINARY PROCEDURE

Section

1. Offences and their level of seriousness.
2. Definition of Offences.
3. Summary of disciplinary measures.
4. Duration/period of operation of warnings.
5. Disciplinary procedure.
 - 5.1 General Considerations.
 - 5.2 Enquiry Procedure.
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 - 5.6 N.E.C. Code of Conduct Appeals Board.
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Offences and their level of seriousness

3.1 There are varying levels of seriousness of breaches of the Code and misconduct under the Code. These are categorised hereunder.

A verbal warning given by an employer shall not form part of disciplinary procedure set out in the Code but may be recorded on the employee's personal record in the presence of a workers committee representative or a fellow employee of own choice.

3.1.1 Minor Offences

Corrective action shall start with a verbal warning which shall last for 3 months for the following offences—

1. Poor time-keeping.
2. Leaving job or place of work without permission.
3. Absence from work for a period of not more than 2 working days without reasonable excuse.
4. Loafing and Loitering.
5. Gambling.
6. Minor breach of Health and Safety regulations.
7. Concealing one's defective work.
8. Sub-standard work performance, including carelessness.
9. Boisterous behaviour.

3.1.2 Major Offences

Corrective action shall start with a written warning which shall last for 4 months for the following offences:

10. Deliberate failure to clock in or out.
11. Inefficiency.
12. Intoxication or drunkenness.
13. Sleeping on duty.
14. Insubordination, including rudeness.
15. Indecency, including obscene behaviour.
16. Malicious allegations.
17. Abuse of privilege of office.
18. Threatening or attempting to do bodily harm to any other person on company premises.

19. Negligence that causes damage to company property or failure to report damage to company property.
20. Insulting or abusive language.
21. Absence from work for a period of 3 or 4 working days without reasonable excuse.
22. Disorderly behaviour likely to cause or resulting in damage to company property or of any other person on company premises.

3.1.3 Serious Misconducts

- (a) The offences covered by this section shall warrant dismissal.
- (b) However, prior to making the decision to dismiss an employee, the presiding officer in consultation with the Disciplinary Committee shall take into consideration such factors as the offender's length of service, previous disciplinary record, work performance and any special circumstances pertaining to the case such as extreme provocation etc.

Having due regard for the aforementioned, the presiding officer may, having assessed the merits and demerits of the case in consultation with the disciplinary committee as well shall mete out one of the following as an alternative to dismissal:

- (i) a final written warning with suspension for a maximum period of two weeks without pay; or
- (ii) a final written warning with reduced pay to not lower than the level immediately below his current level for a maximum period of three months; or
- (iii) a final written warning with a reduction in pay to not more than two levels below his current level for a maximum period of one year.

3.1.4 The following offences warrant dismissal

23. Attacking or assaulting a fellow employee or any other person, including fighting on company premises.

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24. Possession of a dangerous weapon such as a firearm or prohibited drugs and alcohol on company premises without authorisation.
25. Wilful damage or destruction of the employer's property or that of a fellow-employee within the company premises;
26. Theft, fraud, bribery, embezzlement, extortion, forgery or corruption;
27. Absence from work for a period of 5 or more consecutive working days without a reasonable excuse;
28. Habitual or substantial neglect of duties;
29. Serious violation of health or safety rules or regulations;
30. Making unauthorised press statements;
31. Refusal or failure to obey lawful instructions or to perform duties, and knowingly issuing unlawful instructions;
32. Illegal collective job action;
33. Wilfully sleeping on duty;
34. Harassment at the workplace;
35. Gross Incompetence.

3.2 Definition of Offences

1. "Poor time-keeping", this includes the following types of misconduct committed without reasonable excuse—
 - (a) Reporting late for work.
 - (b) Leaving work early without permission.
 - (c) Extended or unauthorised breaks during working hours.
2. "Leaving job or place of work without permission", offence is self-explanatory.
3. "Absence from work for not more than 2 working days without reasonable excuse", this includes taking time off without leave and tacking time off without being granted leave of absence.

4. “Loafing and loitering” means spending time idly and aimlessly.
5. “Gambling” means playing games of chance for money during working hours.
6. “Minor breach of health and safety regulations” includes failure to wear or utilize protective or safety clothing or equipment, failure to report any situation hazardous, or potentially hazardous to the health or safety of others.
7. “Concealing one’s defective work” is self-explanatory.
8. “Sub-standard work performance, including carelessness” includes work performed below the level of expertise which would normally be expected of the individual and includes neglect of work.
9. “Boisterous behaviour” includes rough or noisy behaviour or playing practical jokes which may affect the concentration or performance of other persons at the work place.
10. “Deliberate failure to clock in and out” is self-explanatory.
11. “Inefficiency” Includes state of not achieving maximum productivity or failure to make the best of time or resources.
12. “Intoxication or drunkenness” means being under the influence of alcohol or drugs to an extent which renders the employee incapable of performing his or her duties properly.
13. “Sleeping on duty” means failing to keep awake while on duty.
14. “Insubordination” means discreditable conduct which includes rudeness, or disrespect for persons in authority.
15. “Indecency and obscene behaviour” include offensive or unbecoming behaviour against normally accepted standards of morals or tastes.
16. “Malicious allegations” are utterances or publication of words which are derogatory of any persons, race, tribe,

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religion, or sex which have no truth or evidence validating their utterances or publication.

