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Handling and investigating professional misconduct

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This support material is revised and updated at the turn of each year, and as needed. The HR officers at the faculty offices (LU-HR) are notified of any updates to the document.

1 Introduction

This support material aims to make it easier for you as a manager/head of department/equivalent to handle alleged professional misconduct in your organisation.

1.1 Professional misconduct in brief

From the perspective of labour law, workplace professional misconduct occurs when an employee acts or behaves in breach of their employment contract.

Professional misconduct can be:

- **less serious**, but turns into a problem if it is repeated, for example when an employee
 - is consistently late to important meetings,
 - does not wish to cooperate with a particular colleague,
 - is unpleasant to colleagues and/or students (work environment),
 - is careless with certain work assignments
- **serious**, for example when an employee
 - is absent from the workplace without providing a valid reason/continues to be absent despite being asked to be present in the workplace
 - refuses to carry out one or several work assignments which reasonably can and should be carried out by the employee, based on their expertise, fitness to work and working hours
 - treats another employee and/or students in a way which could be interpreted as offensive or harassment/discrimination
 - commits serious errors in the execution of important work duties
- **very serious**, for example in cases of
 - violence, violent behaviour
 - threats of violence
 - theft from or other economic crime against the employer
- **unintentional** and due to, for example,
 - illness, mental ill health or similar
 - deficient procedures in the organisation
 - incompetence of the individual caused by the employer in the workplace, for example, by the employer changing the scope of the work

As different cases of professional misconduct may be very dissimilar, you as a manager must always have a talk with the employee to explain and clarify what you see as professional misconduct. In the talk you must also try to establish what has happened and the reason for the employee's actions.

2 Professional misconduct – a breach of the employment contract

When a person accepts an offer of employment, the employee enters into an employment contract with the employer. At Lund University, which is a public authority, the contract gains legal validity when the written employment decision has come into effect.

In short, the employment contract means the employer is obliged to pay a salary for work completed, while the employee is obliged to carry out their work duties in accordance with the current **rules and procedures** of the organisation, **within given frameworks**.¹ The employer manages and allocates the work within the framework of the employment contract. Both parties have obligations and rights regulated by the employment contract.

As a manager, you are responsible for ensuring the function of the organisation and its social work environment². You are responsible for ongoing follow-up to ensure employees are abiding by their employment contracts, rules and regulations, and that employees are contributing to the attainment of organisational goals, as well as contributing to a good organisational and social work environment.

It is your responsibility as a manager that your employees are aware of which rules and frameworks apply to the workplace and to the organisation. It is the employee's responsibility to accept and comply with the regulations and procedures, as well as to skilfully carry out their work duties.

3 Handling professional misconduct

In all cases of professional misconduct, managers should bear the following steps in mind:

- React immediately upon receiving information, talk to the employee.
- Investigate what has actually happened.
- Inform the employee about what is prohibited or wrong with the behaviour.
- Correct the employee and put measures in place to prevent the professional misconduct from recurring.
- If the professional misconduct is due to illness you must also monitor the rehabilitation process³.
- Document! Good documentation helps both you as a manager and the employee, as well as facilitating any follow up.
- Follow up! Check whether the measures have been sufficient and had the intended result. Draw conclusions on preventative work for the future.
- Repeat the steps from the beginning, when needed. Be consistent.

¹ Here frameworks refer to: laws, ordinances, agreements, budgets, delegations, appraisals, organisational planning etcetera. Everything which in different ways regulates our public organisation.

² See further information in Organisational and social work environment (AFS 2015:4Eng), provisions, Swedish Work Environment Authority (Arbetsmiljöverket).

³ Read more on the HR website, under [Work environment/Rehabilitation](#).

3.1 Opportunity for improvement

In cases of less serious professional misconduct the employee shall always be given the opportunity to correct their behaviour or conduct. Everyone makes mistakes and everyone should be given a fair opportunity to do the right thing, with the support required to do so. To succeed in correcting wrong or prohibited behaviour you as a manager must give the employee clear and consistent information on what is wrong and what he or she must do instead. The employee must receive sufficient support and time to be able to achieve the goal: to do the right thing.

