

DISCIPLINE OF ACADEMIC, PROFESSIONAL, ADMINISTRATIVE, LIBRARY AND TECHNICAL, INTERMEDIATE AND JUNIOR AND HOURLY PAID STAFF ORDINANCE

This Ordinance takes effect from the 1st of the second month subsequent to Ordinance approval by Council

Statute 31 provides:

“The Vice-Chancellor, Deputy Vice-Chancellor, the Registrar, the members of staff, and the holders of any other posts for this purpose by the Council from time to time, may be disciplined or removed from office in accordance with Ordinances made by the Council.”

1. Object- Organizational Standards- Ethics and Values and Discipline Matters

The object of this Ordinance is to ensure staff conduct themselves in accordance with the National and University laws, university values, staff attributes, and conduct codes. All staff are expected to uphold the principles embodied in the University Values, Staff Attributes, and Code of Conduct. All staff are expected to uphold these principles and apply with due care the ethical behaviour with high integrity, in their daily activities and personal interactions to ensure effective working relationships between the University and its staff. Such actions and behaviour, include the following expectations:

- (a) staff are expected to work according to the terms of employment, and towards the goals and objectives of the University;
- (b) staff are expected to comply with all policies, procedures and regulations, and within the accepted protocols for their discipline, professional bodies codes of practices and University Code of Conduct;
- (c) staff shall not behave in any way that brings the University into disrepute.

The University will fully investigate any allegations of misconduct in a timely and impartial manner and all disciplinary processes will be subject to natural justice and due process expected in civil contractual law.

2. Interpretation and Application

(I) Definitions

In this Ordinance, unless the context otherwise requires:

“Staff member” or “member of the staff” means the Deputy Vice-Chancellors, Vice Presidents and any person who is a member of the Academic, Professional, Administrative, Library and Technical Staff, Intermediate and Junior Staff and Hourly Paid Staff of the University as defined by the Council from time to time.

“Disciplinary action” means any action by the University that charges or penalises a member of staff for misconduct.

“Misconduct” means:

- (a) breach of the express or implied terms of the staff member’s University duties; or
- (b) neglect of the staff member’s University duties amounting to a failure to discharge those duties in accordance with proper care and responsibility; or
- (c) conduct so seriously in breach of the staff member’s position that by standards of fairness and justice the University should not be bound to continue the employment; or
- (d) conduct which constitutes a serious impediment to the staff member carrying out his or her University duties or to others carrying out their University duties.
- (e) conduct, including academic misconduct, which may amount to a breach of the laws of member countries, the University Charter, Statutes, Ordinances, Code of Conduct, Values, Staff Attributes, staff member’s employment contract, rules, regulations, policies or standards of fairness and justice such that the University should not be bound to continue the employment.

“Minor misconduct” means conduct that comprises an isolated and a minor breach of any University Charter, Statutes, Ordinances, Code of Conduct, Values, Staff Attributes, staff member’s employment contract, rules, regulations or policies.

“Major misconduct” means conduct that comprises a major breach of a University Charter, Statutes, Ordinances, Code of Conduct, Values, Staff Attributes, Staff member’s employment contract, rules, regulations or policies or a series of breaches of regulations and/or policies, or conduct that is not in keeping with the national, regional and international standards of conduct in the profession.

“Gross misconduct” means conduct so seriously in breach of the staff member’s conditions of service that it results in a breakdown of the relationship of trust and confidence between a staff member and the University, and if proved, warrants an immediate dismissal.

“Summary dismissal” means the immediate termination, normally within 48 hours of the matter brought to the attention, approval and instruction of the Vice-Chancellor and President, for gross misconduct and offenses recognised under the Employment Relations Promulgation 2007.

“Human Resources Department” comprises of the Director of Human Resources, the Deputy Director Human Resources and all other Professional staff in the Department.

“Immediate Supervisor or Line Manager” refers to staff that are authorised to approve annual leave through the Leave Management System.

