

# Suspension without pay: An alternative to dismissal

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**T**he *Labour Relations Act, 1995 (Act 66 of 1995) (LRA)* stipulates that all employees must be treated fairly, as unfair suspension may constitute an unfair labour practice in terms of section 186(2)(b) of the *LRA*.

Punitive suspension is a sanction that can be imposed by temporarily suspending an employee without pay. It is a form of disciplinary action that addresses serious misconduct or other serious offences contravening the company's policies or code of conduct. The goal of punitive suspension is to offer employees the opportunity to remedy their actions and change their behaviour.

## Permissible disciplinary sanction

The Labour Court found that suspension without pay is a permissible disciplinary sanction when circumstances warrant it. Furthermore, the court found that although section 19 of the *Basic Conditions of Employment Act, 1997 (Act 75 of 1997) (the BCEA)* prohibits the employer from making deductions from an employee's remuneration, it does not prevent the employer from imposing the sanction of suspension without pay. This provision was a pertinent point in the case of *Koka vs Director-General: Provincial Admin North West Government (1997) BLLR 874 (LC)*.

As can be noted from the case, the application of punitive suspension depends on the circumstances of each case. Employers must observe the principle of fairness when considering this measure.

If suspension is applied as a disciplinary sanction, all standard requirements relating to substantive and procedural fairness must apply. Since suspension is typically utilised as an alternative to dismissal, it would be advisable to follow the guideline contained in appendix 8 of the *LRA – The Code of Good Practice: Dismissal* when deciding to suspend an employee.

## Possible reasons for action


There are several reasons for choosing punitive suspension rather than immediate dismissal. A key reason is affording the employee the opportunity to improve his/her behaviour, and a second chance to continue his/her activities. This is a constructive option, especially if the employee has a long service history or if the nature of the offence does not justify immediate dismissal.

Punitive suspension may also be a useful alternative in cases where the evidence supporting immediate dismissal

is lacking, but the employee's actions remain cause for concern.

## Assess before acting

Punitive suspension is, however, not always the most appropriate solution. In some cases, it may not be sufficient to address the seriousness of an offence or damage to the business' interests. There should be a balance between employee and business interests, as well as the impact of the employee's actions on the work environment and the employer-employee relationship.

If applied properly, punitive suspension can be a valuable tool for dealing with labour relations issues. However, it may only be imposed if both parties agree to it. The employee can withhold consent if the suspension is deemed unreasonable. 



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