17. "Abuse of privilege or office" includes—
 - (a) engaging in personal hobby during work;
 - (b) reading material unconnected with employment during working hours;
 - (c) engaging in personal telephone conversations of unreasonable duration during working hours;
 - (d) using employer's office for improper purposes;
 - (e) concealing or covering-up defective work, either one's own or another's work;
 - (f) Abusing any other privilege offered by the employer.
18. "Threatening or attempting to do bodily harm to any other person on company premises" consists of any act or gesture which causes another person to have reasonable fear of infliction of physical violence or harm on him/her or his/her family or property.
19. "Negligence that causes damage to company property or failure to report damage to company property" consists of not exercising the standard of care or diligence which can reasonably be expected of an employee in his particular position. "Damage to property" includes loss thereof and loss of production.
20. "Insulting or abusive language" means language or behaviour towards another person or groups of persons which shows hatred, ridicule or contempt or is likely to provoke retaliation or violence. The offence is aggravated if it is related to race, tribe, and religion, place of origin, colour or political opinion of the person or persons addressed.
21. "Absence from work for 3 to 4 working days without reasonable excuse" is the same as described in 3 above except for the duration of absence. It includes overstaying leave of absence. However, the employee may be excused

only if he can offer reasonable excuse for his absence but he may nonetheless, suffer loss of pay for the days he has been absent without leave.

22. “Disorderly behaviour likely to cause or resulting in damage to company property or the property of any person in company premises” means behaviour resulting or likely to result in disorder, disturbance of peace or an outbreak of lawlessness on the part of an individual or group of individuals. Damage includes situations which are potentially damaging to the employers property or production.
23. “Attacking or assaulting another person or fighting on company premises” consist of doing any physical act which causes another person to have reasonable fear of infliction of physical violence on him. The offence can be committed by striking or touching that other person in anger or vengeful or insolent manner. A final written warning may be imposed if there are extenuating features to the case, such as extreme provocation.
24. “Possession of a dangerous weapon such as a firearm or prohibited drugs and alcohol on company premises without permission” is self-explanatory.
25. “Wilful damage or destruction of the employer’s property or that of a fellow employee within company premises” An employee damages property if he unnecessarily or without justification, wilfully causes damage to the property or destroys or throws it away, or is reckless, or does not care whether the property will be damaged or destroyed by his or her conduct.
26. “Theft, fraud, bribery, embezzlement, extortion, forgery or corruption—
 - (a) Theft is the intentional removal of property belonging to another person with the intention of permanently depriving that person of the property. For the purpose of the Code, theft includes unauthorized borrowing and the removal of the employer’s property from the company premises without the employers’ permission.

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- (b) Fraud is the intentional making of a false representation (whether verbally, in writing or by conduct or implication) to another person which representation has the effect of prejudicing that other person. Fraud includes theft by false pretences and theft by conversion. It also includes obtaining concessions (such as leave, loans, pay advances, etc.) through false pretences, falsification of any document relating to the offender's employment or his obtaining employment.
 - (c) Extortion is obtaining some advantage of benefit from another person by intentionally and unlawfully subjecting him or her to threats of bodily harm or damage to himself or herself, or his or her family, or property or arrest or prosecution, defamation, dismissal, civil proceedings, inconvenience or other such consequence.
 - (d) Corruption: an employee acts corruptly if he or she does or refrains from doing anything which is his or her duty to do or refrain from doing, in return for any form of favor or reward, whether such reward is solicited or unsolicited.
27. "Absence from work for a period of more than 5 consecutive working days without reasonable excuse" itself is explanatory.
28. "Habitual or substantial neglect of duties" is similar to the misconduct outlines in paragraph 8 above but of a more aggravated and sustained form.
29. "Serious violation of safety and health regulations" is similar to the misconduct outlined in paragraph 6 hereof and includes more serious breaches such as smoking in a prohibited area or failure to provide protective clothing.
30. "Making unauthorized press statements": An employee is guilty of this misconduct if he or she makes a statement to the press concerning a matter relating solely to the affairs of his or her employer without permission from the employer.

