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EMPLOYMENT ALERT

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STRIKE AVOIDANCE

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The continuous rise in the number of strikes and the effects of it on businesses require that employers consider engaging in a more meaningful and intentional conciliation process in an attempt to avoid strike action completely.

South Africa is known for protracted strikes with devastating effects, as a result there is a real incentive to avoid strikes completely. This is true, particularly in the aviation industry for example, where very often, strikes result in the grounding of aircrafts, and rescheduling of flights which directly impact travellers who will, most likely, think twice before using the affected airline again. There is a great need for businesses, to avoid strikes completely.

In South Africa, employees cannot go out on strike without following the prescribed procedures set out in the Labour Relations Act, No 66 of 1995. Essentially two steps need to be complied with: First the employees or union must refer the dispute to the Commission for Conciliation, Mediation and Arbitration or to the applicable bargaining council. If this is done and the independent chairperson issues a certificate stating that the dispute remains unresolved or if 30 days have lapsed since the referral, the employees may go out on strike after complying with step two – the issuing of a strike notice.

All too often the conciliation process is regarded and approached as a procedural tick box as opposed to a dispute resolution mechanism. Considering the high stakes, this is unfortunate.

The referral to conciliation ensures that employees cannot go out on strike immediately. More importantly, conciliation ensures that the employer and aggrieved employees are forced to sit around a table and discuss the matter in the presence of an independent chairperson. The independent chairperson cannot order the parties to act in a specific manner. In other words, the independent chairperson cannot instruct the employer to adhere to the employees' demands, nor direct the employees not to strike. Nevertheless, the value of conciliation must not be undermined.

Conciliation presents the ideal opportunity for the employer and its employees to discuss the matter at length. The independent chairperson may be of great assistance in facilitating the discussion and resolving the dispute. The parties are also at liberty to agree to timelines during the conciliation or to ask that a second conciliation meeting be scheduled to revert on possible ways in which the dispute can be settled.

In our view, employers need to shift the focus from damage control to avoiding the damage completely. Treating the conciliation process as a valuable step in such disputes may well be the difference between remaining grounded and cruising above the clouds.

*Gavin Stansfield and
Katlego Letlonkane*



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