

# 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.

## IN THIS ISSUE

### THE LABOUR RELATIONS AMENDMENT BILL AND ITS IMPACT ON STRIKES, PICKETS AND LOCKOUTS

The Labour Relations Amendment Bill seeks to introduce measures which will address protected strikes that commence in the absence of picketing rules, as well as address the ever common issue of protracted strike action which is no longer conducive to collective bargaining.

### WORK, LOVE AND PEACE – DID VALENTINE'S DAY AFFECT YOUR BUSINESS THIS YEAR?

On the 14<sup>th</sup> of February the workplace may have looked a little redder than usual, but make sure you control the consequences of all the love that goes around.

# THE LABOUR RELATIONS AMENDMENT BILL AND ITS IMPACT ON STRIKES, PICKETS AND LOCKOUTS

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*Currently, the absence of picketing rules is not a bar to the commencement of strike action.*



The Labour Relations Amendment Bill seeks to introduce measures which will address protected strikes that commence in the absence of picketing rules, as well as address the ever common issue of protracted strike action which is no longer conducive to collective bargaining.

## **Q&A: UNDERSTANDING THE AMENDMENTS**

**Q: Has anything changed around how trade unions refer disputes?**

A: No, a dispute referral must still be made to the CCMA or relevant Bargaining Council and there is still a compulsory 30-day conciliation period.

**Q: What happens during the compulsory 30-day conciliation period?**

A: The commissioner will not only attempt to conciliate the dispute, but will under the proposed amendments, also have to consider whether the parties have any binding collective agreement between them, which contains picketing rules. If no such picketing rules exist, the commissioner will attempt to secure an agreement between the parties.

**Q: What if no agreement is secured?**

A: The commissioner will then be obliged to determine picketing rules in accordance with any such picketing rules published by the CCMA and any code of good practice.

**Q: Can the 30-day conciliation period be extended?**

A: Yes, but only if:

- its extension will lead to a meaningful conciliation process;
- an agreement appears likely; and
- that any such request to extend the 30-day period is not unreasonably withheld.

**Q: When determining the rules, is the commissioner obliged to consider any other factors?**

A: Yes, the commissioner must consider:

- the nature of the premises/workplace and where the employees intend to picket;
- the Code of Good Practice: Picketing; and
- the representations made by either party.

**Q: What happens if your staff deployed at third party sites want to picket at those third parties' sites?**

A: This is possible however, the party who owns or controls that third party site must now be given an opportunity to make prior representations on the picketing rules and importantly, on where the designated area may be.

**Q: Can the commissioner issue picketing rules that permit employees to picket on the employer's premises?**

A: Yes, but only if the employer unreasonably withholds its consent and in such cases, regard must still be had to the nature and circumstances of the premises. Health and safety factors will also be relevant factors to take into account.

**Q: When will the commissioner issue the picketing rules?**

A: Currently, the absence of picketing rules is not a bar to the commencement of strike action, however and under

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CONTINUED

*In terms of the proposed amendments, no picketing will be permitted unless there is a collective agreement in place regulating picketing ie picketing rules.*



the proposed amendments, the commissioner will have to issue the picketing rules before issuing a certificate of non-resolution.

**Q: Under what other circumstances will a commissioner issue picketing rules?**

A: A commissioner will be called upon to urgently issue picketing rules in cases of:

- strike action that is carried out as a result of a unilateral change to terms and conditions of employment by the employer; or
- where a strike is carried out in response to an unprotected lock-out by the employer.

**Q: What happens if there are no picketing rules in place when the strike starts?**

A: In terms of the proposed amendments, no picketing will be permitted unless:

- there is a collective agreement in place regulating picketing ie picketing rules;
- an agreement has been reached on picketing rules between the parties; or
- the commissioner has issued picketing rules.

**Q: What recourse is available in the event that the picketing rules are breached?**

A: In terms of the proposed amendments, the Labour Court may through an interdict:

- compel compliance with the picketing rules;
- vary the terms of the picketing rules; and
- suspend the picket.

