

National Sea Rescue Institute of South Africa “NPC”
Registration No 1967/013618/08
“the Institute”

Disciplinary Policy and Procedure

Approved: 2015
Reviewed: July 2018



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1. INTRODUCTION

Acceptable behaviour by employees is an essential requirement for the successful maintenance of the employer-employee relationship. This enables the employer to achieve business objectives, while at the same time creating a pleasant working environment for employees.

The disciplinary code is provided to inform employees of the rules and behavioural standards in the workplace and at the same time give guidance to management on what behaviour is unacceptable and how it can be addressed fairly.

This policy and procedure applies to all NSRI employees.

The following policy principles apply:

- The main principle of this code is that the employer and employees will treat each other with mutual respect.
- Disciplinary action is initiated by management if it appears that the disciplinary policy has been contravened or a criminal offence has been committed.
- Employees accept that it is the responsibility and prerogative of management to institute disciplinary action in terms of this policy. At the same time, it is the responsibility of employees to comply with the rules contained in this code.
- Disciplinary processes will be applied in a fair manner in order to contribute to sound employment relations.
- As a general point of departure, disciplinary steps will focus primarily on progressive (remedial/corrective) action, rather than on punitive action. The latter should generally be taken only if previous informal steps have been unsuccessful; or where an offence is so serious that the continued employment relationship has become untenable.
- Disciplinary action may and will be instituted by managers and supervisors who are responsible for managing discipline.
- If rules are broken, action will be taken against the offender. The nature and extent of the steps in question will depend on the circumstances of each case. In this regard NSRI will strive to act consistently.
- Some contraventions of the rules are viewed in such a serious light that, if the offender is found guilty, termination of service, demotion or suspension may result.

2. DISCIPLINARY POLICY: BEHAVIOURAL GUIDELINES

In order to comply with the NSRI code of ethics, norms and values, all employees are expected to adhere to specific behavioural guidelines. To inform employees of the nature of these expectations, guidelines are provided below. The foundation of these guidelines is equity in the workplace and respect for the individual.

2.1 Employees

- 2.1.1 Employees are expected to comply with the rules, practices and responsibilities contained in their employment contracts. All reasonable and lawful instructions given by a superior must be complied with.
- 1.1.2 Employees must act in an orderly and lawful manner, taking into consideration, and respecting, the rights of other employees, the NSRI facilities and the NSRI clients.
- 1.1.3 Attacks, whether verbal or physical, as well as insulting, obscene, racist and discriminatory language, are condemned in the strongest possible terms.
- 1.1.4 The NSRI property and equipment, and the personal possessions of colleagues (fellow employees) need to be treated with the necessary care and respect. No such property or possessions may be removed from the premises without proper authorisation.
- 1.1.5 In order to protect fellow employees and the NSRI, the NSRI reserves the right to search employees' individual workstations, electronic communication, cabinets, briefcases and packages. Such searches will take place with due respect for the dignity of the person concerned.
- 1.1.6 There are appropriate procedures, namely the Grievance Procedure and the Appeal Procedure, for dealing with issues that employees regard as having a negative influence on their working environment. Employees are therefore expected to follow this procedure and provide their services in accordance with the employment contract.
- 1.1.7 Employees commit themselves to the Sea Rescue rules regarding access control. Access to premises outside normal working hours is, where appropriate, subject to the proper authorisation being obtained.
- 1.1.8 All apparatus and equipment (excluding that purchased by the employee) remains NSRI property and employees must return or leave behind such equipment when they leave the NSRI.

