

# EMPLOYMENT ALERT

## LET OUR STRIKE GUIDELINES BE THE STARTING POINT FOR YOUR STRIKE STRATEGY

At Cliffe Dekker Hofmeyr we pride ourselves in providing our clients with practical solution driven information in line with the current challenges faced by our clients.

Due to the increase in strikes and strike violence in South Africa, our employment practice developed useful strike guidelines for our clients' benefit. These guidelines will provide clients with practical information about strikes, lock-outs and picketing and answer some of the more complex questions around these topics. The guidelines are definitely the starting point when considering a strike strategy and when preparing for industrial action. Our strike guidelines can be accessed on our website.

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### SECURITY ON SECURITY – REVIEW APPLICATIONS

Snyman AJ recently provided some clarity on issues relating to the payment of security in review applications in the case of *Rustenburg Local Municipality v South African Local Government Bargaining Council and others* (Case No. J 779/2017).

# SECURITY ON SECURITY – REVIEW APPLICATIONS

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**Snyman AJ recently provided some clarity on issues relating to the payment of security in review applications in the case of *Rustenburg Local Municipality v South African Local Government Bargaining Council and others* (Case No. J 779/2017).**

The court was called on to consider this matter with special consideration of the recent amendments to s145 of the Labour Relations Act (LRA). It was emphasised that the introduction of s145(7) and (8) of the LRA was to discourage review applications that have little prospects of success. This came about as a result of employers reviewing arbitration awards even if the review application had little merit, merely to obstruct or delay compliance with an arbitration award.

This matter involved the issue of when and on what terms, the execution of arbitration awards issued in terms of the dispute resolution processes under the LRA can be suspended or stayed, especially in light of the s145 amendments.

Section 145 of the LRA states that the institution of review proceedings does not suspend the operation of an arbitration award unless the applicant furnishes security to the satisfaction of the court. Subsection 8 sets out the amounts required as security to be 24 months' remuneration in the case of an award for reinstatement or re-employment, and in the case of awarded compensation, an amount equivalent to the compensation.

Despite the pending review application in this matter, the CCMA certified an arbitration award for purposes of the execution and issued a writ of enforcement. The employer applied to the Labour Court to stay the execution and to be absolved

from providing security as required by the LRA. In essence, the employer held that because it was subject to the Local Government: Municipal Finance Management Act (MFMA), it should be exonerated from furnishing security under the LRA because such payment was not budgeted for and it was not possible to provide it.

The Labour Court emphasised that arbitration awards are final and binding and that it is trite that arbitration awards remain executable, despite a pending review. It held, that the duty is directly on the applicant in review proceedings to seek relief to stay the execution of the award pending the conclusion of the review.

The court held that the suspension of execution of an award can either be effected by way of security or obtained by leave of the court, in terms of s145(7) of the LRA. However, this does not prescribe how or in what form this security must be provided. It simply provides that this security must be to the satisfaction of the court. In considering what this means, the Labour Court concluded that security can be provided by payment into the court or the Sheriff's trust account, or by the issuing of a security bond by a legal practitioner or a registered banking institution. Once such satisfactory security has been provided, the simple process of serving and filing of a bond document would satisfy the Court.

# SECURITY ON SECURITY – REVIEW APPLICATIONS

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*The court concluded that all employers, whether in the public service or the private sector, should be subject to the same requirement of providing security.*

Where an applicant for review does not wish to furnish security for the suspension of the enforcement of the award, then it must secure a suspension of enforcement from the Labour Court by way of an application under s145(3), which states '[t]he Labour Court may stay the enforcement of the award pending its decision.' The Court exercises a discretion in this regard, and may even impose conditions, including reducing the amount of security required or even dispensing with it all together.

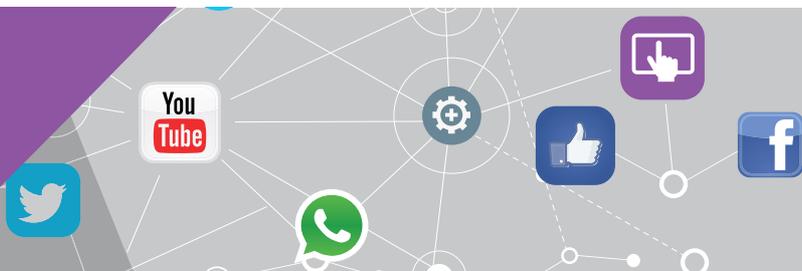
However, a proper case must always be made out by the applicant, in seeking to dispense with the requirement of providing security. In simple terms, the court will require security to be provided, unless the applicant can show good and proper cause why this should not be the case. The explanation cannot be that it will be hard to set security, but that it would be unduly onerous and harmful to be required to set the prescribed security.

The court concluded that all employers, whether in the public service or the private sector, should be subject to the same requirement of providing security. Importantly, it held that the previous case of *Free State Gambling and Liquor Authority v Commission for Conciliation Mediation and Arbitration & Others*, setting precedent to the effect that public service entities subject to the provisions of the PFMA or related legislation are exempt or exonerated from providing security under s145, was wrong.

In this regard, the court held that the LRA must prevail, in line with s210, which states that if any conflict relating to the matters dealt with in the LRA arises between it and the provisions of any other law (save for the Constitution or any Act expressly amending the LRA), the provisions of the LRA will prevail. Therefore, the LRA prevails above other legislation such as MFMA, as in this case.

*Aadil Patel and Samantha Bonato*

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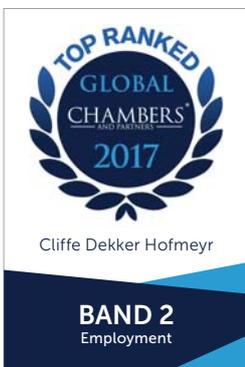




## Employment Strike Guideline

Find out what steps an employer can take when a strike is unprotected.

 [Click here to find out more](#)



CHAMBERS GLOBAL 2014 - 2017 ranks our Employment practice in Band 2: Employment.

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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

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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