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EMPLOYMENT ALERT

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IN THIS ISSUE

THE LABOUR APPEAL COURT: SEXUAL HARASSMENT IN THE SPOTLIGHT

In the case of *MEC for Education (North West Provincial Government) v M* (JA37/2012) [2017] ZALAC 13 (3 February 2017), a school principal was disciplined for sexually harassing a fellow teacher on two separate occasions. A disciplinary hearing was held and he was dismissed by the Department of Education in the North West Province (MEC).



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THE LABOUR APPEAL COURT: SEXUAL HARASSMENT IN THE SPOTLIGHT

Where appropriate, employers must take firm action against employees for misconduct, irrespective of what the employee and the aggrieved party may agree among themselves.

The settlement or resolution of the matter between the parties themselves does not preclude the employer from enforcing disciplinary measures against employees who commit acts of misconduct.



In the case of *MEC for Education (North West Provincial Government) v M (JA37/2012) [2017] ZALAC 13 (3 February 2017)*, a school principal was disciplined for sexually harassing a fellow teacher on two separate occasions. A disciplinary hearing was held and he was dismissed by the Department of Education in the North West Province (MEC).

The principal referred a dispute to the Education Labour Relations Council, which ultimately found that his dismissal was fair. He took this decision on review to the Labour Court. The Labour Court found that the matter was settled because the parties (the principal and the fellow teacher) recorded that the allegations of sexual harassment or assault were discussed between them and amicably resolved. The principal was thus reinstated.

The MEC appealed the decision of the Labour Court and at the Labour Appeal Court, Judge Savage held that there was no settlement of the complaint. Furthermore, even if there was a settlement between the principal and the victim, the MEC was still entitled to take disciplinary action against an employee for misconduct in the context of the employment relationship.

In the case of *Campbell Scientific Africa (Pty) Limited v Simmers and others [2015] JOL 34906 (LAC)*, it was held that an employer is entitled to discipline an employee for misconduct which was both related to and impacted on the employment relationship. In this instance, an employee had acted inappropriately in

sexually harassing a colleague employed by another company. Although this had taken place outside of the workplace and outside of working hours, the seriousness of his misconduct made a future employment relationship impossible. The Labour Appeal Court therefore found that his dismissal was fair.

The Labour Appeal Court is understandably taking a much harder stance on sexual harassment. Where appropriate, employers must take firm action against employees for misconduct, irrespective of what the employee and the aggrieved party may agree among themselves. The settlement or resolution of the matter between the parties themselves does not preclude the employer from enforcing disciplinary measures against employees who commit acts of misconduct. This is true even where misconduct has occurred outside of the workplace and working hours. Workplace rules regulate the standard of conduct required within the context of the employment relationship and these standards must be upheld.

Samantha Bonato and Aadil Patel

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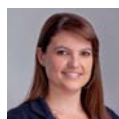
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