

# 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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### WHO IS AUTHORISED TO BE A COMMISSIONER OF OATHS?

In terms of South African law, people occupying various offices in various professions can be authorised to act as commissioners of oaths in South Africa and thus are able to commission affidavits and certify documents within their own prescribed areas.

# WHO IS AUTHORISED TO BE A COMMISSIONER OF OATHS?

*This legislation in South Africa prescribes which people in what offices may be designated commissioner of oaths as well as the powers assigned to these commissioners of oaths.*

*Section 7 of the Act prescribes the powers assigned to a commissioner of oaths as including the power to administer an oath or affirmation within the area for which he is a commissioner of oaths.*



**In terms of South African law, people occupying various offices in various professions can be authorised to act as commissioners of oaths in South Africa and thus are able to commission affidavits and certify documents within their own prescribed areas.**

The question as to who may be designated as a commissioner of oaths in South Africa is found in the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 (Act) as well as its Regulations. This legislation in South Africa prescribes which people in what offices may be designated commissioner of oaths as well as the powers assigned to these commissioners of oaths.

According to s5 of the Act, a commissioner of oaths can be any person appointed as such by the Minister of Justice (Minister) or appointed by any officer of the Department of Justice with the rank of a director authorised in writing by the Minister. Any persons appointed as a commissioner of oaths in terms of s5 of the Act will hold office in any area fixed by the Minister or delegated officer and shall hold such office during the Minister's pleasure. Section 6 of the Act provides the Minister with further powers to designate the holder of any office as an *ex officio* commissioner of oaths for any area specified in a notice published in the Government Gazette. This provision also extends the power of the Minister to be able to withdraw and/or amend any such notice.

Section 7 of the Act prescribes the powers assigned to a commissioner of oaths as including, amongst other things, the power to administer an oath or affirmation within the area for which he is a commissioner of oaths.

The regulations regarding the Designation of Commissioners of Oaths in terms of s6 of the Act (GN 903 in GG19033 of 10 July 1998 as amended, and GN 109 in GG22030 of 2 February 2001) provide a list of various offices which are designated by the Minister to be commissioners of oaths. Amongst the most notable listed offices are members of the National Executive, which includes the President or the Acting President of the Republic of South Africa, Ministers and Deputy Ministers. From the administration of justice branch, we note that Advocates who are admitted in terms of the Admission of Advocates Act, 1964 and its subsequent amendments, as well as Attorneys admitted in terms of the Attorneys Act 1979, as well as notaries and conveyancers, are amongst the designated offices. The regulations provide an exhaustive list of all the offices which are designated as commissioners of oaths and who are authorised to administer an oath or take an affirmation.

In the event that a particular office is not designated as a commissioner of oaths by the Minister, any persons occupying a position that has not been designated may apply to the Department of Justice and Constitutional Development (Department of Justice) to be designated as a commissioner of oaths. Such application is done through the completion of a prescribed form referred to as form J5. This form is available at both Magistrates and Regional offices of the Department of Justice as well as electronically on the Department's website.

# WHO IS AUTHORISED TO BE A COMMISSIONER OF OATHS?

CONTINUED

*A designated commissioner of oaths is only designated as such for the period in terms of which they occupy the particular designated post or capacity of the post.*



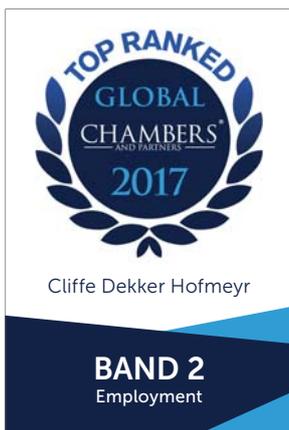
A designated commissioner of oaths is only designated as such for the period in terms of which they occupy the particular designated post or capacity of the post. As soon as one resigns or retires from the designated post or capacity, one automatically ceases to be an *ex officio* commissioner of oaths. Should a person wish to remain a commissioner of oaths upon resignation or retirement, they would have to reapply to the Department of Justice by completion of the prescribed application form J5 as well as supplying its supporting documentation.

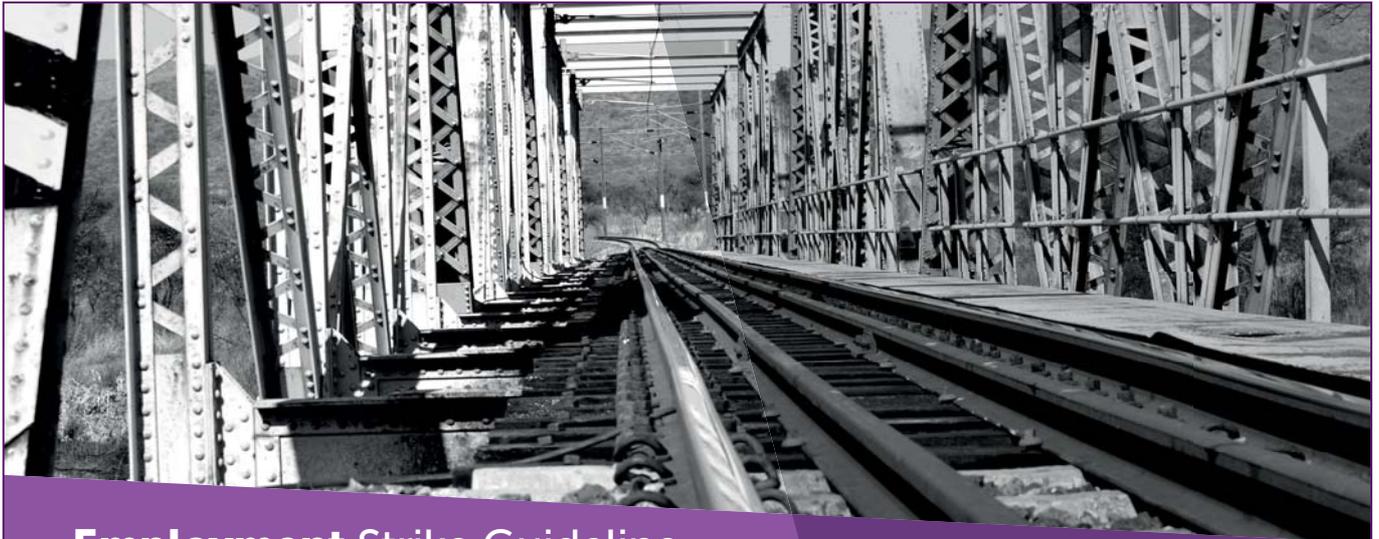
It is, however, not clear from the Act what criteria are used to determine which offices are suitable for designation as commissioners of oaths. What is noted, however, from form J5, is that an applicant who applies to be a commissioner of oaths is required to motivate why

their appointment as commissioner of oaths would be in the public's interest. This is one of the considerations that the Department of Justice will take into account in a person's application. It appears, therefore that, if one's appointment would be in the public interests, one may be designated as such.

In conclusion, the answer as to which offices are bestowed with the authority to be commissioners of oaths is thus found in the regulations of the Act. The Minister reserves the right to amend these regulations by including and excluding certain offices as commissioners of oaths by way of Notices in the Government Gazette, therefore the list may change from time to time.

*Gavin Stansfield and Zola Mcaciso*





## Employment Strike Guideline

**Find out when a lock-out will be protected.**

 [Click here to find out more](#)

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

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2017 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2017 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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