



EMPLOYMENT

ALERT

4 AUGUST 2014

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THE EMPLOYER'S
STATUTORY DUTY TO
REPORT CRIMINAL
CONDUCT UNDER THE
PREVENTION AND
COMBATING OF CORRUPT
ACTIVITIES ACT,
NO 12 OF 2004
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THE EMPLOYER'S STATUTORY DUTY TO REPORT CRIMINAL CONDUCT UNDER THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, NO 12 OF 2004

Where an employee is dismissed for reasons pertaining to dishonest conduct, the employer is under a duty to go one step further and report such act, if the act is deemed an offence under the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCA).

The purpose of the PCCA is to prevent and combat corruption, theft, fraud, extortion, forgery etc. 'Corruption' is defined under PCCA as a situation where, someone (A) gives (or offers to give) someone in a position of power (B) something to use their power, illegally and unfairly, for the advantage of (A) (or someone not directly involved).

The PCCA has created a positive obligation on employers to report any criminal conduct as defined by PCCA which involves an amount from R100 000 or more, which occurs in their workplace and that falls within the parameters of PCCA.

This obligation to report is regulated by s34(2) of PCCA which includes all employers that fall within the public and private sector. The categories of such employers are the following:

- the Director-General or head, or equivalent officer, of a national or provincial department;
- the municipal manager;
- any public officer in the Senior Management Service of a public body;
- any head, rector or principal of a tertiary institution;
- the manager, secretary or a director of a company as defined in the Companies Act and includes a member of a close corporation;

- the executive manager of any bank or other financial institution;
- any partner in a partnership;
- any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;
- any other person who is responsible for the overall management and control of the business of an employer; or any person contemplated in paragraphs mentioned above, who has been appointed in an acting or temporary capacity.

Employers who fall within any of the these categories who know or reasonably ought to have known that an employee has committed an act which is deemed an offence under PCCA, which involves an amount of R100 000 or more, are to report the act to a police official in the office of the Directorate



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for Priority Crime Investigation in terms of s34(1) of the Act.

Such a report will entail the employer:

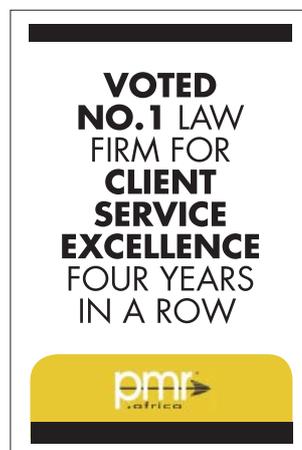
- personally going to the office of the Directorate for Priority Crime Investigation (DPCI); or
- sending an email or fax to the DPCI;

which contains critical information such as the employee's identity, contact details, position of authority, and the allegations pertaining to the offence as well as details of person involved in the alleged commission of the offence.

An employer who fails to report an offence under s34(1) is deemed to have committed an offence, which may result in imprisonment of up to 10 years or a fine.

Therefore all directors, managers, supervisors and the like who operate in either the public or private sector are to ensure that disciplinary offences categorised as an offence under PCCA (and which is above the monetary threshold) are reported in terms of the PCCA. A failure to report may result in detrimental consequences for the employer.

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