3.2 Less serious professional misconduct

In cases of less serious professional misconduct it may be sufficient to hold a corrective action and awareness-raising talk with the employee. It may become apparent that the reason for the professional misconduct is easily resolved and that this was due to a misunderstanding or similar. Document what has happened and that you have discussed it with the employee, as well as which corrective measures you have agreed on. Schedule a follow up dialogue with the employee to review whether everything has worked as intended.

3.3 Serious professional misconduct and repeated professional misconduct

When professional misconduct is serious, or if less serious professional misconduct is repeated despite requests to cease the behaviour, you as a manager must act immediately after receiving the information of professional misconduct. Summon the employee to a longer corrective action and awareness-raising talk. Consult with your immediate HR officer to plan the meeting.

An awareness-raising talk may result in you and the employee agreeing that the employee requires specific support to correct the wrong/prohibited behaviour. Create a simple plan for the support that is to be put in place, the responsibilities for each person, when this intervention shall be completed and when it will be followed up. Document the talk, the implementation of the support provided and the follow-up. An awareness-raising talk may be complemented by a written clarification in more serious or repetitive cases.

The talk may sometimes reveal a difference of opinions between you and the employee about what has happened and whether or not it constitutes professional misconduct. In these cases it is especially important that you have documentation and evidence of the professional misconduct and that you are consistent and clear about what constitutes professional misconduct. Seek support from your immediate HR officer for further handling of the case. Depending on the kind of professional misconduct (see unintentional professional misconduct) there are several ways to proceed which require further investigation and potentially more serious measures. Stay in contact with the employee. Read more about awareness-raising talks in appendix 2.

If there is no improvement despite talks and measures put in place, the HR officer at the faculty should consult with the Section Human Resources regarding the continued handling of the case.

3.4 Very serious professional misconduct

In cases of very serious professional misconduct there may be reason for immediate and decisive action from the employer. In such cases, the faculty HR office should therefore consult with the Section Human Resources, of the Lund university Central administration office, about further action on the case/suitable measures.

3.5 Unintentional professional misconduct

3.5.1 Illness

If the professional misconduct completely or partially occurs due to illness, you must work on the rehabilitation of the person, while you continue to follow up and act on repeated professional misconduct. Contact your HR officer and the Occupational Health Services for support.

Potential rehabilitation measures depend on the illness the employee has.

3.5.2 Incompetence

If the professional misconduct is due to the employee not being sufficiently competent to satisfactorily carry out their work duties and it is the employer who has placed the employee in the situation, sit down and draw up a plan for professional development together.

Potential professional development measures may be to:

- Shadow a more experienced colleague
- Complete a course or training programme
- Engage a mentor or coach (for example for leadership support)

3.5.3 Deficient procedures etc.

Is the professional misconduct caused by unclear or deficient procedures in your division? Maybe the work environment is affected by a lack of role clarity? Enlist the help of staff in planning and implementation.

Possible measures could be to:

- Improve procedures, clarify and explain roles and responsibilities
- Improve contact areas within the department/division
- Review the workload of staff – is a work environment investigation needed?
- Conduct an independent review of the working climate and the way in which you interact with one another, put measures in place. Enlist help from the HR office at your department/faculty.

4 Documenting the handling and measures

Documenting the handling of and the measures taken in cases of professional misconduct creates a basis for follow-up. It is a good aid for you as a manager and for the employee to explain and clarify what you have agreed on in the talk. It is also a good aid during your talks to be able to go back to and see what you have discussed.

As a manager, you can get a clearer general picture of the situation through clear documentation, for example if the events are part of a larger problem that requires more extensive and general action.