- 1.1.9 Employees are expected to promote the NSRI interests. In this regard, no confidential information regarding NSRI may be given to anyone who is not in the NSRI service without the authorisation of the relevant senior manager.
- 1.1.10 Employees may also not do any other work that may create a conflict of interests with NSRI without the written permission of the senior executive manager of the business unit in question.
- 2.2 Work place
 - 2.2.1 Safe and healthy practices must be maintained in the working environment. All employees must therefore apply proper safety guidelines.
 - 2.2.2 Safety in the workplace is very important to NSRI and, therefore, no employee may bring alcohol or drugs onto the premises without management's permission, or report for duty or begin his/her work while he/she is smelling of/or under the influence of alcohol or drugs. In such a situation, any employee must inform his/her supervisor of his/her condition. The person concerned will then be sent home (disciplinary and/or counselling steps will be considered depending on the circumstances).
 - 2.2.3 Employees will be subjected to a testing procedure if it is suspected that they are under the influence of alcohol or drugs.
 - 2.2.4 Employees may also not bring any non-prescribed substances onto the NSRI premises. Any unauthorised possession of drugs or alcohol is viewed in a very serious light.
 - 2.2.5 For this purpose, NSRI reserves the right to search employees entering or leaving the premises, or to refuse such person access to the premises.
 - 2.2.6 A further commitment to safety is the wearing of safety and protective clothing, which is provided when appropriate and which must be worn. Any accidents or damage to equipment or property, even of a very minor nature, must be reported to the employee's superior or the safety representative immediately. Safety rules and practices must be adhered to at all times.
 - 2.2.7 A safe working environment also implies that no employee will enter the NSRI premises or those of a client while in possession of a firearm or dangerous weapon, unless written permission has been obtained in advance. Any firearms on the NSRI premises will be strictly dealt with in accordance with the provisions of the Firearms Control Act.

2.2.8 The employer has to provide a safe working environment. NSRI therefore strives to establish and enhance a culture of mutual respect amongst employees and managers. This inter alia requires an environment that is free from any form of harassment. Should such incidents happen, disciplinary steps will be taken?

2.2.9 Smoking in the workplace is prohibited, except for those areas demarcated as smoking areas.

3. MISCONDUCT: SUBSTANTIVE FAIRNESS

3.1 Valid Reason

The employer does not have to prove beyond reasonable doubt (as in a criminal court) that an employee has committed an offence. The test is whether based on a balance of probability; the employer has reasonable grounds to believe that the offence was indeed committed by the employee. (This means that the version that is probably true is accepted.)

If the employer alleges that he/she had a valid reason for acting against an employee, he/she must present the facts on which this decision was based.

3.2 All relevant facts must always be taken into account.

The validity of the reason relates to the motive or justification for the particular action.

- Was a standard or rule contravened?
- Is it a valid or reasonable standard or rule?
- The reason must also be able to be specified objectively by means of evidence, not just suspicion.
- Was the employee aware of the rule or standard, or should he/she reasonable have been aware of the rule or standard?

4. MISCONDUCT: FAIR PROCEDURE

4.1 A fair procedure refers to the requirement that certain procedures be followed before a sanction may be imposed on an employee.

4.2 The Code of Good Practice: Dismissal stipulates that the procedures need not be excessively formal, but does state that a more formal approach with regard to discipline will be expected of larger employers. In the main, the following guidelines are laid down:

- The employee must be informed of the allegations against him/her in a format and language that the employee can reasonably understand.
- The employee must be given the opportunity to put his/her case in reply to the allegations. (Audi Alterum Partum)
- The employee should be given a reasonable period of time in which to prepare. In the case of a disciplinary interview 24 hours and a disciplinary hearing 48 hours.
- The employee may be assisted by a colleague or a trade union representative employed at the same workplace.
- The decision should be conveyed to the employee after the hearing / interview.
- The findings, together with reasons, must preferably be provided to the employee in writing.
- If a trade union representative is the subject of disciplinary action, the trade union should be informed and consulted.
- The reasons for the dismissal must be explained (that is, the sanction and reasons).
- The employee must be reminded of his/her right of appeal to the CCMA.
- Appeal is restricted to dismissal cases only.

5. REPRESENTATION

5.1 At any stage of the disciplinary process or grievance procedure, employees must be given the opportunity to be represented by a colleague (a co-worker in the same workplace) or, where applicable, a trade union representative.

