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EMPLOYMENT ALERT

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UNLAWFUL DEMANDS AND STRIKES AND THE IMPORTANCE OF CONTRACTUAL TERMS

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UNLAWFUL DEMANDS AND STRIKES AND THE IMPORTANCE OF CONTRACTUAL TERMS

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In *G4S Cash Solutions SA (Pty) Ltd v Motor Transport Workers Union and Others* (JA51/15) [2016] ZALCJHB 2016 (26 May 2016), the employer required its employees to work on Sundays and on public holidays. The employees refused to work on Sundays and public holidays because they were not given an increase in the remuneration for work on those days.

On appeal, the employer argued that the employees' refusal to work on Sundays and public holidays fell within the definition of a strike in the Labour Relations Act, No 66 of 1995. In terms of the Basic Conditions of Employment Act, No 75 of 1997 an employer may not require an employee to work on a public holiday, unless a written agreement exists.

The Labour Appeal Court considered whether the employees had a contractual obligation to work on Sundays and on public holidays.

The court held that although the contracts of employment provided for overtime, it did not mean that the employees were obliged to work on Sundays or on public holidays. It held that there was no obligation on the employees to work every Sunday and therefore the employer could not require employees to do so. The employees' refusal to work on Sundays did not constitute a strike and does not fall within the definition of strike.

The effect of the judgment is that the refusal by employees to work in response to an employer's request that does not contractually arise will not amount to a strike. The essence of the case is that employers that require their employees to undertake work on Sundays or on public holidays must contractually agree the terms.

*Sipelelo Lityi
and Stephanie Gonclaves*



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Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

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Michael Yeates named winner in the **2015 and 2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

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