“University” means the University of the South Pacific.

“Member countries” includes Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

“Ombudsman” means the person who shall review the decision of the Staff Disciplinary Committee.

(II) Application

- (a) Where an allegation is made that a member of staff has committed an act of misconduct, the allegation must be investigated and dealt with in accordance with provisions of this Ordinance.
- (b) Proof of the conviction of a staff member of a crime by a court of competent jurisdiction must be accepted as being proof on the balance of probabilities of the commission of that crime. If the conviction is considered relevant to the performance of the staff member’s duties, the Staff Disciplinary Committee shall determine only the penalty.

(III) Service of Notices

Any notice or document required by or for the purpose of this Ordinance to be given or sent to a member of the staff shall be in accordance with Statute [34].

(IV) Laws of Member Countries to Prevail

In the event that any laws of any of the member countries contradict this Ordinance, those laws of the member countries shall take precedence over this Ordinance.

(V) Transitional Provisions

- (a) The Ordinance for the Discipline of Academic and Comparable Staff effective from 1 August 2009 (“2009 Ordinance”) is hereby repealed.
- (b) Notwithstanding the repeal of the 2009 Ordinance, it shall continue to apply to all disciplinary actions pending pursuant to that Ordinance at the commencement of this Ordinance.

DISCIPLINE OF STAFF MEMBERS

3. Allegation of Misconduct

- (a) Any allegation of misconduct must be made to the Human Resources Department of the University in writing.
- (b) The Human Resources Department is responsible for conducting a preliminary investigation of the allegation to determine the severity of the allegation.
- (c) The Human Resources Department shall examine all evidence before it, including any evidence it may choose to obtain through interviews and other means.
- (d) The Human Resources Department must then classify each allegation of misconduct as either minor misconduct, major misconduct or gross misconduct.
- (e) The Human Resources Department must refer all allegations of minor misconduct to the Immediate Supervisor.
- (f) The Human Resources Department, in consultation with the Vice President Administration, shall refer all allegations of major misconduct and gross misconduct to the Vice-Chancellor and President.
- (g) The Human Resources Department must, within five (5) working days from the date of the investigation report, provide a formal letter outlining the allegations to the staff member alleged to have committed a minor or major misconduct.
- (h) The Human Resources Department must, within two (2) working days from the date of the investigation report, provide a formal letter outlining the allegations to the staff member alleged to have committed gross misconduct.

4. Minor Misconduct

- (a) Any allegations of minor misconduct must be referred to the Immediate Supervisor.
- (b) The Immediate Supervisor, upon receiving the allegation of minor misconduct, must:
 - (i) conduct a preliminary investigation into the matter;
 - (ii) conduct a meeting with the staff concerned within five (5) working days from the date of the referral of allegation to him/her. The staff concerned may be accompanied by a Union or Labour Management Consultative Committee (LMCC) representative at the meeting.
- (c) After meeting with the staff concerned, if the Immediate Supervisor finds reasonable grounds to believe that the staff member is guilty of the alleged minor misconduct, the Immediate Supervisor must, within five (5) working days, meet with the Human Resources Department and confirm the findings against the staff member.
- (d) The Immediate Supervisor must, within the same five (5) working days, also meet with respective Line Manager to convey the facts and recommend a final decision on the balance of probabilities as set out in paragraph (e) hereof.
- (e) If the Line Manager agrees with the Immediate Supervisor recommendations regarding the staff member guilty of the alleged minor misconduct, the Line Manager must decide on the appropriate action to be taken from the list of penalties in Clause 11(a) hereof. If the Line Manager does not agree with the immediate Supervisor recommendations, the Line Manager must register own decision as executive privilege execution.
- (f) Within five (5) working days of the final decision being made, the concerned staff must be informed by a letter in writing of the outcome.
- (g) The Immediate Supervisor must implement the decision of the Line Manager as soon as it is practicable.
- (h) Where the staff member is not satisfied with the decision of the Line Manager, the staff may appeal to the Director Human Resources within ten (10) working days from the date of the letter. There is no further appeal from the decision of the Director Human Resources. A staff member on probation does not have the right of appeal.