If a case is presented to the Staff Disciplinary Board (PAN) or the Government Disciplinary Board for Higher Officials (SAN), it is important that you are able to support your claims with clear and objective documentation. It is also crucial to be able to demonstrate that you have taken responsibility as a manager and attempted to address the professional misconduct. It may also be important to document how the employee has dealt with the process.

4.1 Document registration and confidentiality

Documentation must be registered. To protect the privacy of the employee you can apply a confidentiality procedure when registering documents. This means the case can only be viewed by the administrators of the document registration system. Consult with your immediate registrar.

If a request for disclosure is made, contact the Legal Services office at the Services and Records Management section for a confidentiality assessment. Please note that only some parts of the contents can be classified. A decision on confidentiality can be appealed and does not guarantee the individual's privacy.

A report to the Staff Disciplinary Board or the Government Disciplinary Board for Higher Officials is a public document. Decisions and minutes from the meetings are also public documents.

Supporting documents that are not official documents, for example notes from the investigation, must be handled carefully by keeping them locked in an employee file or similar.

5 Consequences of professional misconduct

5.1 *The Staff Disciplinary Board (PAN) or the Swedish Government Disciplinary Board for Higher Officials (SAN)*

The Lund University Staff Disciplinary Board (PAN) meets three times per semester or when needed. The Government Disciplinary Board for Higher Officials (SAN) has scheduled meetings throughout the year. A report to PAN/SAN requires all supporting documentation which is cited by each party to be registered.

PAN handles issues relating to:

- The termination of an employee for personal reasons when the employment is not in a trial period (termination in accordance with section 7 of the Swedish Employment Protection Act, as well as summary dismissal in accordance with section 18 of the Employment Protection Act)
 - The employee must be informed at least two weeks in advance of a termination, and at least one week in advance for summary dismissal. If the employee is a union member, their union shall be notified at the same time.⁴
 - The employee and their union have the right to request a meeting to discuss the measure that the notification relates to.⁵
- Disciplinary measures – written warnings, salary deductions, (pursuant to sections 14-19 of the Public Employment Act (1994:260))
 - The employee must be informed in advance about the report in writing⁶, to be provided with the opportunity to comment on it.
- Report for prosecution (pursuant to section 22 of the Public Employment Act (1994:260))
 - In some cases, the organisation is obliged to take legal action when there is reasonable suspicion of a crime being committed.
- Suspension
 - The employee must be informed of the report in advance⁷.

Cases involving professors shall be examined by SAN, with the exception of cases of termination of an employee for personal reasons which are handled by PAN. It is the vice-chancellor who, after a briefing from the labour law counsel at the Section Human Resources, determines whether a case is to be handled by PAN. It is also the vice-chancellor who, after a briefing from a labour law counsel at the Section Human Resources, makes a decision on whether the case should be reported to SAN.

A report to PAN or SAN should normally be preceded by solid work to put measures in place, with the aim of correcting the professional misconduct. The work must be well-documented and presented in the report in a structured and clear manner. The report must be objective and clear. The report to PAN/SAN must specify what the person making the report considers the board's conclusion should be. Consult with your faculty HR office for help with templates and detailed instructions regarding the report. The faculty HR office should also consult the

⁴ Section 30 (1982:80) of the Employment Protection Act

⁵ Ibid.

⁶ Section 25 (2017:900) of the Administrative Procedure Act

⁷ Ibid.

Section Human Resources for assessment of whether or not the case should be reported to PAN/SAN.

The members of PAN/SAN must, in a simple way, be able to establish what has happened, how it has been addressed, in which way the events were in breach of the employment contract, which damage the University has suffered, which measures have been implemented, as well as the results of follow-up of these measures, without other previous knowledge. Documentation of the contents of the report shall be attached as evidence.

