

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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In the unreported case of *the South African Equity Union obo Van Wyk and 100 members v Lodestone confectionary (Pty) Ltd t/a Candy Tops (PS19/16)*.

PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2018

INCREASED MINIMUM WAGE FOR DOMESTIC WORKERS

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The Bill has been approved by cabinet and has been tabled in parliament.



The minimum wage for domestic workers was increased from 1 January 2018. This is as a result of an amendment to the sectoral determination which establishes minimum wages for employees in the Domestic Worker Sector. Employers paying below the minimum wage will have to increase the amount that they pay domestic workers.

As a result of the amendments, domestic workers working in Area A (bigger metropolitan areas) that work more than 27 ordinary hours per week must be paid a minimum of R13.05 per hour. For a domestic worker who ordinarily works 45 hours per week, this will equate to approximately R2545.22 per month. Workers in Area A that work less than 27 hours per week, must be paid a minimum of R15.28 per hour.

Domestic workers who work in Area B (those areas not listed in Area A) for more than 27 ordinary hours per week must be paid a minimum of R11.89 per hour. This will amount to approximately R2317.75 per month for domestic workers who work 45 ordinary hours per week. Domestic workers in Area B who work 27 hours or less per week must be paid a minimum R14.03 per hour.

The National Minimum Wage Bill (Bill) on the other hand provides for the introduction of a minimum wage to come into effect on 1 May 2018. In terms of the Bill, initially, the minimum wage for domestic workers will be R15 per hour. The initial R15 hourly rate in the bill is higher than the hourly rate of R13.05 for Area A and R11.89 for Area B for domestic workers working more than 27 ordinary hours per week.

The Department of Labour published a media statement stating that the amended minimum wage figures in the sectoral determination "...will be offset by the introduction of the National Minimum Wages for domestic workers..." and that "all wages for domestic workers during the period of the [national minimum wage] will be set at R15 for both local (Area B) and greater metropolitan (Area A) areas. However, the wages for domestic workers in local and rural areas who work 27 ordinary hours per week or less, will be slightly over the R15/h proposed by the [national minimum wage]"

The Bill has been approved by cabinet and has been tabled in parliament. As it stands, the amended sectoral determination sets out the minimum wages for domestic workers and this will result in employers paying increased salaries in circumstances where they are not complying with the amended sectoral determination. This may however not be the last time employers will have to increase the amount that they are paying domestic workers. With the national minimum wage a step closer, employers may in the near future have to once again evaluate whether they are compliant with the minimum wage and increase the amounts they are paying domestic workers.

Samantha Coetzer and Aadil Patel

THE FIRST STOP IS THE CCMA

The dismissals arose as a result of a large scale retrenchment.

The union was unsuccessful and the Labour Court held that it that it lacked jurisdiction to determine the dispute.



In the unreported case of the South African Equity Union obo Van Wyk and 100 members v Lodestone confectionary (Pty) Ltd t/a Candy Tops (PS19/16), the Labour Court considered whether an unfair dismissal dispute was required to be referred to the CCMA before the Labour Court could determine the dispute in circumstances where, prior to the dismissal, the CCMA facilitated the parties engaged retrenchment consultations.

In the case, the union referred an unfair dismissal dispute to the Labour Court. The dismissals arose as a result of a large scale retrenchment. When the employer contemplated the dismissal it issued the trade union with the s189(3) notice, inviting it to consult. The employer also requested that the CCMA facilitate the consultations in terms of 189A (3) of the Labour Relations Act, No 66 of 1995.

The employer dismissed the employees for operational requirements after seven facilitated consultation meetings and the parties' failure to reach consensus on issues.

After the dismissals, the union failed to refer the dismissal dispute to the CCMA for conciliation. It, instead, approached the Labour Court directly to determine the fairness of the employees' dismissals for operational requirements.

The employer argued that the Labour Court did not have the jurisdiction to determine the dispute as the union was required to first refer the unfair dismissal dispute to the CCMA for conciliation before it approached the Labour Court. It argued that there was a requirement that the dispute must be referred to conciliation before the Labour Court can determine it.

The union argued that since the CCMA was involved in facilitating the retrenchment consultations it was not

required to refer that dismissal dispute to the CCMA and that it could approach the Labour Court directly. The Labour Court disagreed.