31. “Refusal or failure to obey lawful instructions or to perform duties, and knowingly issuing unlawful instructions”—
- (a) an employee is guilty of this misconduct if he or she shows intention to resist carrying out a lawful and reasonable order or does not, in fact, carry out the order;
 - (b) orders, instructions or duties may be in the form of factory regulation, standing orders, and circulars, written or oral instructions and may be expressed or implied. Duties also include those duties which an employee is obliged to perform or which are a part of or incidental to his or her job.

Unlawful instructions are those which are in violation of one’s contract of employment.

32. “Illegal collective job action” means an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, go-slow, lock out, sit-in or sit out, inciting others to engage in illegal, unconstitutional and disorderly behavior, or other such concerted efforts.
33. “Willfully sleeping on duty” is a blameworthy action done on purpose, governed by will without regard to reason, done obstinately, perversely, willfully, stubbornly, deliberately and intentionally for which compulsion, ignorance or accident is no excuse.
34. Harassment at the workplace; includes any action in the course of carrying out duties, linked with or arising out of work—
- (a) in the workplace, including public and private spaces where they are a place of work or work related business;
 - (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
 - (c) during work related trips, travel, training, events or workplace organised social activities;

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- (d) through work-related communications, including those enabled by information and communication technologies;
 - (e) in employer-provided accommodation; and
 - (f) when commuting to and from work.
35. Gross Incompetence: means any professional misconduct or unreasonable lack of professional skill in the performance of professional practices.

3.3 Summary of disciplinary measures

	<i>Offence/Misconduct</i>	<i>1st Breach after a verbal warning</i>	<i>2nd Breach</i>	<i>3rd Breach</i>	<i>4th Breach</i>
1	Poor time-keeping	1st w/w	2nd w/w	f/w/w	Dismissal
2	Leaving job or place of work	1st w/w	2nd w/w	f/w/w	Dismissal
3	Absence without reasonable excuse 1 to 2 days	1st w/w	2nd w/w	f/w/w	Dismissal
4	Loafing or loitering	1st w/w	2nd w/w	f/w/w	Dismissal
5	Gambling	1st w/w	2nd w/w	f/w/w	Dismissal
6	Minor breach of health and safety regulations	1st w/w	2nd w/w	f/w/w	Dismissal
7	Concealing one's defective work	1st w/w	2nd w/w	f/w/w	Dismissal
8	Sub-standard work performance	1st w/w	2nd w/w	f/w/w	Dismissal
9	Boisterous behaviour	1st w/w	2nd w/w	f/w/w	Dismissal
10	Deliberate failure to clock in or out	w/w	f/w/w	dismissal	
11	Inefficiency	w/w	f/w/w with or without demotion	dismissal	
12	Intoxication or drunkenness	w/w	f/w/w	dismissal	

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	<i>Offence/Misconduct</i>	<i>1st Breach after a verbal warning</i>	<i>2nd Breach</i>	<i>3rd Breach</i>	<i>4th Breach</i>
13	Sleeping on duty	w/w	f/w/w	dismissal	
14	Insubordination including rudeness	w/w	f/w/w	dismissal	
15	Indecency, including obscene behaviour	w/w	f/w/w	dismissal	
16	Malicious allegations	w/w	f/w/w	dismissal	
17	Abuse of privilege or office	w/w	f/w/w	dismissal	
	Threatening or attempting to do bodily harm	w/w	f/w/w	dismissal	
19	Negligence	w/w	f/w/w	dismissal	
20	Insulting or abusive language	w/w	f/w/w	dismissal	
21	Absence without reasonable excuse 3 to 4 days	w/w	f/w/w	dismissal	
22	Disorderly behaviour	w/w	f/w/w	dismissal	
23	Attacking, assaulting etc.	dismissal			
24	Possession of a dangerous weapon	“ “			
25	Wilful damage or destruction of employer’s property	“ “			
26	Theft, fraud, bribery etc.	“ “			
27	Absence from work without reasonable excuse for 5 days or more	“ “			
28	Habitual or substantial neglect of duties	“ “			
29	Serious violation of health and safety regulations	“ “			

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	<i>Offence/Misconduct</i>	<i>1st Breach after a verbal warning</i>	<i>2nd Breach</i>	<i>3rd Breach</i>	<i>4th Breach</i>
30	Making unauthorised press statement	“ “			
31	Refusal or failure to obey lawful instructions	“ “			
32	Illegal collective job action	“ “			
33	Wilfully sleeping on duty	“ “			
34	Harassment at the workplace	“ “			
35	Gross Incompetence	“ “			

N.B: Before dismissal for offences 23 to 35 the employer’s attention is drawn to the provision of section 3.1.3 (b) of this Code.

3.4 Duration/period of operation of warnings

1. Verbal warning: expires after 3 months.
 First written warning expires: after 4 months.
 Second written warning: expires after 6 months.
 Final warning: expires after 12 months.
2. The unexpired period of operation of a warning given for an offence in categories 1 to 9 and 10 to 22 of section 3 shall, within their categories have a cumulative effect in determining the appropriate punishment, and due weight shall be given to the seriousness of the offence for which the warning was given.
3. When considering the punishment to be imposed, the details of the offender’s record as a whole shall be taken into account.

