# CHECKLIST

# STEP BY STEP PROCEDURE FOR DISCIPLINARY HEARING

When holding a disciplinary hearing, it is imperative that the employer follow the correct procedure according to the [COUNTRY] labour law. The labour market in [COUNTRY] is highly regulated which makes it crucial for employers to continuously comply with labour law.

Holding a disciplinary hearing ensures that a fair procedure is followed and that there is substantive reason to dismiss an employee. Disciplinary hearings can be formal or informal but we recommend that formal hearings are performed in all cases, that way you are sure to have everything documented correctly should the case be transferred to the CCMA.

## 1. Issue the Employee with a notice to attend a disciplinary hearing

* The Employer must state the date, time & place of the hearing on the notice.
* The notice must have a detailed description of the charges that have been brought against them.
* The date, time & description of the incident must also be noted on the notice
* The date of the hearing must only be set 48 hours (excluding weekends & public holidays) from the date you issued the notice to the Employee. This gives them ample time to prepare for the hearing.
* You must state on the notice that you offer the Employee an interpreter/ translator if necessary.

## 2. Before the hearing takes place

* Contact an independent individual to chair the hearing and make sure they are available. This person should be an impartial and objective third party to the matter, preferably with knowledge of labour law. It’s important that you are able to prove at the CCMA that the chairperson was not bias in any way.
* Gather all the evidence that you will need for the hearing, including any witnesses that you will be bringing forward
* Organise an interpreter/translator if the employee has requested one.

## 3. Have the hearing on the proposed date and time

* The hearing must still take place, even if the employee does not show up for the hearing
* As the employer you will present your evidence to the chairperson.
* The chairperson must determine if the employee had sufficient notice of the hearing.
* If the chairperson has determined that the employee did have sufficient notice, he must then make recommendation, not the employer, to either dismiss the employee or not (regardless of whether the employee has a valid reason for not attending or not)

**4. During the hearing**

* The employer presents his case by presenting evidence and calling witnesses.
* The employee is then allowed to present his case and cross examine the evidence presented by the employer.
* Thereafter the employer may cross examine the employee’s evidence and witnesses
* Both parties will make closing arguments at the end of the disciplinary hearing

**5. Conclusion**

* The employer will be asked to present aggravation factors
* The employee will be asked to present any mitigating factors
* The chairperson will then determine the appropriate sanction
* If the sanction is dismissal, the employee can be dismissed with immediate effect.