

# 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

### YOUR RACIST COMMENTS ON FACEBOOK WILL GET YOU FIRED!

Your social media posts, as well your comments and likes on other people's posts, can be liked or shared and can easily make their way to your employer. A racist comment made on social media is very serious and it is potentially accessible to hundreds, if not thousands, of other social media users. Even if the post is deleted, once it is shared or if some has taken a screen shot, it can continue circulating on social media or the internet.

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In *Dagane v SSSBC and others* (JR2219/14), an employee, employed as a warrant officer put himself in this situation after posting racist remarks on Julius Malema's Facebook page. He wrote, "[F\*\*\*] this white racist [s\*\*\*]! We must introduce Black apartheid. Whites have no ROOM in our heart and mind. Viva MALEMA." "When the Black Messiah (NM) dies, we'll teach whites some lesson. We'll commit genocide on them. I hate whites." (Sic)

The remarks were picked up by a reporter, an article was published and the remarks made their way to the employee's employer. He was dismissed. The bargaining council found the dismissal was fair. He then approached the Labour Court and once again the court had to deal with a case involving racist comments made by employees. The Labour Court held that "the use of racist language is despicable."

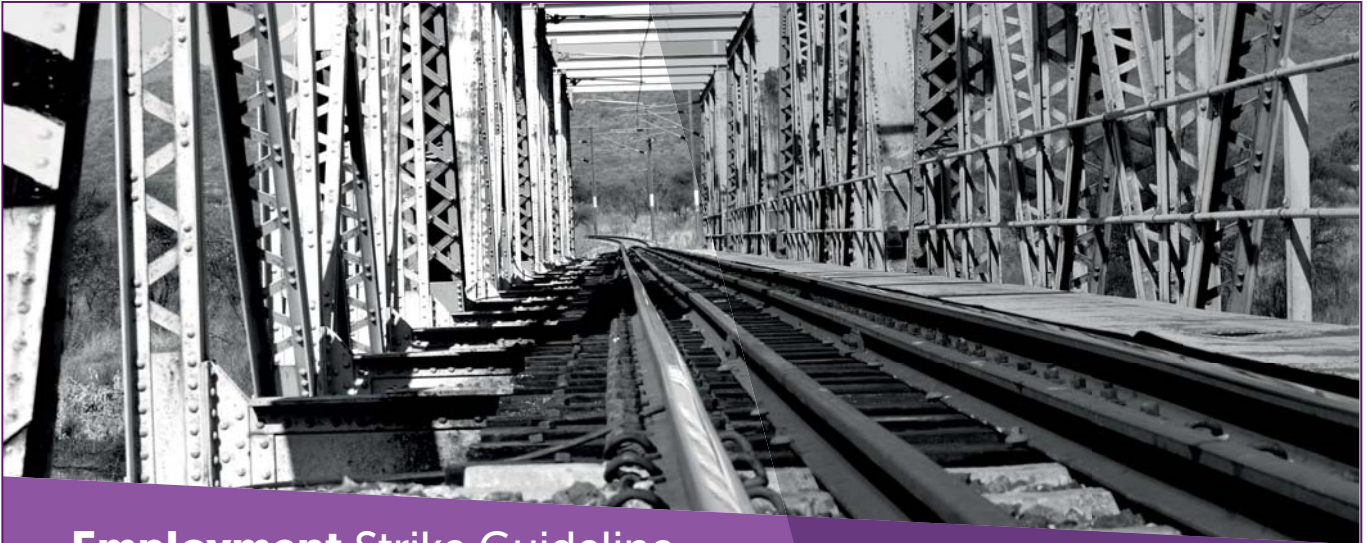
As proof of the employee's remarks, the employer relied on print-outs from Google that incorporated the employee's remarks. The employee argued that he did not make the comments. His defence was that someone created an account using his details or someone hacked into his account. The commissioner at the bargaining council found that on a

balance of probabilities, the employee had made the comments of Facebook. The employee argued the employer could not rely on the print-outs as they were hearsay evidence and inadmissible. Although the commissioner agreed that the print outs amounted to hearsay evidence, she nevertheless used her discretion to admit them as evidence.

The commissioner considered that the employee was a police officer required to protect citizens irrespective of their race. She did not interfere with the employer's decision to dismiss the employee and held the dismissal was fair. The Labour Court found that this was reasonable. It held that the employee "was dismissed for very serious misconduct. He, a SAPS officer, had unfairly and openly discriminated against others (whites) on the basis of race through blatantly discriminatory racial remarks; by blatantly threatening the future safety of white people; and by making remarks on Facebook which amounted to hate speech."

The Labour Court held that "there can be no doubt that dismissal was a fair sanction".

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**Aadil Patel**



## Employment Strike Guideline

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

 [Click here to find out more](#)

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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.

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