3.5 Disciplinary Procedure

1.—

3.5.1 General Considerations

- (a) The maintenance of discipline within a factory, in a department or in any work situation is a function

of line management, who are responsible for administering the Code.

- (b) This section of the code covers the procedural stages to be followed in a disciplinary case, the requirements regarding investigation, preparation of disciplinary cases and the conduct of disciplinary hearings. The stages may be summarized as follows—
 - (i) Enquiry committee.
 - (ii) Hearing committee.
 - (iii) Disciplinary committee – first stage of internal appeal.
 - (iv) In the case of shortage of manpower the employer in consultation with the workers committee shall seek approval to combine either inquiry and hearing, or hearing and disciplinary committee during the initial stages.
 - (v) Company arbitrator – second and final stage of internal appeal within the company.
 - (vi) N.E.C Code of Conduct Appeal’s Board.
 - (vii) Labour Court.
 - (viii) Supreme Court.

It should be noted that the arbitrator is the last stage of internal appeal as far as the company is concerned.

- (c) In terms of the Labour Relations (Employment Codes of Conduct) Regulations, Statutory Instrument 379 of 1990 as amended, no proceedings commenced in terms of this code of conduct in respect of misconduct or breach of the rules and procedures of the code shall continue beyond 14 working days from the date of their commencement without a decision being reached.
 - (i) Disciplinary and appeals proceedings should be completed within 30 working days from the date they commenced. 14 working days should be with the disciplinary procedure and another 14 working days within the appeals procedure.

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- (ii) If 30 working days elapse and the matter has not been dealt with, the alleged offender has the right to refer the matter to a Labour Officer who will deal with the matter in terms of section 93 of the Labour Relations Act [*Chapter 28.01*] as amended.
2. Where there is a Human Resources Department, Officials in that department should be available to assist line management in the composition and training of disciplinary committee structures and ensure that disciplinary action and procedures are consistent in all departments and that they are in conformity with this Code.
 3. When an employee is alleged to have committed misconduct in terms of this Code, the circumstances shall be thoroughly investigated by an Enquiry Committee headed by an investigating officer (“the I.O”) within 2 working days.
 4. At the conclusion of the investigation, the I.O shall forward a written report of his or her findings to a managerial employee (“the Presiding Officer – P.O”) who shall conduct a hearing of the matter if the I.O has recommended that disciplinary action should be taken against the employee.
 5. The employee may, if he so wishes be represented at the hearing before the P.O. by a member of the workers’ committee or any fellow employee of his choice:
 - Provided that a managerial employee shall not have his interests represented by a member of the workers’ committee but by any other fellow employee of his choice.
 - At any hearing, at least two members of the workers committee (or managerial workers committee) shall be present and shall have the right to assess on any point pertaining to the case.
 6. At the conclusion of the hearing, the P.O with the consent of the Hearing may impose any of the punishments provided by section 5 of the Code.
 7. The category of managerial employees empowered to issue written warnings or suspend an employee (“Designated Persons”) shall be made known to all staff and employees.

8. Agents of the National Employment Council for the Textile Industry (“NEC”) shall be responsible for the administration, policing and the implementation of the Code to ensure consistency and fair treatment of all at all levels.

3.5.2 Enquiry procedure: Enquiry Committee

1. The alleged offender shall be informed of the nature of misconduct in writing within twenty-four hours by his superior who shall also ensure that he obtains written proof of acknowledgement from the alleged offender.
 - (a) If the misconduct is admitted, then the necessary disciplinary action may be taken in terms of this Code.
 - (b) If the misconduct is refuted, the employee must be notified by his superior in writing within twenty four hours of the date, time and place where an official enquiry into the allegations against him shall be held.
2. An Enquiry Committee (“E.C”) shall consist of equal numbers of representatives of management and the workers. Their number shall not be less than 2 or more than 4—
 - (a) The Investigation Officer “I.O” (a managerial employee) shall preside over the enquiry. Whenever possible, the enquiry shall be conducted within 48 hours from the time the misconduct is reported.
 - (b) The enquiry committee shall gather all the relevant evidence available whether written or oral.
3. Having considered all the evidence before it, the E.C. shall decide whether the allegation made against the employee is valid. If the allegation is considered to be not valid, the IO. Shall forward a written report of the findings to the Head of Department who shall inform the alleged offender in writing and the case will be closed.
4. Disciplinary Hearing
 - (i) Composition of hearing committee: The hearing committee shall consist of two members of management and two members of the workers committee (or managerial workers committee) as the case may be.