5.2 Consequences of serious or very serious professional misconduct

5.2.1 Disciplinary measures

5.2.1.1 Written warning

The Staff Disciplinary Board can issue a written warning in accordance with sections 14-19 of the Public Employment Act (1994:260). When the case involves a professor it is the Government Disciplinary Board for Higher Officials that issues the warning (section 15 of the Swedish Employment Ordinance (1994:373)). A written warning is a labour law disciplinary measure which may not be used unless PAN or SAN decide to issue one. A warning may be used in rare cases to reinforce an earlier correction regarding professional misconduct but above all to mark a neglect of duty⁸.

5.2.1.2 Salary deduction

Salary deduction for a maximum of 30 days, in accordance with sections 14-19 of the Public Employment Act (1994:260), can be imposed by the Staff Disciplinary Board. In cases involving a professor it is the Government Disciplinary Board for Higher Officials which decides on salary deductions (section 15 of the Swedish Employment Ordinance (1994:373)). Salary deduction is, as with warnings, a labour law disciplinary measure which may not be used unless PAN or SAN decide to issue one. Salary deduction may be applicable if the employee is culpable of neglect of duty. Salary deduction must be applied restrictively.

5.2.1.3 Time limit for disciplinary liability

If the case involves disciplinary liability the employee shall be informed within two years of the employer receiving information about the professional misconduct that has occurred. The report can then be sent to PAN/SAN.

5.2.1.4 Other

Disciplinary liability is not to be considered if legal action is taken. In addition, warnings and salary deductions cannot be issued jointly.

5.2.2 Legal action

Lund University has a duty to report crimes for prosecution if there is reasonable suspicion that an employee, in the course of their duties, has committed a crime, as prescribed in chapter 20 sections 1-2 (professional misconduct and bribery, respectively) and section 3 paragraph 1 (breach of confidentiality) of the penal code

⁸ A neglect of duty is where an employee intentionally or carelessly neglects their employment duties and the error, considering the circumstances, is not insignificant (section 15 of the new Public Employment Act, 1993/94 AU16)

or other crime if it is considered to involve any sanction other than a fine. It is PAN and SAN respectively that decide if a report for prosecution should be made.

Depending on what takes place after a report for prosecution is lodged, labour law measures may also be implemented such as, for example, termination.

5.2.3 Suspension

The General Agreement on Pay and Benefits provides for the possibility of suspending an employee. The following is prescribed in the agreement:

If necessary, an employee, who on good grounds is suspected to have committed a crime or other act of gross negligence which may lead to suspension from duties, and the situation is such that a continued presence in the workplace seriously puts the trust in the employer's impartiality at risk, or may damage the reputation of the public authority or hinder the ongoing investigation, pending the employer's final decision, should be suspended from duties. Suspension must be for a maximum of 30 calendar days at a time. During the period of suspension the employee maintains their employment benefits.

The agreement must be applied restrictively and is to be preceded by a Co-Determination Act consultation (MBL). It is the Vice-Chancellor who, after being briefed by the labour law counsel at the Section Human Resources, makes a decision on this type of suspension. PAN and SAN, respectively, can also make decisions on suspensions.

5.2.4 Termination for personal reasons/summary dismissal

Termination for personal reasons and summary dismissal can take place in cases of very serious professional misconduct and repeated serious professional misconduct. In these cases the Section Human Resources, must be consulted by the local HR office for an assessment of whether **termination** or, alternatively, a summary dismissal, should take place. The choice of termination or summary dismissal depends on the nature of the professional misconduct and how the employer reacted to it but other circumstances may also play a role (for example, length of employment, previous behaviour etc.). Before termination is decided on, the employer is normally required to have tried to relocate the employee assuming there is an available position for which the employee is suitably qualified.

5.2.4.1 Time limit on termination/dismissal

In cases of termination or dismissal, information and potential notice must be given to the employee within two months of the employer being informed of the professional misconduct that has occurred. In some cases, the two month time-limit may be extended or, alternatively, begin once the circumstances have been sufficiently clarified. Should the time-frame be exceeded, termination/dismissal cannot take place. It is therefore important to act promptly. Enlist help from your immediate HR office and consult with the Section Human Resources should this issue arise.