5. Major Misconduct

- (a) Any allegation of major misconduct against a staff must be made to the Human Resources Department in writing.
- (b) The Human Resources Department must, within ten (10) working days of the receipt of the complaint, conduct an investigation, gather evidence and make its recommendations to the Executive Director of Human Resources.
- (c) Where the Human Resources Department deems it necessary for investigations to be carried out by a subject expert or to avoid conflict of interest, it may appoint a relevant person outside the Human Resources Department to carry out the investigation.
- (d) The Human Resource Department must within two (2) working days from the date of the investigation report provide a formal letter outlining the allegations to the staff member alleged to have committed major misconduct
- (e) The Executive Director Human Resources, after receiving the recommendations from the Human Resources Department, shall within 5 working days:
 - (i) make a report;
 - (ii) send confidentially the report, all relevant witness statements and any other evidence to the Vice-Chancellor and President;
 - (iii) after consultation with the Vice President Administration, make recommendation to the Vice-Chancellor and President to decide on appropriate action to be taken from the list of penalties in Clause 11(b) hereof.
- (f) The Executive Director Human Resources may conduct further investigation if necessary and keep the Vice-Chancellor and President informed of the progress.
- (g) Upon receipt of the final report, the Vice-Chancellor and President or his/her delegate shall make a decision on the final recommendation within five (5) working days except when the Vice-Chancellor and President is out of office, in which case he/she shall make a decision on appropriate penalty within no more than ten (10) working days.
- (h) The Vice-Chancellor and President or his/her delegate after consultation with the Vice President Administration may decide to refer the allegation to

the Staff Disciplinary Committee or dismiss the allegation. If referred to SDC, the Human Resources Department shall then formulate the complaint setting out the details of the alleged major misconduct and the relevant evidence and present the case in support of the allegations to the Staff Disciplinary Committee, who shall make a decision within twenty-one (21) working days. The Vice-Chancellor and President will then have 10 working days to accept and fully implement the Staff Disciplinary Committee decision, or in part make an executive decision. If the Vice-Chancellor and President rejects the recommendations of SDC, then Vice-Chancellor and President must refer the matter to the Ombudsman within 5 working days. In the latter case, the Ombudsman will consider the case and provide a decision to implement within 5 working days. The Human Resources Staff formulating the allegations and the Human Resources Staff presenting the case in support of the allegations to the Staff Disciplinary Committee must not be the same person(s).

- (i) Where the staff member is not satisfied with the decision of the Staff Disciplinary Committee, the staff member may appeal to the Visitor within fifteen (15) working days from the date of the letter. A staff member on probation does not have the right of appeal.

6. Procedures for dealing with Gross Misconduct

- (a) Where the staff member is alleged to be guilty of gross misconduct, the Director of Human Resources must conduct an investigation and gather evidence.
- (b) The allegations and the evidence supporting the allegations shall be referred to the staff member concerned who shall within two (2) working days respond in writing with an explanation in his/her defence.
- (c) Upon receiving the written response from the staff concerned, the Executive Director Human Resources after consulting the Vice President Administration shall make recommendations to the Vice-Chancellor and President who shall have the discretion to decide on penalties set out in Clause 11(b) hereof or summarily dismiss the staff member guilty of gross misconduct.
- (d) In the event that the Vice-Chancellor and President decides to dismiss the staff member for gross misconduct, the Vice-Chancellor and President shall advise the Director of Human Resources to implement his/her decision immediately
- (e) The Director of Human Resources shall inform the staff member of the decision by a letter in writing.