The Labour Court highlighted the differences between the facilitation and conciliation processes and held that they are two different processes. It held that, "facilitation is held pre-dismissal with a view to avoid unfair retrenchment. Conciliations are held post dismissal in an attempt to resolve the unfair dismissal dispute"

It also held that, "The Constitutional Court confirmed that the referral of a dispute to the CCMA or bargaining council and the issuing of the certificate of the non-resolution of the dispute constitute the necessary jurisdictional fact for the Labour Court to have jurisdiction over unfair dismissal disputes which include unfair mass retrenchment disputes."

The union was unsuccessful and the Labour Court held that it that it lacked jurisdiction to determine the dispute.

This case is important as it confirms that despite the CCMA facilitating parties engaged in retrenchment consultations, an unfair dismissal dispute must still be referred to CCMA or bargaining council before the Labour Court will determine the unfair dismissal dispute.

Samantha Coetzer and Aadil Patel

PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2018

Two consecutive public holidays can have a significant impact on working arrangements and shifts, especially in workplaces that run a 24/7/365 operation.

Employers can expect requests for additional days off on Monday 30 April, Friday, 10 August, Monday, 24 December and Monday, 31 December .



There are a number of national public holidays that take place in South Africa every year.

The remaining public holidays for 2018 are:

- Human Rights Day: Wednesday, 21 March;
- Good Friday: Friday, 30 March;
- Family Day: Monday, 2 April;
- Freedom Day: Friday, 27 April;
- Workers' Day: Tuesday, 1 May;
- Youth Day: Saturday, 16 June;
- National Women's Day: Thursday, 9 August;
- Heritage Day: Monday, 24 September;
- Day of Reconciliation, Sunday, 16 December;
- Additional Public Holiday: Monday, 17 December;
- Christmas Day: Tuesday, 25 December;
- Day of Goodwill: Wednesday, 26 December; and
- New Year's Day: Tuesday, 1 January 2019.

The Day of Reconciliation (16 December) is the only public holiday that falls on a Sunday. The next day, Monday, 17 December, becomes an additional public holiday in terms of the Public Holidays Act. Both 16 December and 17 December are thus public holidays. Two consecutive public holidays can have a significant impact on working arrangements and shifts, especially in workplaces that run a 24/7/365

operation. Employers should consider the effect on the workplace and implement measures to address the impact on work. Employers should also consider collective agreements and Bargaining Council agreements that impact public holidays, working arrangements and shifts.

There is bad news for employees who are on strike on public holidays in that they are not entitled to any remuneration. They are only entitled to be remunerated for public holidays if they "ordinarily worked" on the public holiday (see s16 of the Basic Conditions of Employment Act, no 75 of 1997). As they would not ordinarily work on any day during the strike, they would not ordinarily work on a public holiday that falls in the strike period. Thus, they are not entitled to remuneration for the public holiday during the strike.

Employers can expect requests for additional days off on Monday, 30 April, Friday, 10 August, Monday, 24 December and Monday, 31 December as these dates are convenient for employees to create long weekends. Employers are advised to timeously make arrangements with employees who wish to take extra days off to work in those days.

For additional information, contact the Employment Law Practice or Employment Director Faan Coetzee at Faan.Coetzee@cdhlegal.com.

Faan Coetzee



Employment Strike Guideline

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

 [Click here to find out more](#)

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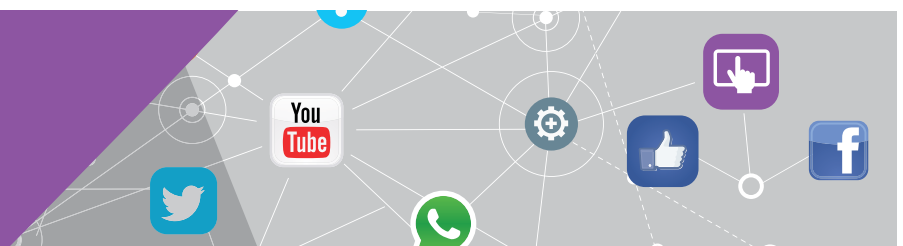
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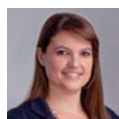
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BBBEE STATUS: LEVEL THREE CONTRIBUTOR

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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