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- (ii) Where the E.C. decides that the alleged offender has a case to answer, the I.O. shall forward a written report of the findings to a managerial employee (“the Presiding Officer –P.O.”) who shall notify the alleged offender within two working days, in writing, of the day, time and place where a hearing shall be conducted. The P.O. shall also advise the alleged offender of his right, if he so wishes, to be represented at the hearing by a fellow employee of his choice and the right to bring in witnesses to support his case. The complainant in the case shall not be allowed to preside over the hearing.

The hearing shall be conducted within two working days in accordance with the following procedure—

- (a) inform the employee of the charge against him in writing;
- (b) invite the employee to admit or refute the charge;
- (c) if the charge is admitted, the P.O. shall proceed to implement the appropriate disciplinary action regarding the category of misconduct in terms and procedures of the Code of Conduct;
- (d) if the charge is refuted, the P.O. shall—
 - (i) invite the employee to state his case;
 - (ii) invite comments from his representatives and members of the workers committee;
 - (iii) call in witnesses, one at a time;
 - (iv) allow for cross-examination by both parties;
 - (v) invite closing arguments;
 - (vi) summarize and give the decision of the committee and complete the relevant form;
 - (vii) inform the offender of his right of appeal against the decision and the procedure to be followed.

- (e) at any hearing at least two members of the workers committee (or managerial workers committee) shall be present and shall have the right to assess the evidence presented before the committee.
- 5. The proceedings may be adjourned for a period not exceeding 48 hours if the committee considers an adjournment to be necessary.
- 6. Should disciplinary action be taken, it will be the duty of the P.O to inform the employee of the consequences of any further misconduct, and of the improvement expected of the employee in the future. The P.O shall also make it clear to the employee that he has a right to appeal against the decision in terms of the Code.
- 7. Record of proceedings: The P.O. should always ensure that a written record of the proceedings is kept. The record should be well documented and, where necessary, the recording shall be verbatim and preferably typed. The record shall be kept for a period of not less than twelve months.

3.5.3 Written warnings

- 1. A written warning may only be issued by a designated person.
- 2. Written warnings shall be recorded on the Code of Conduct Warning/Suspension Form as set out in Schedule A.
- 3. The written warning, giving details of the offence, shall be served on the employee in the presence of a representative of the workers committee (or managerial workers committee) at the hearing.
- 4. A copy of the written warning and other relevant records shall be retained on file and shall be distributed in accordance with the instructions contained in schedule A.

3.5.4 Suspension pending investigation

- 1. An employer may suspend an employee, including a managerial employee, in writing, giving the reason for

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the suspension, with or without pay, for a period not exceeding 14 working days as a precautionary measure in order to facilitate investigation of any offence or instance of misconduct allegedly committed by the employee.

2. Before so suspending an employee, the employer shall satisfy himself, from the information available to him, that there is a real danger that, if the employee is not so suspended, he is likely to interfere with or hamper such investigation.
3. Within 14 working days of suspension, the employer shall —
 - (a) institute a hearing of the matter;
 - (b) impose appropriate punishment in terms of the Code; or
 - (c) re-instate the employee on full pay and benefits.
4. Any disciplinary measures implemented in relation to the employee at the conclusion of the investigation shall be in conformity with the Code and be effective from the date of the commencement of the suspension.
5. If any disciplinary measure is taken against a suspended employee, he shall be paid all the salary, wages and benefits which had accrued to him before the date of the salary, wages, benefits or privileges during the period of his suspension.
6. If no disciplinary measures are taken against an employee who has been suspended under this section, such employee shall be re-instated in his employment and shall be entitled to be paid all the salary, wages, benefits and privileges which should have been due to him had he not been suspended.

3.5.5 Appeals procedure

1. Every employee has the right to appeal against any decision which involves an entry on his disciplinary record and which may thus affect his future employment prospects.
2. Disciplinary Committee—1st stage of Internal Appeal: Appeals from a disciplinary hearing will be lodged with the Disciplinary Committee (“the D.C.”), in writing, within three working days of the issue of a written disciplinary action, giving full grounds of the issue of a written disciplinary

action, giving full grounds and reasons for the appeal. The appeals shall be considered within two working days of its receipt by the D.C.

3. The D.C shall consist of an equal number of management representatives and/or managerial employee representatives and representatives of the workers committee, altogether numbering not more than six and not less than four.
 - (a) The chairman shall be a representative member of management, while the secretary shall be appointed by the workers committee (or managerial workers committee).
 - (b) The chairman shall have a casting vote in addition to his deliberative vote.
 - (c) The secretary, in consultation with the chairman, may appoint a recorder to assist him during the proceedings.
4. Functions of the Disciplinary Committee—
 - (a) to consider the grounds of appeal and investigate the issues raised in order to determine their validity;
 - (b) to ensure that the charge preferred is the correct one;
 - (c) to ensure that the decision of the presiding officer confirms with the category of the misconduct;
 - (d) to ascertain that all the procedures were followed from the enquiry up to and during the hearing;
 - (e) to consider any new facts that may be raised by the appellant;
 - (f) to confirm, vary or alter the decision of the hearing committee; and
 - (g) to inform the employee of his right of appeal to the company arbitrator.
5. Arbitrator – 2nd stage of Internal Appeal: in the event that the employee is not satisfied with the decision of the D.C., he may request arbitration, and the matter shall be referred to the Chief Executive of the company or an arbitrator appointed by him within three working days.