5.2 An employee may be represented at an internal disciplinary by a legal representative at the employees cost.

6. CATEGORIES AND TYPES OF MISCONDUCT

6.1 Misconduct is defined as conduct by an employee, which constitutes an infringement of the NSRI disciplinary policy or any other rule applicable to the employees of the relevant NSRI.

6.2 Such offences are characterised as less serious offences, serious offences, and very serious offences.

6.3 Every case must be judged on merit. Although certain offences are regarded as more serious than others, a final decision regarding the seriousness of an offence can be made only once all the circumstances have been taken into account.

6.4 The list of offences is not an exclusive list. Only the most important disciplinary offences are mentioned. There may therefore be offences unique to a particular area, or which are unusual, and are therefore not mentioned specifically.

7. SUSPENSION OF PAY

NSRI may suspend an employee on full pay, pending the institution and completion of a disciplinary investigation and the holding of a hearing where applicable.

8. MISCONDUCT OFF NSRI PREMISES/OUTSIDE WORKING HOURS

The employer may in certain circumstances have the jurisdiction to act against offences that take place away from the NSRI premises or outside normal working hours. There are instances where jurisdiction exists and where the employer could consider taking action.

If the particular incident:

- brings the NSRI good name into disrepute and/or
- brings the reputation of the employee into disrepute and/or
- causes a serious breach of trust between employer and employee, or affects the employee's ability to do his/her work and/or
- in cases where the employee fulfils a position of exceptional trust and where this trust is damaged seriously, it constitutes a disciplinary matter within the NSRI jurisdiction.

In each such case, the onus is on the employer to show that there is indeed jurisdiction to act.

9. THE FORMAL PROCESS

Disciplinary procedures at NSRI may follow one of two processes:

The disciplinary interview or the disciplinary hearing.

An interview is usually conducted when (1) the offence is not so serious as to warrant dismissal for a first offence and where (2) there is agreement about the facts to a large extent.

10. DISCIPLINARY SANCTIONS: INTRODUCTION

- a) Disciplinary steps can be taken only once the facts and the circumstances of the case have been considered carefully. In the interests of consistency, the steps taken must be clearly formulated, with reasons being provided for all actions, as far as possible.
- b) The sanctions with regard to the offences serve as guidelines only. However, any deviation from them must be motivated properly based on the particular circumstances.

Any action by an employee which threatens the relationship between employer and employee, or between employees, can also be regarded as an offence in terms of this disciplinary code.

11. DISCIPLINARY SANCTIONS

- a) The sanctions stated in the disciplinary code, are guidelines. The manager or chairperson may ask for or impose stricter or more lenient measures depending on the circumstances. Since it is impossible to put together a comprehensive list of all possible offences, NSRI reserves the right to take disciplinary action against any offence, irrespective of whether it is contained in this code. (Act or failure to act)
- b) Once an alleged charge against an employee has been proved, and mitigating and aggravating factors considered, a sanction must be imposed. This measure must be appropriate to the seriousness of the offence.

12. DISCIPLINARY SANCTIONS: PERIOD OF VALIDITY OF WARNINGS

12.1 Verbal Warning

- The grounds for a verbal warning are usually misconduct of a less serious nature. The warning is also used when informal discussions do not result in a change in the employee's behaviour.
- It is usually given by the employee's supervisor (in an interview situation), who must make sure that the employee understands the warning, knows what behaviour is unacceptable, and what the correct behaviour/ standard is.

- Since the verbal warning is a formal warning, it forms part of the employee's disciplinary record. It must therefore also be put in writing and kept in the employee's personal file.
- A verbal warning can only be given within the framework of a disciplinary interview or hearing.
- Verbal warnings are valid for a period of three (3) months and noted on the employees file.