It is the Vice-Chancellor who signs the notification and notice. The report is then normally sent to PAN/SAN.

5.3 Cases of serious professional misconduct at PAN/SAN

Normally, cases of serious professional misconduct should initially be handled through awareness-raising talks, potentially in combination with the delivery of a written clarification. Only if there is no change, can the case be referred to PAN/SAN for assessment of the need for a written warning or salary deduction. As mentioned above, there is an assumption that the case is investigated and documented before a report is made to PAN/SAN.

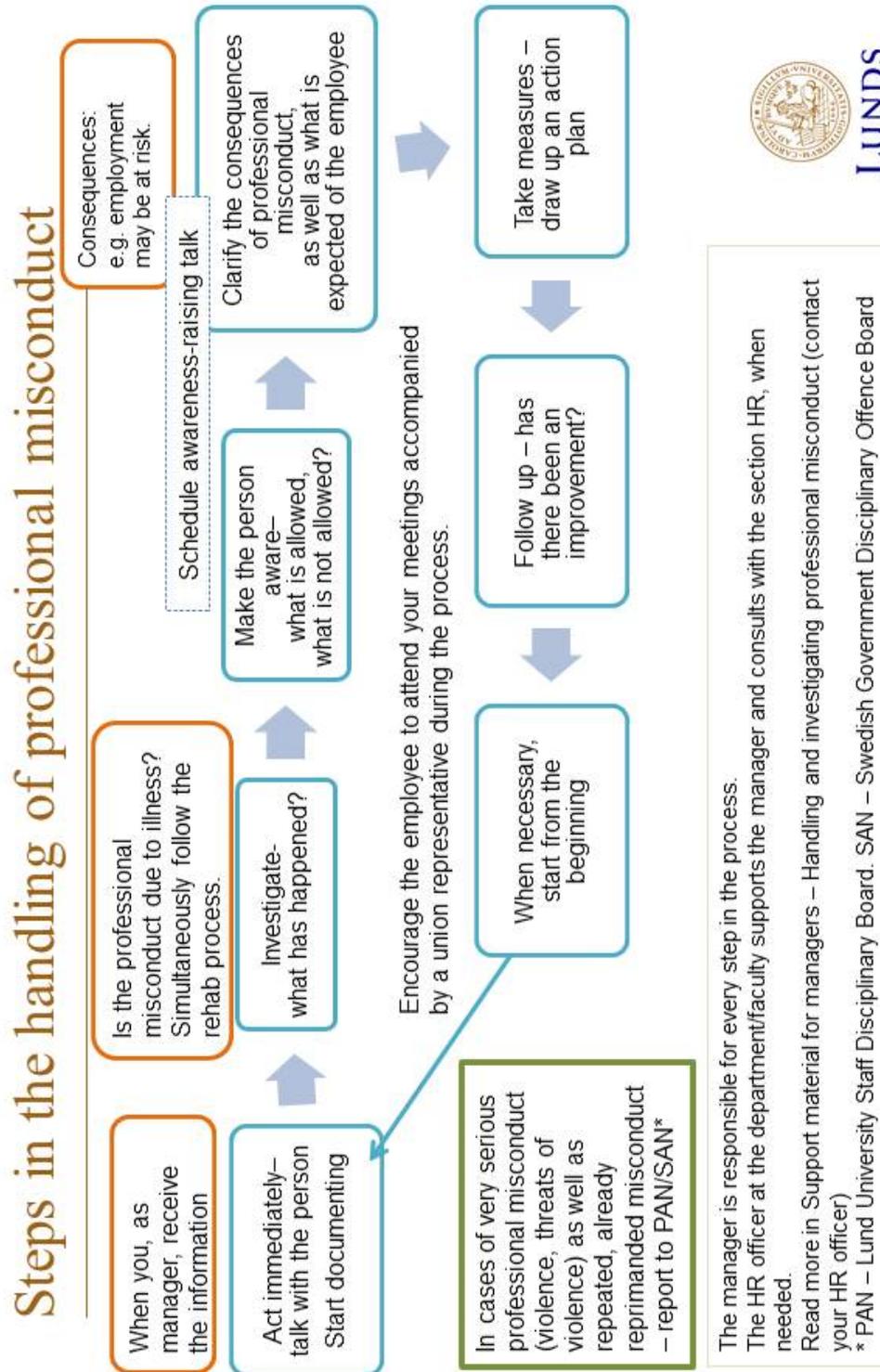
Before PAN/SAN meet to discuss the disciplinary measures, the employee is given the opportunity to comment on what he or she is considered to have done wrong.