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6. The arbitrator shall review all the evidence presented in the matter and he may also carry out such further investigations of the matter as he deems necessary.
7. The arbitrator shall announce his decision within five working days of the request for arbitration, and his decision will be regarded as final as far as the company is concerned.
8. If after receiving the decision of the arbitrator, the employee considers that the procedures of the Code have been violated or that the proceedings were in any way ultra vires the regulations set out herein, the employee shall have the right, within seven working days thereafter, to appeal, in writing, to the Code of Conduct Appeals Board (“the Board”) by completing Schedule C and presenting the same to the secretary of the N.E.C who shall forthwith notify the Board to review the appeal.

3.5.6 NEC Code of Conduct Appeals Board

1. During the period commencing on the date of lodging an appeal with the Code of Conduct Appeals Board (“the Board”) until the announcement of the decision of the Board—
 - (a) an appealing employee who has been dismissed shall be considered to be on suspension without pay; and
 - (b) neither the employee nor the employer may refer the matter to the Ministry of Labour.
2. Upon receipt of an appeal, the N.E.C secretary shall assign the designated agent to carry out investigations of the issue in whatever manner he deems necessary to obtain the facts and information concerning the appeal. The investigation shall be completed within fourteen working days, unless formally extended by the Board, and upon a report submitted to the Board in writing.
3. Whenever possible, appeals should be heard within thirty working days after the investigation.
4. Subject to the parties’ right to appeal to the Labour Court in terms of the Act, the decision of the Board shall be deemed to be final and binding on the parties.

3.5.7 Composition of the Board

1. Whenever possible, the Board shall consist of members of the Executive Committee of the N.E.C. But if a member should become an interested party, he shall declare such interest and his place taken by a person chosen by the trade union or employer's organization, whichever the case may be, in order to ensure the administration of justice. The Board shall have equal representation of not less than two and not more than three members from both the employer's representatives and the representatives of the employees.
2. The Chairman of the Board shall be the Secretary of the N.E.C and the designated agent shall act as his secretary. He shall not be required to vote in the proceedings except in the event of an equality of votes when he shall exercise a casting vote in order that a determination may be reached. If one or both secretary or designated agent is not available the administration shall appoint an independent person.

3.5.8 Functions of the Board

1. The functions of the Board shall be—
 - (a) to receive appeals and all necessary documents and submissions relevant to the appeal from the N.E.C's designated agent.
 - (b) to ascertain that the Code of Conduct procedures have been complied with, and that no variation, deviation or misinterpretation has occurred or been perceived during the conduct of any disciplinary or grievance resolution proceedings;
 - (c) to ascertain that any charge or allegations involving disciplinary action have been properly determined;
 - (d) To ensure that at all times during the application of the Code the basic rules of natural justice and due process have been observed.
2. In the event that the Board determines that there has been:
 - (a) breach of disciplinary procedure;
 - (b) incorrect determination of a charge or allegation; or
 - (c) any other violation of the Code that is deemed to be prejudicial to either the employer or the employee;

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- the Board shall, in the discharge of its authority—
 - (i) direct re-instatement or dismissal (as the case may be) of the employee affected thereby; or
 - (ii) direct that the case be re-investigated; or
 - (iii) order that the Code be complied within a fresh proceedings; or
 - (iv) give any other directive which will ensure that justice between the parties has been done and fairness observed in the case
- 3. In the event of any party not being satisfied with the decision of the Board, the party may appeal to the Labour Court in terms of the Act.
- 4. The designated agent of the N.E.C shall be responsible for ensuring that there has been compliance with decisions made under the Code of Conduct.
- 5. If an employer fails or refuses to comply with a decision of the CCAB he shall be guilty of an unfair labour practice in terms of section 8(e) of the Labour Relations Act [*Chapter 28:01*] as amended.

PART II

GRIEVANCE RESOLUTION PROCEDURE

Preamble

- 4.—
- A. A grievance is any feeling of dissatisfaction or unfair treatment which an employee experiences in relation to his work. All employees have the right to seek redress of their grievances. It is in the Industry's interest that the grievance be resolved at the earliest stage possible. This should happen as near the point of origin as possible.
 - B. All employees should also be made aware that grievances may be submitted without any form of recrimination, or risk of victimisation.

