

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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SHOP STEWARDS: "A LICENCE TO CONFRONT"?

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SHOP STEWARDS: "A LICENCE TO CONFRONT"?

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The recent case of *National Union of Metal Workers of South Africa (NUMSA) obo Motloba v Johnson Controls Automotive SA (Pty) Ltd and Others* [2017] 5 BLLR 483 (LAC), dealt with the question of whether shop stewards are to be held to the same behavioural standard as other employees.

In this case, the employee had been employed by the employer for a period of nine years and was a shop steward at the workplace. The employee had an altercation with the payroll administrator as he didn't agree with management's interpretation of a provision in the MIBCO collective agreement regulating how employees on night shift were to be paid for work performed on a public holiday.

The employer's evidence was that the employee confronted the payroll administrator and, in an aggressive voice, said: "Don't lie to my people that I agreed to how they would be paid".

Further evidence was led that the employee's finger moved in the direction of the payroll administrator and that the service centre supervisor thought the employee was going to hit her. The employee was dismissed on the grounds of physical and verbal assault, serious disrespect and threatening and/or

intimidating behaviour towards the payroll administrator. The employee challenged his dismissal.


The Labour Appeal Court held that, "a shop steward should fearlessly pursue the interest of his/her constituency and ought to be protected against any form of victimisation for doing so. However, this is no licence to resort to defiance and needless confrontation. A shop steward remains an employee, from whom his employer is entitled to expect conduct that is appropriate to that relationship."

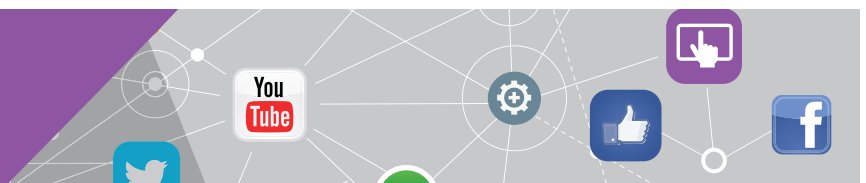
The court was robust in its finding that it is unacceptable to reason that when an employee acts in a representative capacity, "anything goes".

A vociferous shop steward should act in the best interest of his constituency and not in a manner that is unbecoming of the office which he holds.

This case is important as it fortifies the principle that shop stewards, regardless of their representative mandate, are to conduct themselves at the same standard as a CEO.

Aadil Patel and Courtney Jones

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MEDIA AND THE WORKPLACE
GUIDELINE





Employment Strike Guideline

Find out when a lock-out will be protected.

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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.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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