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Staff Misconduct Policy

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Status:	Approved
Responsibility for policy:	CEO
Responsibility for implementation:	All Staff

This policy defines acts of misconduct and serious misconduct and outlines the responsibilities of BCE Management when handling misconduct relating to BCE duties and appropriate action to be taken. This policy also outlines the opportunity for staff to respond to allegations of misconduct and serious misconduct together with consideration of the matter by the CEO and subsequent disciplinary action if deemed warranted.

Definitions:

'Disciplinary Action' is the action or actions taken as a result of an allegation meeting the required standard of proof, for which a penalty is considered appropriate.

Penalties may include:

- formal censure, warning or caution;
- suspend the staff for a period with or without pay
- termination of contract.

'Disciplinary Process' is the process undertaken by BCE Management to investigate and manage allegations of unacceptable conduct or behaviour.

'Staff' means a person employed by BCE who has a short, ongoing or fixed term contract.

'Staff Representative' is a person nominated by the staff member to provide support and/or to make representations to BCE on their behalf.

'Misconduct' means:

- negligence in the performance of the duties of the position held; or
- misbehaviour; or
- refusal to carry out a lawful and reasonable instruction that is consistent with the staff's contract; or
- a serious breach of BCE's code of conduct, policies, regulations or procedures.

'Serious misconduct' means:

- (a) wilful, or deliberate, behaviour that is inconsistent with the continuation of the staff's contract, or
- (b) conduct that causes imminent, and serious, risk to:
 - the health, or safety, of a person; or
 - the reputation, viability or profitability of BCE.

'Standard of proof' means findings are based on the conclusion that it is more probable than not that the matter found to have occurred did in fact occur.

'Summary Termination' means contract termination without notice for serious misconduct.

This policy is intended to:

- assist management when handling misconduct relating to BCE duties and to provide guidance in taking appropriate action, and
- provide staff with a clear understanding of the processes for dealing with allegations of misconduct or serious misconduct.

Staff must be afforded procedural fairness throughout the implementation of this policy. Normal standards of respect, civility and confidentiality must be maintained throughout the process.

Nothing in this policy precludes BCE from terminating the contract of a staff without notice for serious or wilful misconduct.

Conduct that is serious misconduct includes but is not limited to:

- theft
- assault
- fraud
- being drunk while performing BCE duties
- a serious breach of BCE's Code of Practice, Statutes or Policies;
- disobeying a lawful and reasonable instruction given by a senior staff member
- repeated acts of misconduct for which the staff has been cautioned
- abusing or threatening BCE staff, centre staff/learner or member of the public
- serious bullying or harassment (including sexual harassment);
- malicious damage to BCE property or reputation;
- repeatedly refusing to carry out a lawful or reasonable instruction that is consistent with the staff's contract of employment.
- disclosing confidential assessment material including copying or distribution of examination scripts
- leaking BCE information

Staff who are unsure about any aspect of this policy should seek further clarification from Administration.

Confidentiality

The confidentiality of all parties involved in the management of misconduct and serious misconduct processes must be respected and all information gathered is confidential.

Dealing with misconduct and serious misconduct

1. Initial Inquiry

Allegations of misconduct or serious misconduct will be considered in the first instance by the staff's line manager. Where there is a perceived conflict of interest on the part of the line manager, they may refer the matter to the CEO or Board of Advisors.

If the initial inquiry determines that the allegation does not meet the required standard of proof, no further action will be taken under this policy.

If the initial inquiry determines that an allegation of misconduct or serious misconduct is of sufficient substance to warrant an investigation the line manager will then consult the CEO to initiate the investigation process.

If the CEO considers that a matter is of a sufficiently serious nature to warrant summary action, the staff's contract may be summarily terminated. Where the decision is to summarily terminate without notice, a confirmation of this decision will be communicated to the staff as

soon as possible. In circumstances where summary termination is not warranted, the following procedures will be applied.

Should the information obtained indicate that criminal misconduct has occurred, the CEO will ensure the police are promptly notified.

2. Investigation

Allegations of sufficient substance will be formally investigated. The investigation process must be carried out as soon as possible after the alleged misconduct is discovered. It is critical to ascertain all the available relevant facts and circumstances and determine what action is to be taken in the shortest practicable period of time. Investigations will normally be conducted by the Administration functional unit.

The investigation process may include:

- interviewing relevant people and witnesses and/or
- gathering and assessing relevant documents/evidence

and will -

- afford the staff procedural fairness.

The staff will be informed of the investigation, the form it will take and that the staff may be accompanied at any interviews by a staff representative.

3 Not performing BCE duties during investigation

Depending on the nature of the allegations, the CEO may determine that it is appropriate to direct the staff not to perform BCE duties whilst a full investigation is carried out. A reinstatement of pay may be approved by the Board of Advisors where the allegations prove unfounded or in the case of significant and unmanageable hardship.

4 Proceeding to interview

It is a requirement of the investigation process that -

- allegations are specifically put to the staff,
- adequate opportunity is given for the staff to respond, and
- the staff is offered an opportunity to be interviewed.

Depending on the circumstances -

- the allegations will be set out in writing, and
- a formal interview will be conducted

OR

- a formal interview will be conducted, and
- the allegations will be confirmed afterwards in writing.

A staff must be advised in advance of the nature of the interview, that they may be accompanied by a staff representative and that the interview may result in disciplinary action or termination of contract.

5 Opportunity for response

The staff will ordinarily be given at least 5 working days (from the date of reasonable receipt of correspondence or verbal discussions) in which to respond in writing to any allegations put

to them. Where two or more staff are alleged to be involved in the same misconduct, each staff should be given the opportunity to state his or her own case. For that purpose each staff should be interviewed separately.

6 Report of allegations and opportunity for written response

At the completion of the investigation a written report will be produced for the CEO, outlining the following:

- allegations,
- investigation process,
- findings as to misconduct or serious misconduct,
- any written response received from the staff, and
- a suggested course of action.

The staff will be provided with a copy of the report and invited to submit a written response to the CEO within 5 working days or a time agreed by the CEO. The CEO will consider the report, the staff's response and, in addition, will also consider:

- any mitigating circumstances associated with the staff's misconduct;
- the staff's work record; and
- the seriousness of the misconduct.

The CEO may, after consideration of the matter, decide to:

- take no further action; or
- take disciplinary action.

7 Disciplinary Action

If the CEO determines that disciplinary action is warranted, the staff will be advised of the decision in writing and a copy placed on the relevant file. If the determination is for a written warning, the warning must outline the elements of the misconduct or serious misconduct, the required improvement and the consequences if misconduct or serious misconduct is repeated.

If the CEO decides to terminate contract, the staff will be given a final opportunity to be heard.

Findings of misconduct or serious misconduct must meet the required standard of proof.

8 Records

Relevant records must be kept of all meetings, for example records of discussions with witnesses, responses, e-mails and any other considerations relevant to the alleged misconduct.

The staff being interviewed will be asked to sign the notes of all interviews as a true and accurate record. If the staff refuses to sign the notes, the reasons for such refusal will be recorded.