12.2 Written Warning (second warning)

- A first written warning is regarded as an appropriate measure when the employee has previously received a valid formal verbal warning for the same or a similar offence, or when the circumstances are of such a nature that the offence justifies a more serious step (notwithstanding any previous warnings).
- The first written warning may be given during a disciplinary interview or disciplinary hearing.
- When the warning is given to the employee, it is advisable to do so in the presence of a witness, if possible, to ensure that he/she understands the nature, seriousness and content of the warning, and to obtain the signature of the employee or a witness to acknowledge receipt of the warning. This applies to all forms of written disciplinary sanctions. (Define what a suitable witness is)
- Written Warnings are valid for a period of six (6) months and filed on the employees file.

12.3 Final Written Warning (third warning)

- A final written warning is required when a previous written warning has not resulted in the desired improvement, or when the disciplinary offence is serious enough to justify a final written warning at the first offence.
- A final written warning may be given during a disciplinary interview or disciplinary hearing.
- Final Written Warnings are valid for a period of six (6) months and filed on the employees file.

12.4 Dismissal with Notice

- Dismissal with notice is justified when, despite a final written warning, the employee has committed the same or a similar offence, or neglected to improve his/her behaviour, or where the offence is serious enough to justify dismissal on the first offence.
- In cases of misconduct, employees may be dismissed only after a disciplinary hearing.
- After the hearing, the employee will not be required to work and such employee will be paid in lieu of his notice period.

12.5 Dismissal without Notice (summary dismissal)

- Dismissal without notice is usually restricted to cases where the offence is of a very serious nature, for example fraud, theft, victimisation, sexual harassment, damage to NSRI property, and contravention of security regulations. The circumstances of each case must be taken into account before a sanction is imposed. Summary dismissal may take place only after a full disciplinary hearing. The employee is paid only until his/her last working day and is not given notice.
- Demotion and/or Suspension without pay as an alternative to dismissal
 - Demotion or suspension without pay is permitted as a disciplinary sanction in extraordinary circumstances when dismissal of the employee is justified in terms of the guidelines of this Code, but the mitigating circumstances are such that the employee should not be dismissed, the chairperson of the hearing could propose demotion and/or suspension without pay as an alternative to dismissal. If the employee accepts this offer, he/she is demoted or suspended. If the employee does not accept it, he/she is dismissed.
 - Demotion assumes a reduction in job grade as well as the consequent reduction in remuneration.

13. DISCIPLINARY SANCTIONS: LIST OF DISCIPLINARY OFFENCES

13.1 Classification of Offences

13.1.1 Very serious misconduct

- Theft, Fraud, Bribery, Corruption, Forgery, making false statements, giving false evidence, Industrial espionage, Misappropriation, Misapplication of money, Unauthorized removal, possession or use of property of NSRI, colleagues or clients, Extortion or misrepresentation, Giving or taking bribes or attempting to do so or, inciting anyone to an act of corruption or attempting to do so or any contravention of NSRI policy, which constitutes dishonesty.
- Any effort, conspiracy/co-operation to commit or be an accessory to any of the above mentioned, making of false charge/allegation against another employee, Breaking a duty of trust for example in handling, personal information or NSRI business, whether in general or for personal gain.
- Any action that results in the relationship of trust implied in the employment contract, being broken.
- Sabotage: any intentional or malicious action to hinder the normal activities of NSRI by damaging any machinery or equipment, or by interrupting any supply of essential power, material or services,
- Unauthorized work for a competitor or work in competition with the business of the employer. Conduct that involves a conflict of interest or potential conflict of interest for the employer, any effort, favouring or conspiracy/co-operation to commit or be an accessory to any of the above mentioned offences.
- Being found guilty in a criminal court of a common law or statutory offence, which in the opinion of NRI holds negative implications for the employer/employee relationship, Any conduct that impacts negatively on Sea Rescue, work unit or clients (possibly also after hours), Any effort, favouring or conspiracy/co-operation to commit or be an accessory to any of the above mentioned offences, Failure to report the unauthorized disconnection of safety mechanism on equipment, The unauthorized disconnection of a safety mechanism on equipment.
- Contravention of policy on computer use and e-mail, Any conduct in contravention of the code of ethics or other NSRI policies.

