
EMPLOYMENT

ALERT

10 FEBRUARY 2014

IN THIS ISSUE

.....

GETTING UP CLOSE AND
PERSONAL WITH POPI

.....

PLANNING FOR PUBLIC
HOLIDAYS AND EXTRA PUBLIC
HOLIDAYS IN 2014

.....

GETTING UP CLOSE AND PERSONAL WITH POPI

The President assented to the Protection of Personal Information Act, No 4 of 2013 (POPI) on 26 November 2013. However, as no date for commencement has been set, this Act remains inoperative for the time being.

Here we provide a brief overview of the applicable obligations relevant to any organisation that processes personal information, including employers.

POPI has been drafted within the context of the right to privacy contained in s14 of the Constitution. Its primary purpose is to 'promote the protection of personal information processed by public and private bodies.' Essentially, POPI has been enacted to regulate how those who process personal information must acquire, store, retain, use and destroy information. POPI also seeks to align South African legislation with international legislation regarding the requirements for the lawful processing of personal information.

Once the date of commencement is announced, all affected parties have a one-year grace period to ensure that their policies and procedures are POPI-compliant.

The office of the Information Regulator will also be established and will be tasked with monitoring and enforcing POPI compliance. Natural or (where applicable) juristic persons are also entitled to submit complaints regarding alleged violations of POPI to the Information Regulator.



FOLLOW US ON TWITTER:

@CDH_LabourLaw

continued

Conditions placed on organisations who process personal information

Organisations will need to comply with eight principles to lawfully process personal information:

- **Accountability:** organisations must ensure that they are accountable in that they can demonstrate that they are complying with the conditions for the lawful processing of information;
- **Processing limitations:** this condition deals with the lawfulness of processing information – ie information must be processed in a reasonable manner which does not infringe on the right to privacy of the natural person;
- **Purpose specification:** this condition obliges organisations to collect information for an explicit and specific purpose which relates to the function or activity of the organisation;
- **Further processing limitation:** if the organisation requires that the personal information is further processed, the further processing must comply with the original purpose for which the information was collected;
- **Information quality:** the organisation must ensure that the personal information collected is complete, accurate and updated, where necessary;
- **Openness:** the organisation must maintain all the processing operations under its control in line with the standards as contained in s14 to 51 of the Promotion of Access to Information Act, No 2 of 2000;

- **Security safeguards:** the organisation must implement appropriate security measures which will maintain the integrity and confidentiality of personal information; and
- **Participation:** a natural person, who provides adequate proof of identity, is entitled to request that the organisation confirm whether they hold any personal information of the natural person. The natural person is further entitled to request that the organisation provide a record of the personal information held and information regarding the identity of any third parties who have had access to such a record.

It is clear that POPI will have significant implications for the variety of organisations that process personal information including employers. Although POPI is not in operation as yet, organisations are well advised to proactively ensure that policies and procedures are aligned with the provisions of POPI. This process of review will take time and effort and organisations should not wait until the commencement of POPI to take action. Non-compliance with the provisions of POPI could result in significant difficulties for organisations. We will address further details about this in future editions.

Shane Johnson

PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2014

The remaining public holidays for 2014 are:

- Human Rights Day, Friday, 21 March 2014;
- Good Friday, Friday, 18 April 2014;
- Family Day, Monday, 21 April 2014;
- Freedom Day, Sunday, 27 April 2014;
- Additional Public Holiday, Monday, 28 April 2014;
- Workers' Day, Thursday, 1 May 2014;
- Youth Day Monday, 16 June 2014;
- National Women's Day, Saturday, 9 August 2014;
- Heritage Day, Wednesday, 24 September 2014;
- Day of Reconciliation, Tuesday, 16 December 2014;
- Christmas Day, Thursday, 25 December 2014; and
- Day of Goodwill, Friday, 26 December 2014.

Freedom Day (27 April 2014) is the only public holiday that falls on a Sunday this year. The next day, Monday (28 April 2014) becomes an additional public holiday in terms of the Public Holidays Act, No 36 of 1994. Both 27 April 2014 and 28 April 2014 are thus public holidays. Two consecutive public holidays can have a significant impact on working arrangements and shifts, especially in workplaces that run a 24/7/365 operation. Employers should consider the effect on the workplace and implement measures to address the impact on work. Employers should also consider collective agreements and Bargaining Council agreements that impact public holidays, working arrangements and shifts.

There is bad news for employees who are on strike on public holidays in that they are not entitled to any remuneration. They are only entitled to be remunerated for public holidays if they 'ordinarily worked' on the public holiday (s16 of the Basic Conditions of Employment Act, No 75 of 1997). As they would not ordinarily work on any day during the strike, they would not ordinarily work on a public holiday that falls in the strike period. Thus, they are not entitled to remuneration for the public holiday during the strike.

Employers can expect requests for additional days off on Friday, 2 May 2014, Thursday, 25 August 2014, Friday, 26 August 2014 and Monday, 15 December 2014. Employers are advised to timeously make arrangements with employees who wish to take extra days off to work in those days.

Faan Coetzee

CONTACT US

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@dlacdh.com



Johan Botes
Director
T +27 (0)11 562 1124
E johan.botes@dlacdh.com



Mohsina Chenia
Director
T +27 (0)11 562 1299
E mohsina.chenia@dlacdh.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@dlacdh.com



Gillian Lumb
Cape Town Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@dlacdh.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@dlacdh.com



Gavin Stansfield
Director
T +27 (0)21 481 6314
E gavin.stansfield@dlacdh.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@dlacdh.com



Faan Coetzee
Consultant
T +27 (0)11 562 1600
E faan.coetzee@dlacdh.com

Kirsten Caddy
Senior Associate
T +27 (0)11 562 1412
E kirsten.caddy@dlacdh.com

Nicholas Preston
Senior Associate
T +27 (0)11 562 1788
E nicholas.preston@dlacdh.com

Andrea Taylor
Senior Associate
T +27 (0)11 562 1687
E andrea.taylor@dlacdh.com

Ndumiso Zwane
Senior Associate
T +27 (0)11 562 1231
E ndumiso.zwane@dlacdh.com

Anli Bezuidenhout
Associate
T +27 (0) 21 481 6351
E anli.bezuidenhout@dlacdh.com

Shungu Mariti
Associate
T +27 (0)11 562 1475
E shungu.mariti@dlacdh.com

Inez Moosa
Associate
T +27 (0)11 562 1420
E inez.moosa@dlacdh.com

Zinhle Ngwenya
Associate
T +27 (0)11 562 1119
E zinhle.ngwenya@dlacdh.com

Lauren Salt
Associate
T +27 (0)11 562 1378
E lauren.salt@dlacdh.com

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

JOHANNESBURG

1 Protea Place Sandton Johannesburg 2196, Private Bag X40 Benmore 2010 South Africa
Dx 154 Randburg and Dx 42 Johannesburg
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@dlacdh.com

CAPE TOWN

11 Buitengracht Street Cape Town 8001, PO Box 695 Cape Town 8000 South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@dlacdh.com