6.1. Summary Dismissal

- (a) The University has the right of summary dismissal in the following circumstances:
 - (i) where a staff member is guilty of gross misconduct;
 - (ii) for wilful disobedience to lawful orders given by the employer;
 - (iii) for lack of skill or qualification, which the staff member expressly or by implication warrants to possess;
 - (iv) for habitual or substantial neglect of the staff member's duties;
 - (v) for continual or habitual absence from work without the permission of the University and without other reasonable excuse.
- (b) The procedure on summary dismissal is as set out for gross misconduct, in Clause 6 hereof.

6.2. Suspension

- (a) The Vice-Chancellor and President may at any time suspend any staff member from office for cause, if, in the Vice-Chancellor and President's judgment, the circumstances so require.
- (b) The Vice-Chancellor and President must decide whether the suspension is to be:
 - (i) suspension from duties with pay and without withdrawal of privileges; or
 - (ii) suspension with pay but with withdrawal of stated privileges; or
 - (iii) suspension from office without pay and privileges.
- (c) When a staff member is suspended by the Vice Chancellor and President, a report must be made to the Pro Chancellor within fourteen (14) working days of the suspension. Suspension without pay that extends beyond twenty (20) working days will be amended to suspension with partial pay of 50%.

7. Composition of the Staff Disciplinary Committee

- (a) A Staff Disciplinary Committee must consist of the following persons appointed:

- (i) An independent chairperson, who shall be a person qualified to be a magistrate or a judge in Fiji, preferably someone who is a retired Magistrate/Judge or retired Legal Practitioner;
 - (ii) A staff representative nominated by the President of the appropriate staff union, whether or not the staff member concerned is a member of that union, the nominee not acting as a legal practitioner; and
 - (iii) One member of the Senior Management Team other than the Executive Director of Human Resources, who shall be appointed by the Vice -Chancellor and President on the basis of the person's availability and absence of any conflict of interest.
- (b) No member of the Committee may be the staff member concerned, a witness, or anyone who has taken part in any prior investigation of the allegation.
 - (c) The Committee may, if it thinks appropriate, appoint an expert subject advisor, who must not be a member of the Committee, to assist the Committee upon matters of expertise considerations, and if the Committee so decides, call or question persons giving evidence before it.
 - (d) The Executive Director Human Resources must appoint a Secretary to the Staff Disciplinary Committee to arrange meetings, the preparation of the required documents, the calling of witnesses and to ensure an accurate record of the proceedings is kept.

8. Staff Disciplinary Committee Hearing Procedure

The Staff Disciplinary Committee shall examine all evidence before them prior to making a recommendation of finding to the Vice-Chancellor and President. The inquiry must be in accordance with the following rules:

- (a) The staff member is entitled to be assisted or represented by a union representative, or other agent who is not acting as a legal practitioner.
- (b) The staff member and/or his or her agent, who is not a legal practitioner, have the right to be present at all hearings of the Committee.
- (c) Reasonable notice of each hearing must be given to the staff member.
- (d) Any hearing may be adjourned to a later date if there are reasonable grounds for doing so. When adjourned on reasonable grounds, the deadlines will shift accordingly.

- (e) A person nominated by the University's Human Resources Department shall present the University's case to the Committee and shall for all intents and purposes, represent the interests of the University.
- (f) The staff member and the Committee may call witnesses and question any witness.
- (g) Evidence in support of the charge must be heard by the Committee only during the hearing, and may be given by a witness connected to the hearing by audio or video link. The Committee may also receive evidence in writing at any time.
- (h) The staff member is entitled to see and to comment upon any document submitted to the Committee by way of evidence and must be given a copy of any such document as soon as practicable.
- (i) All proceedings of the Committee must be held in private.
- (j) No person except the members of the Committee and its secretary and any legal advisor may be present during its deliberations.
- (k) The members of the Committee must treat the proceedings, report and all matters relating to it as confidential.
- (l) The Staff Disciplinary Committee shall determine its own procedures, which must be in conformity with the principles of natural justice and procedural fairness.