SCHEDULE D

GRIEVANCE RESOLUTION PROCEEDURE FORM

Procedure

1. An employee who wishes to raise any issue as a grievance should, in the first instance raise it with his immediate superior. (With the exception that in the event of the grievance, being against the immediate superior, the employee may raise the grievance with his departmental head or the next superior line manager).
2. The superior with whom the grievance is raised shall investigate the grievance thoroughly in an attempt to resolve the matter within a period of two working days. His findings, and the date of the same, should be recorded on the Grievance Form (Schedule D).
3. If the superior is unable to resolve the grievance to the satisfaction of the employee, the employee may then approach the superior line manager (“the Departmental Head – D.H.”) in the company of a representative of the workers committee or a fellow employee of his choice and re-submit the grievance form.
4. The D.H. must continue to investigate the matter and attempt to resolve it within two working days. His findings shall be recorded on the grievance form.
5. If the D.H. is unable to resolve the grievance to the satisfaction of the employee, the employee will be entitled to ask for a Grievance Tribunal (G.T.”) to meet to resolve the matter.
6. The G.T. will consist of management representatives and workers committee representatives, all together numbering not less than four and not more than six. The G.T. will consider the matter and record its findings on the same grievance form within a period of three working days of the submission of the application.
7. The G.T. shall make every effort to resolve the matter. The employee shall attend the proceedings and offer such evidence and other information as may be relevant to the resolution of his grievance.
8. In the event that the employee is not satisfied with the decision of the G.T., he may request arbitration, where the matter will be placed before the chief executive of the company or an arbitrator appointed by him for the arbitration.

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9. The arbitrator shall review all the evidence presented in the matter, and he may carry out such further investigations of the matter as he deems necessary. He shall announce his decision within five working days of the request for arbitration, and his decision shall be regarded as final in relation to the company.
 10. If an employee remains unsatisfied with the outcome of the arbitration, or if any grievance is outstanding for a period of more than fourteen days from the date of its submission, the employee may appeal to the N.E.C., and the Code of Conduct Appeals Board shall attempt to resolve the grievance within 30 working days.
- 5.—

PART III

DISPUTE RESOLUTION PROCEDURE

Types of Disputes

1. Dispute of Right
2. Dispute of Interest

FORMS

SCHEDULE E: Notification to Party to Attend Proceedings

SCHEDULE F: Certificate of Settlement

SCHEDULE G: Certificate of no Settlement

DEFINITIONS

- (a) A dispute is an argument or disagreement, especially an official one between workers and employers.
- (b) Rights are moral/legal entitlement to have or to do something.
- (c) Interest is a feeling of wanting something.
 - e.g. (wage increases) etc....

1. Disputes of Rights

- Normally involves legal rights and obligations including; - Pay, Pension Gratuity, etc...

- Obligations may arise out of CBA, Labour Act, regulations, Contract of Employment, Constitution or Act of Parliament.

Settlement procedure

- (a) Appeal to the Designated Agent.
- (b) Notification to attend Hearing.
- (c) Findings on a balance of probabilities.
- (d) Certificate of settlement or no settlement.
- (e) Draft ruling by the DA.
- (f) Application by the DA for confirmation of the draft order to the Labour Court.
- (g) Review of the draft ruling by the Labour Court.
- (h) Enforcement of the civil judgment by the appropriate Court.

2. Disputes of Interests

Preamble

Normally these disputes are collective and are resolved through adjudication/determinations, through either compulsory arbitration or voluntary arbitration.
E.g. economic interest (wage increases) etc.

Settlement Procedure

- (a) Collective Bargaining Agreement through Works Council, National Employment Council, or Ministry of Labour.
- (b) Mediation – a mechanism in which parties allow an independent third party (Mediator) to help them reach a point of settlement of which decisions are made by disputing parties.
- (c) Arbitration – a formal submission of the dispute to one or more arbitrators for a decision to be reached and the decision is binding depending on the terms of reference of the arbitration.

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- (d) Conciliation – similar to mediation except that the active role of the third party (conciliator) is putting forward suggestions for compromise.

3. Dispute Settlement Procedure

- (a) Hearing/Arbitration.
- (b) Appeal-Application to the Labour Court/Arbitrator.
- (c) Ruling of the labour court/Arbitrator.
- (d) Appeals for review by the Labour Court/High Court.
- (e) Supreme Court.
- (f) Constitutional Court.

6. Declaration

The employers and the employees, having arrived at the agreement set forth herein, the undersigned hereby declare that the forgoing is the agreement arrived at, and affix their signatures hereto.

Signed at Bulawayo this 29th day of November, 2021.

B. MANGENA,
Chairman.

B. MBEVE.
Vice Chairman.

W. CHAREHWA,
Council Secretary.

Collective Bargaining Agreement: for the Textile Manufacturing Industry

7. Schedules

SCHEDULE: A

THE TEXTILE INDUSTRY OF ZIMBABWE

Code of conduct: Warning/Suspension form

Name of company:

Name of employee:

Position held:

Department:

Nature of offence:

Date:

Written Statement (Recorded by Personnel):

.....