- Failure to report misconduct, corrupt activities, safety risks, theft, sabotage or conflict of interest that came to the employee's attention, Refusal to perform or obey any reasonable instruction without a valid reason. The onus is on the employee to justify his/her refusal or disobedience, Victimization, intimidation, unfair discrimination, racism or harassment of any kind, including sexual harassment, Any threat to resort to violence or to physically harm another person, fighting, assaults, intimidation or inciting other employees to violence, Unacceptable conduct during picketing, for example victimization , personal insults, preventing clients from doing business, disrupting of business, Participating in, or inciting staff to any unprotected/illegal/un-procedural action, for example strikes, work stoppages, stay-away action, or participating in unrest.
- Being drunk on NSRI premises or while on duty (or on duty off the premises) or driving a NSRI vehicle while under the influence of alcohol/drugs, The use or possession of drugs or unauthorized use of alcohol on NSRI or client premises or while on duty, Any grounds recognized by common law as grounds for dismissal, Unfair discrimination, Harassment of any kind, including but not limited to sexual harassment, Racial discrimination, Immoral and indecent behaviour towards the employer, fellow employee, client or service providers, Deliberate damage, abuse or wastage of NSRI, client's or fellow employees property.
- Gross negligent or non-compliance to safety and security regulations or any other procedure, where the consequences resulting from this behaviour, could be serious, Illegally buying and or selling of drugs or alcohol, Insubordination or rebelliousness against supervisors, Improper possession of property belonging to other employees, clients, professional personnel, NSRI or visitors to NSRI.
- Unauthorised disclosure of NSRI information and or trade secrets, Misrepresentation of facts, qualifications and or previous employment history,
- Abuse of Sea Rescue network, including e-mail and internet facilities, which includes, but not limited to, transmitting, retrieving, storage or display of the following: Accessing and/or viewing of obscene or pornographic material, Use of derogatory or inflammatory remarks of any nature, Use of abusive, profane or offensive language, Creation and/or distribution of chain letters and petitions, Expressing, displaying or propagating political or religious viewpoints or content, which can lead to potential and/or actual impact on the employment relationship and/or with fellow employees, Use of material or language that might be deemed to constitute harassment, Accessing and/or viewing of video clips, pictures files unconnected to our business.

13.1.2 Serious misconduct

- Damage to (including spoiled work) or waste of the property of NSRI, clients or employees, Plagiarism, Conveying a computer access code to an unauthorized person, which holds serious or potential serious consequences for the employer, Refusal to work, Failure to adhere to safety/security regulations or other safety procedures, which failure has serious or potential serious consequences, Impertinence, rudeness, the use of obscene language, snide remarks or obscene gestures at a superior, colleague or any other person within NSRI.
- Unauthorized absence without a valid and acceptable reason for longer than three consecutive workdays. The onus is on the employee to justify the absence and reason for not informing the employer. (Desertion procedure comes into operation where it appears that the employee does not intend returning to work.), Uncommunicated absence without a valid and acceptable reason for three consecutive workdays. The onus is on the employee to justify the absence and reason's) for not informing the employer. (Desertion procedure comes into operation where it appears that the employee does not intend returning to work.)
- Unauthorized possession of firearms or other dangerous weapons on NSRI or client premises and, where applicable, in contravention with NSRI policy, Negligence, including negligent driving of a NSRI vehicle, negligent damage to NSRI property, or negligent control of NSRI property, Failures to comply with prescribe or established procedures, policy regulations and rules that may apply from time to time. Including driving a NSRI vehicle without a valid driver's license, Failures to comply with prescribe or established procedures, policy regulations and rules that may apply from time to time, which failure has serious or potential serious consequences, Failure to report a work accident or damage to NSRI property. Failure to report an accident while in control of a NSRI vehicle, A history of periodic unauthorized absences over short periods, Sleeping on duty, where the consequences of such action are or potentially serious, Leaving one's post/workstation without approval or being relieved.

