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DISCIPLINARY HEARING RISK ASSESSMENT

1. Purpose

This risk assessment identifies common procedural and substantive risks in disciplinary hearings that may expose the employer to adverse findings at the CCMA, Bargaining Council, or Labour Court.

2. Procedural Fairness Risks

2.1. Inadequate notice of the hearing
2.2. Charges not clearly formulated
2.3. Failure to provide evidence in advance
2.4. Denial of representation rights
2.5. Inadequate opportunity to prepare
2.6. Biased or conflicted chairperson
2.7. Failure to accommodate language or literacy issues

3. Substantive Fairness Risks

3.1. Charges not supported by evidence
3.2. Inconsistent application of discipline
3.3. Sanction disproportionate to misconduct

3.4. Failure to consider mitigating and aggravating factors

3.5. Reliance on hearsay without justification

4. Chairperson-Related Risks

4.1. Chairperson lacks labour law knowledge

4.2. Chairperson is employed by the company

4.3. Chairperson provides advice to one party

4.4. Inadequate reasoning in outcome

5. Employee Conduct Risks

5.1. Tactical delays or postponement requests

5.2. Sudden claims of language barriers

5.3. Abuse of representation rights

5.4. Allegations of victimisation or bias

6. Documentation & Record-Keeping Risks

6.1. Incomplete or missing minutes

6.2. Poorly drafted outcome

6.3. No record of evidence considered

6.4. Failure to record reasons for sanction

7. Risk Rating Matrix

Rate each risk as:

- Low – Minimal exposure
- Medium – Correctable but risky
- High – Likely adverse finding if challenged

8. Risk Mitigation Measures

8.1. Use an independent labour law chairperson

8.2. Ensure clear, precise charge sheets

8.3. Provide evidence bundles in advance

8.4. Allow reasonable preparation time

8.5. Record proceedings accurately

8.6. Deliver well-reasoned written outcomes

9. Conclusion

A properly conducted disciplinary hearing significantly reduces legal exposure and the risk of adverse CCMA awards.

***Disclaimer*

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