.....

Disciplinary action taken:

.....

.....

I acknowledge that the nature of this warning and consequences has been explained to me without prejudice to my right of appeal:

.....

.....

.....

.....

Signature of employee:

I wish to appeal against the decision:

.....

..... applicant)

Signature of workers' committee Rep/Witness

Signature of the designated person:

This form is to be completed in triplicate and distributed as follows:

- One copy to the offender.
- One copy to the offender employees' record.
- One copy to the personnel representative.

SCHEDULE: B

THE TEXTILE INDUSTRY OF ZIMBABWE

Code of Conduct: Internal Appeal Form

To: —

Name of employee: Contact Details:

Name of company:

Employment No.:

Position held:

Department:

Length of service:

Nature of offence:

.....

.....

Reasons/Grounds for appeal:

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Collective Bargaining Agreement: for the Textile Manufacturing Industry

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.....

Employee's signature: Date Submitted:

Employer's signature: Date Signed:

This form is to be in duplicate:

- One copy is to be retained by the employee.
- The other copy forwarded to the determining authority.

SCHEDULE: C

THE TEXTILE INDUSTRY OF ZIMBABWE

Appeal to Council

To:—

Secretary	Applicant's Contact Address
N.E.C for the Textile Industry
P.O. Box 1028
Bulawayo

Name of employee:

Name of company:

Department:

Employments No.:

Position held:

Length of service:

Nature of offence:

Reasons/Grounds for appeal (Recorded with the assistance of Personnel):

.....

.....
.....
.....
.....

Employee's signature: Date Submitted:

N.E.C. agent's signature: Date Signed:

This form is to be completed in duplicate:

- One copy is to be retained by the employee;
- And the other copy to be receipted and retained by the N.E.C agent.

SCHEDULE: D

THE TEXTILE INDUSTRY OF ZIMBABWE

Grievance Handling Procedure Form

Name of company:

Name of employee: Contact Details.....

Department:.....

Work No:.....

Nature of grievance:

.....

.....

Date submitted: Complainant's Signature:

1. Superior's remarks:

.....

.....

Date recorded: Superior's Signature:

2. Head of department's remarks:.....

.....

.....

Date recorded: H.O.D Signature:.....

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3. Grievance tribunal's findings:.....
.....
.....

Date recorded: Chairman's Signature:.....

4. Arbitrator's recommendations:.....
.....
.....

Date Closed: Complainant's signature:

.....
Workers Committee Representative Signature

SCHEDULE: E

Form L.R.6

LABOUR ACT [CHAPTER 28:01]

Notification to Party to Attend Proceedings

.....
.....
.....
.....

(name and address of party)

You are hereby notified that the matter concerning:
.....
.....

(subject matter)

In respect of which reference was made on the and to which you are a party shall be heard before

(specify the name of the conciliator or ruling authority)

At.....
(Place)

On.....
(Date)

At.....am/pm

NB: if as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interest.

GIVEN under my hand at.....thisday of.....
20.....

.....
CONCILIATORY/RULING AUTHORITY

SCHEDULE: F

Labour (Settlement of Disputes) Regulations, 2003

LABOUR ACT [CHAPTER 28.01]

CERTIFICATE OF SETTLEMENT

N.B: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case Number.....

PART I

CERTIFICATE BY CONCILIATING AUTHORITY

I, certify that the dispute between :
(Conciliating authority)

..... and
(Employee party) (Employer party)

Referred to conciliation on:

.....
(Date)

concerning

.....
.....
.....
(Issues in dispute)

was resolved by agreement of the parties on the
(Date)

Collective Bargaining Agreement: for the Textile Manufacturing Industry

and further that the terms of the agreement are as follows:

.....
.....
.....

(Annex agreement if necessary)

Name of officer:

Signature of officer:

Date and place:

PART II

We the undersigned, being parties to the above dispute do hereby confirm having agreed as indicated above.

Signed Date
(Employee party)

Signed Date
(Employer party)

SCHEDULE: G

Labour (Settlement Of Disputes) Regulations, 2003

L.R. 2

LABOUR ACT [*CHAPTER 28.01*]

CERTIFICATE OF NO SETTLEMENT

N.B: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case Number.....

CERTIFICATE BY CONCILIATING AUTHORITY

I,, certify that the dispute between:
(conciliating authority)

..... and
(Employee party) (Employer party)

S.I. 99 of 2022

Referred to conciliation on:

.....
(Date)

concerning

.....
.....
.....
(Issues in dispute)

remains unresolved as at
(date)

Name of officer:

Signature of officer:

Date and place:.....

Signed Date
(Employee party)

Signed Date
(Employer party)