**Q: What further remedies are available to employers who experience strike action, other than seeking certain interdictory relief from the Labour Court and reserving its rights to implement discipline?**

A: Where it is in the public interest, the proposed amendments seek to introduce the establishment of an advisory panel which will attempt to facilitate a resolution of the dispute. The advisory panel can be appointed upon application from either party, by the CCMA on its own accord, or pursuant to a Labour Court order.

**Q: What facts would give rise to the appointment of an advisory panel?**

- A: Where the strike or lock-out:
- is no longer conducive to collective bargaining, ie it has continued for a protracted period of time with no end in sight;
  - brings about an imminent threat that constitutional rights may or are being violated or there is a threat of damage to property and/or violence;

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Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2018 in Band 2: Employment.

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# THE LABOUR RELATIONS AMENDMENT BILL AND ITS IMPACT ON STRIKES, PICKETS AND LOCKOUTS

CONTINUED

*The advisory arbitration award should be issued within 7 days by the panel.*



- has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for normal social and economic functioning of the community or society.

**Q: Can any party interdict, stay or review the proceedings of the advisory arbitration panel?**

A: This will not be possible until such time as an advisory award has been issued.

**Q: Who makes up the advisory award panel?**

A: A senior commissioner who will be the chairperson, together with one assessor appointed by the employer and one assessor appointed by the trade union.

**Q: What happens if one of the parties fails or refuses to participate in the advisory arbitration?**

A: The director of the CCMA will then appoint a person with the requisite experience to represent the interests of that party during the proceedings.

**Q: What are the powers of the advisory arbitration panel?**

A: The panel will have the same powers as a commissioner but must deal with the substantial merits of the dispute and can order the disclosure of relevant information, provided that information is necessary in order to make a factual finding.

**Q: How long does the panel take to issue the advisory arbitration award?**

A: This should be issued within 7 days.

**Q: If an advisory arbitration panel is appointed, does this suspend the right to strike or lock-out?**

A: No, the strike and lock-out can continue during this period.

**Q: What would the advisory arbitration award seek to address?**

A: It would include a report on the findings, recommendations for the resolution of the dispute and a motivation as to why the recommendations ought to be accepted.

**Q: Is the advisory arbitration award binding?**

A: An award is only binding on a party to the dispute if the parties have accepted or are deemed to have accepted the award. In certain circumstances, the advisory arbitration award can be extended as if it were a collective agreement, but subject to the requirements thereof.

**Q: Under what circumstances will a party be deemed to have accepted the advisory arbitration award?**

A: The parties have to make such an election within 7 days. If a party to the dispute fails to indicate either its acceptance or rejection of the award within the aforesaid period, the party is deemed to have accepted the award.

**Q: Are there any additional requirements if a party rejects the advisory arbitration award?**

A: Yes, the party must provide a motivation for its rejection in the prescribed manner.

**Q: Can a party strike or lock-out once it becomes bound by the advisory arbitration award?**

A: No, the advisory award then binds the parties.

.....  
*Hugo Pienaar and Nicholas Preston*

# WORK, LOVE AND PEACE – DID VALENTINE’S DAY AFFECT YOUR BUSINESS THIS YEAR?

*Consider your own workplace and whether employees who exhibit ongoing public displays of affection is appropriate behavior.*

*Although love may be in the air this month, it doesn’t have to be at the expense of a harmonious work environment.*



**On the 14<sup>th</sup> of February the workplace may have looked a little redder than usual, but make sure you control the consequences of all the love that goes around.**

The workplace is a fertile ground for office romances, which is hardly surprising considering that employees spend most of their time in workplace. Workplace relationships, if left unregulated, can give rise to behavioural issues and conflict amongst staff. These may include:

- sexual harassment claims;
- violations of company policies including sexually inappropriate behavior at the workplace;
- poor work performance of either employee;
- perceived favoritism or discrimination claims by other employees;
- internal gossip and rumors that can impact on the corporate work environment and contribute towards low employee morale; and
- potential conflicts of interest when the relationship sours.