9. Report of the Staff Disciplinary Committee

- (a) The report of the Staff Disciplinary Committee must be signed by the Chair of the Committee, and be either signed by other members of the Committee, or accompanied by a statement that they agree with its contents or, if not, include the dissenting views of any member(s).
- (b) The full report of the Committee including the penalty recommendations must be sent to the Vice-Chancellor and President within thirty (30) working days of the referral of the allegation. It must also be made available to the staff member.
- (c) The Vice-Chancellor and President shall consider the Committee's report and may accept the recommendations fully, or reject them fully, or accept them in part.

- (d) When the Vice-Chancellor and President accepts the recommendations fully or makes an executive decision to accept recommendations only in part, the Vice Chancellor and President shall make a decision within ten(10) working days including the penalty to be imposed and forward a written summary of the final decision to the Human Resources Department with instructions to provide the said written summary to the staff member concerned and implement the said final decision.
- (e) When the Vice-Chancellor and President rejects the recommendations of the Staff Disciplinary Committee, the Vice Chancellor and President shall submit the matter within five (5) working days to the Ombudsman for his deliberation. The Ombudsman shall be instructed to provide a recommendation on the matter to the Vice-Chancellor and President within five (5) working days.
- (f) Upon receiving the recommendation from the Ombudsman's Office, the Vice-Chancellor is to follow the procedures set out in paragraph (d) hereof.

10. Notice of Dismissal

At the discretion of the Vice-Chancellor and President, a staff member who has been dismissed for misconduct other than gross misconduct and who instead chooses to resign within seven (7) days of the notice of dismissal may be recorded as having resigned rather than being dismissed.

11. Penalties

- (a) A staff member guilty of minor misconduct may be subject to one or more of the following penalties:
 - (i) counselling;
 - (ii) verbal warning;
 - (iii) written reprimand;
 - (iv) cancellation or deferment of study or training leave;
 - (v) other similar penalty
- (b) A staff member guilty of major misconduct may be subject to one or more of the following penalties:
 - (i) deferment of training leave;

- (ii) cancellation or deferment of study leave;
 - (iii) withholding of increment;
 - (iv) placing on a lower point of the salary scale;
 - (v) written reprimand;
 - (vi) transfer to other locations or campuses;
 - (vii) transfer to other duties with or without demotion;
 - (viii) demotion in rank;
 - (ix) research sanction (particularly for academic misconduct);
 - (x) suspension of up to ninety (90) days or an academic term;
 - (xi) dismissal;
 - (xii) referral of the matter to the police for further investigation;
 - (xiii) other similar penalty
- (c) A staff member guilty of gross misconduct or any other offences specified in Clause 6.1 hereof may be summarily dismissed.

12. Appeals to Visitor

- (a) An appeal from the final decision of the Staff Disciplinary Committee lies to the Visitor.
- (a) No appeal lies to the Visitor from the decision of the Staff Disciplinary Committee affecting a staff member who is on probation and for summary dismissal of a staff member on grounds of gross misconduct.
- (b) The appeal must be in writing and state the grounds of the appeal, and must be lodged by the staff member concerned or by the University within fifteen (15) working days of being notified of the final decision.
- (c) Pending a determination of the appeal, the Vice-Chancellor and President must decide whether to suspend the imposition of any penalty on the staff member. Where the Staff Disciplinary Committee has dismissed a staff member, that staff member will be suspended without salary or other benefits under his or her contract pending the appeal.

- (d) If the decision of the Staff Disciplinary Committee is reversed on appeal to the Visitor, the staff member must be paid any salary and allowances withheld and all other benefits must be restored.
- (e) The Visitor may also make such order for costs of proceedings as he or she thinks appropriate having regard to all the circumstances.

Approved by the 80th meeting of the USP Council held on 2nd and 3rd October 2015