

Punitive and precautionary suspension

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Case study:

The employer's livestock is fast disappearing and he suspects a certain employee's involvement. He decides to install additional cameras to survey the farm and catches the culprit in the act. The employer is free to proceed with criminal charges separately, but in terms of the employer-employee relationship, labour law requires that the employer first holds a disciplinary hearing to ensure that any dismissal is procedurally and substantively fair. Can the employer suspend the employee in the meantime?

Suspending an employee is a common occurrence in the workplace. Employers must, however, take care to follow the correct procedures when imposing both precautionary and punitive suspension to avoid putting their business at unnecessary risk.

What is precautionary suspension?

Precautionary suspension is imposed when an employer suspects that an employee might have breached either the business's disciplinary code, or the terms and conditions of employment. Due to the nature of the alleged misconduct or breach and lack of proof of guilt, the employer can proceed to suspend the employee on a precautionary basis pending an investigation, especially if there is a possibility that the employee can interfere with the investigation in any way.

Take note that precautionary suspension is with full pay and benefits. The employee should understand that he or she is not being punished and should not suffer any prejudice in general or in respect of remuneration.

Before suspending an employee on a precautionary basis, the employer should ensure that there are justifiable reasons for removing the employee from the workplace, pending an internal investigation.

Typical scenarios where precautionary suspension can be applied include cases of theft, fraud, gross negligence, misuse of the employer's property and the like. Each case must be judged on its own merits, but usually precautionary suspension will not exceed four weeks, although it can be longer if intensive investigation is required.

In order to prepare for the disciplinary hearing, the employee has the right to request additional information (including an interpreter, witnesses, postponement of the hearing, and further information or documentation) by completing a procedural application form at least 24 hours before the disciplinary hearing.

What is punitive suspension?

Punitive suspension is a form of punishment following a disciplinary hearing where an employee is found guilty of misconduct or a breach of the terms and conditions of employment. Punitive suspension is a sanction which can be imposed on the employee as an alternative to dismissal, and is without pay and benefits.

Punitive suspension can be applied in any case of misconduct where the disciplinary hearing's outcome leads to dismissal, but the employer does not want to dismiss the employee and rather opt for severe punishment in the form of suspension without pay and benefits. Each case must be judged on its own merits, but usually punitive suspension will not exceed two weeks.

Common mistakes and pitfalls

Common mistakes employers make with regard to suspension include:

- Not following the correct procedure.
- Not clearly informing the employee that he or she is suspended, the reason for the suspension as well as the type of suspension (precautionary or punitive), and the duration of the suspension.
- Not having substantive reason to suspend the employee (insufficient reason to suspend the employee or suspending the employee for the wrong reason).
- Not giving the employee the opportunity to state his or her case.
- Not remunerating the employee (full pay and benefits) during the period of precautionary suspension.

The employer should make it very clear to the suspended employee whether he or she is being suspended on a precautionary or punitive basis to avoid any confusion and possible subsequent Commission for Conciliation, Mediation and Arbitration (CCMA) referrals. 📍

The LWO Employers Organisation assists employers to comply with labour law, and to use it to their advantage to protect their business. As a registered employers' organisation with the Department of Employment and Labour, the LWO has the right to represent members at the CCMA. Contact the LWO on 086 110 1828 or send an email to info@lwo.co.za.