Consider your own workplace and whether employees who exhibit ongoing public displays of affection is appropriate behavior. Even though such conduct may not purposely be offensive, it may be considered to be objectionable to some employees or clients, potentially bringing the company’s name into disrepute.

Importantly, employers are entitled to set standards of acceptable behavior in the workplace and maintain an appropriate corporate culture. This is achieved by implementing safeguards, such as policies on workplace relationships, and what conduct is or isn’t acceptable.

It will also remain open to employers to institute disciplinary action where the workplace romance gives rise to misconduct or invoking its poor performance procedures in cases where an employee’s work performance deteriorates.

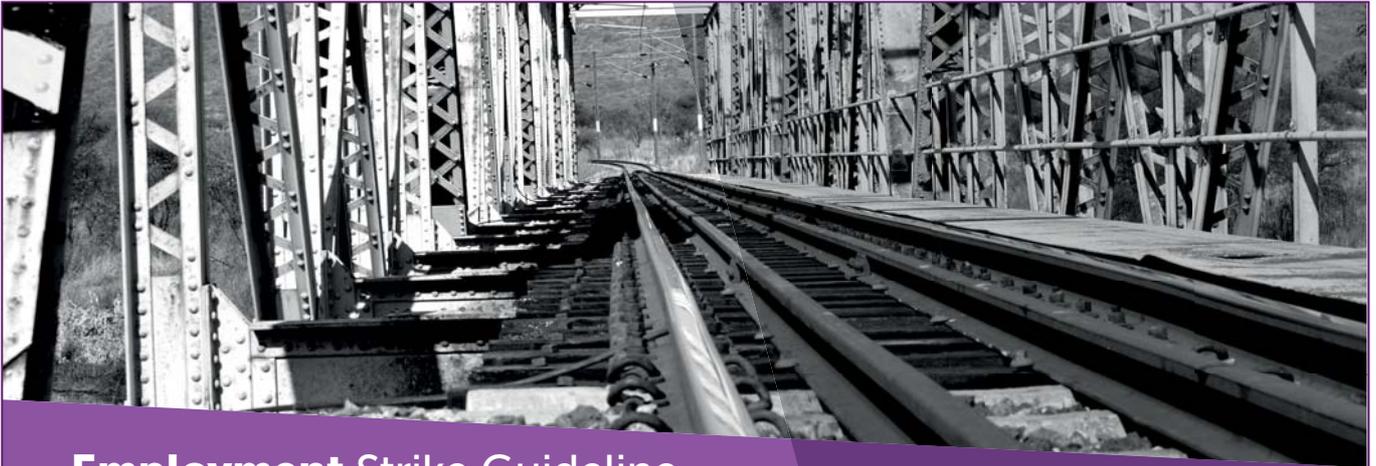
The regular training of supervisors around handling workplace romances and the expected standards of professional conduct would also be a prudent management initiative.

Although love may be in the air this month, it doesn’t have to be at the expense of a harmonious work environment. Setting expectations from the onset and recording these clearly in an appropriate policy will ensure a harmonious work environment for all.

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**Nicholas Preston  
and Prinoleen Naidoo**

Michael Yeates was named the exclusive South African winner of the **ILO Client Choice Awards 2015 – 2016** in the category Employment and Benefits as well as in **2018** in the Immigration category.





## Employment Strike Guideline

Find out when a lock-out will be protected.

 [Click here to find out more](#)



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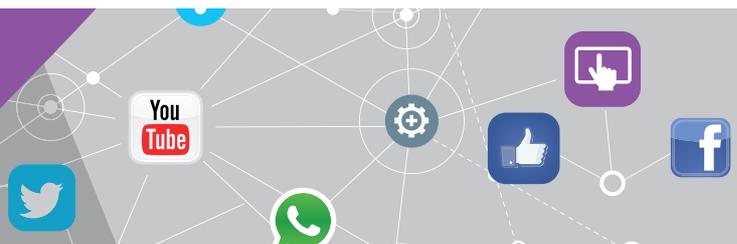
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CDH has been named South Africa's number one large law firm in the PMR Africa Excellence Awards for the eighth year in a row.



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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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