13.1.3 Less serious misconduct

- Failure to comply with NSRI smoking policy, Gambling on NSRI premises, Distributing, display or putting up notices, posters, slogans etc. on NSRI premises without prior approval by NSRI, An unacceptable personal/hygienic appearance (including clothes) that may embarrass colleagues or NSRI, Unauthorized absence without a valid and acceptable reason for three work days or less. The onus is on the employee to justify the uncommunicated absence without a valid and acceptable reason for three work days or less. The onus is on the employee to justify the absence and reason's) for not informing the employer absence and reason's) for not informing the

employer, Failure to comply with working hours, including arriving late and leaving early. Failure to comply with an overtime arrangement on an individual basis, the use of derogative or disparaging language or signs, Behaviour that disrupts good interpersonal relationships, Breaking of house rules, Careless or sloppy work, Wastage of materials and resources.

14. PURPOSE OF AN APPEAL PROCEDURE

An appeal procedure is a process by means of which an employee, against whom disciplinary action has been taken, can appeal against that disciplinary action. Via the appeal procedure, the employee appeals to a person on a higher post level than the chairperson of the original disciplinary interview or hearing. The chairperson of the appeal has the authority to sustain or set aside the decision reached at the original disciplinary hearing.

The parties in the Appeal Hearing are:

- Appeal Chairperson
- Complainant
- Accused and representative, where applicable
- HR Representative

The appeal process is restricted to dismissal cases only.

Grounds for Appeal

In terms of this policy, there are four grounds for appeal following disciplinary action.

These are:

1. Jurisdiction,
2. Irregularities regarding procedure,
3. Matters regarding evidence, and
4. The extent/seriousness of the sanction.

Time restriction

An appeal is lodged by an employee against his/her dismissal. The employee has three (3) working days from the date on which he/she was informed of the decision of the disciplinary hearing. Such an appeal must be in writing. The appeal is directed to the HR Department within the specified time frame.

15. GRIEVANCE POLICY AND PROCEDURES

15.1 NSRI appreciates the value of sound labour relations. However, frustrations, dissatisfaction and feelings of injustice do sometimes exist among employees. Sometimes these are justified, and sometimes not. In order to give employees the opportunity to raise their grievances and to enable management to respond to them as quickly and effectively as possible, so that employees can function in optimum conditions, this policy and procedure applies to all employees.

It is the NSRI policy that all employees have the right to raise a grievance in accordance with the set policy and procedure.

15.2 The aim of this policy and procedure is to:

- enable employees to bring their grievances to management's attention in an effective manner;
- ensure that grievances are investigated and resolved properly and quickly, and in a way that is fair to all the parties concerned;
- establish mutual trust between management and employees;
- provide management with support in the management of conflict in the workplace.

15.3 Definition

A grievance is any feeling of dissatisfaction or injustice that an employee or group of employees may have with regard to:

- working conditions;
- personal frustrations arising from the work itself or the physical environment;
- the conduct or work-related action of a superior or colleague.

15.4 Exclusions

The grievance procedure cannot be used to deal with the following issues:

- substantive disputes regarding aspects to which collective bargaining applies, for example salary, wage or bonus issues;
- disciplinary matters, including appeals against disciplinary hearings;
- individual or collective bargaining regarding conditions of service.

15.5 Time Limits

Parties must attempt to deal with the grievance within a reasonable period of time.

15.6 Representation

- Employees may be represented by a fellow employee at any stage of the grievance procedure.
- In the case of grievances by a group of employees, the group should preferably be represented by two employees.
- Employees may also be represented by a trade union representative who is an employee, in terms of an existing recognition agreement.

16. INCAPACITY – POOR WORK PERFORMANCE

16.1 Definition

Incompetence as a form of incapacity refers to those cases where the employee does not meet the minimum job requirements. His/her performance is unsatisfactory.