In cases of repeated serious professional misconduct, termination for personal reasons may be the ultimate measure. This normally presumes that you as a manager have clarified to the employee, in conjunction with corrective measures following an investigation of the causes of the professional misconduct, that termination may be the consequence of repeated behaviour. It is important that employees understand the consequences of their behaviour and how serious it is perceived to be. As mentioned above, it is PAN that makes decisions on terminations.

5.4 Cases of very serious professional misconduct at PAN/SAN

Cases of very serious professional misconduct can be directly referred to SAN/PAN, on condition that the case has been sufficiently investigated and documented. PAN/SAN can reach decisions on legal action or dismissal or, alternatively, termination in very serious cases. However, a very well-founded case is necessary for this.

Appendix 1 – Steps in the handling of professional misconduct



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Appendix 2 – Corrective action and awareness-raising talks

Corrective action and awareness-raising talks

The aim of a corrective action and awareness-raising talk is for the employee to understand what she or he has done that is wrong or prohibited. It is your responsibility as a manager that the employee understands what to do/how to act or how to correct their behaviour. You should clarify and explain what is wrong/prohibited and what is right/allowed, as well as the potential sanctions for continued or repeated transgressions. Sometimes this is sufficient to ensure the employee is able to do the right thing.

When a case of professional misconduct requires a more significant or long-term intervention, it may also be necessary for you to draw up a plan, together with the employee, with clear and scheduled goals to correct the professional misconduct. This can be documented in an action plan with clear follow-up dates. The employee commits to the measures and to follow through with the action plan and you commit to follow up on the employee's progress. You must make it clear to the employee what the sanction is if he or she does not implement measures or does not follow through with the plan. You must also clarify what the sanction⁹ is if the behaviour is repeated despite the measures and action plan.

The employee does not attend the scheduled meeting

If the employee does not attend the meeting without valid reason, you must inform the employee that you consider the act to be a refusal to work. Make an official note that the meeting did not take place, documenting what has occurred and that you consider it to be an act of refusal to work. Send the notes to the employee and confirm that he or she has read and understood them. Schedule a new meeting.

Checklist:

- Set aside time for a longer talk on the professional misconduct (approximately one hour is usually sufficient). Provide a start and finish time in the meeting invitation.
- In the invitation you must inform the employee of the reason for the meeting as well as inviting him or her to attend the meeting with union representation.
- If needed, you can request support, before and during the meeting, from the HR office at the department/faculty, and potentially the chief security officer or the occupational health service, depending on what the professional misconduct relates to.
- During the meeting – be clear with the employee that the behaviour/conduct is not allowed and that it should cease immediately. Remain **objective** during the meeting; describe what is wrong and what the employee should do instead.
- Give the employee the opportunity to explain their behaviour and the reason for it.

⁹ A sanction may be that the employee risks receiving a written warning or salary deduction. A serious sanction may be that the employee's position is in danger or a risk of legal action being taken. It is important that you as a manager notify the employee of the risks early in the process.

- If the employee is critical of you as a manager or anyone else, confirm that you have registered this and that you will schedule another meeting to discuss this in further detail. Return to the aim of the current meeting.
- Keep within the allotted time – if you have scheduled one hour, finish when the hour is up and schedule a new meeting if you have not yet finished. This way everyone is able to think clearly and the message has time to sink in.