16.2 Merits of the Case

Adequate proof of incompetence is required e.g. the employee has not complied with the required standard.

- Does the employee have his/her job description/ KPA's/ objectives and target dates and does he/she understand them?
- Was the employee aware of the standard required, or could he/she reasonably have been expected to be aware of it?
- How can this be confirmed?
- Has the employee been given a fair chance to reach the required standard?
- Is dismissal an appropriate sanction?

16.3 Prescribed Procedures

During the formal handling of a case of incompetence, the following four procedural guidelines for fair procedures apply:

- A proper evaluation.
- Appropriate warnings

- A reasonable time in which to improve.
- A final hearing.

16.4 A distinction is made between (a) unacceptable performance or failure to comply with job requirements as a result of medically related problems, and (b) problems that relate to the particular employee's skills, personal motivation and work environment. If it appears that the inadequate performance is the result of an intentional refusal to do the work or do it properly, it constitutes a disciplinary matter that should be dealt with in accordance with the disciplinary guidelines.

16.5 Incapacity can be divided into two main categories, namely;

- Incapacity as a result of medically related causes, and
- Incapacity as a result of causes that may relate to a lack of skills, inadequate training, personal problems and inadequate motivation.

16.6 Incapacity - (failure to comply with job requirements as a result of a medical problem)
 Incapacity is distinguished from disciplinary matters in that disciplinary issues focus on the contravention of rules and guidelines, in which case disciplinary procedures represent the appropriate way of dealing with the misconduct.

16.7 Incapacity results in the employee being unable to do the work for which he/she was originally appointed. The reason for incapacity is of a medical nature. As such, it does not constitute misconduct and disciplinary procedures are therefore not the appropriate way of dealing with the problem.

16.8 Serious or Chronic Illness

If it is clear that the employee is suffering from a chronic illness, NSRI may require the employee to provide medical evidence confirming the chronic nature of the illness, or may request the employee to obtain independent medical opinion from a medical practitioner appointed by NSRI (in such circumstances NSRI will pay the cost of the examination).

If it is confirmed that the employee is indeed suffering from a serious and chronic illness, and is also absent for long periods of time, the options given below should be investigated in consultation with the employee or his/her representative.

- Medical disability in accordance with the requirements of the Disability Insurance Scheme as provided for in the Retirement Fund.
- An alternative suitable job in NSRI where the problem would have little or no impact or a change in job content, if this can be justified operationally.
- Termination of service on the grounds of disability (in terms of the employment contract) as a last resort if the employee is not declared disabled.

16.9 Exceptionally High Frequency of Sick Leave

Problem definition

The worker is absent frequently for almost the same reason or for a number of reasons, or his/her chronic illness results in periods of lengthy absence. An employer is not expected to condone this.

The employee's services may be terminated eventually, once the requirements and conditions of substantive and procedural fairness have been complied with.

In exceptional circumstances, the frequency of absence may be so high that its operational effect is such that the work comes to a standstill, or that the alternative arrangements that have to be made regularly, cause so much disruption that the employee's services may be terminated because he/she no longer meets the obligations in terms of his/her employment contract. In such a case, the employer must do everything possible to reasonably deal with the high incidence of absence before resorting to such drastic measures.

The Basic Conditions of Employment Act, Act 75 of 1997 as amended, further states in Section 23 that, in the following circumstances, the employer is not obliged to grant paid sick-leave to an employee:

- if the employee was absent from work for more than two consecutive days; or
- if the employee was absent for two and less days on more than two occasions during an 8-week period (the eight-week rule);
- and upon his/her employer's request, the employee is unable to present a medical certificate stating that he/she was unable to work for the duration of his/her absence.

- It is further important to note that the Act specifically mentions a "period" of eight weeks and not a "cycle" of eight (8) weeks. Consequently, the rule should be applied strictly to an 8-week period (any continuous period of eight (8) weeks).

/...ends