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EMPLOYMENT ALERT

IN THIS ISSUE

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Honesty is the best policy: Possible jail time for CV fraudsters

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On 13 August 2019, the National Qualifications Framework Amendment Act, No 12 of 2019 (the Act) was signed into law. While the Act is not yet in effect, when it comes into effect, lying on a CV could result in prison time, a fine or both.

Section 32B(3) of the Act provides that *"A person is guilty of an offence, if such person falsely or fraudulently claims to be holding a qualification or part-qualification registered on the NQF or awarded by an education institution, skills development provider, QC or obtained from a lawfully recognised foreign institution."*

In terms of s32B(6), any person convicted of an offence in terms of s32B(3) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and imprisonment.

The amendments mean that fraudulently misrepresenting one's qualifications or part-qualifications can have very serious consequences, over and above the possibility of being dismissed for misrepresentation and/or dishonesty.

Having regard to the broad manner in which s32B(3) is drafted, the offence is not limited to misrepresentations on CVs alone. It can include, for example, fraudulent misrepresentations on social media platforms such as Facebook and LinkedIn.

Gillian Lumb and Siyabonga Tembe

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Play by the book: Unions prohibited from recruiting outside the scope of their constitutions

On 27 January 2015, NUMSA wrote to Lufil Packaging requesting that it deduct union fees in relation to its (alleged) members.

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On 27 January 2015, NUMSA wrote to Lufil Packaging (Lufil) requesting that it deduct union fees in relation to its (alleged) members. Lufil rejected NUMSA's request on the basis that its core business, namely printing and packaging, falls outside NUMSA's revised scope and that by recruiting from amongst Lufil's employees, NUMSA was acting *ultra vires* its constitution.

NUMSA referred an organisational rights dispute to the CCMA in terms of s21(4) of the Labour Relations Act (LRA). In response, Lufil argued that NUMSA did not have the requisite *locus standi* to refer the dispute to the CCMA.

NUMSA, while conceding that the nature of Lufil's operations is not specified within its scope, argued that this did not preclude it from organising or representing its members who fall outside the specified scope. The commissioner agreed and ruled that a union has standing to seek organisational rights in workplaces that are not specifically included within the scope of its constitution.

Lufil sought to review the ruling and attempted to postpone the arbitration pending the outcome of the review. The commissioner refused to postpone and the arbitration proceeded. The commissioner ruled that NUMSA, which represented 70% of Lufil's employees, should be granted organisational rights including access to the workplace, shop stewards and the deduction of union fees.

Lufil again sought to review this finding and both the review of the jurisdictional ruling as well as the arbitration award were consolidated and set down for hearing before the Labour Court. The Labour Court dismissed the review applications. It held that NUMSA had 70% representation and was entitled to organisational rights. Lufil took the order on appeal.

Before the Labour Appeal Court (LAC), Lufil argued that a union is bound by its constitution and cannot have as members employees who fall outside of the eligibility for membership requirements contained in its constitution. Persons who are not eligible in terms of a union's constitution to be members of that union are not members of the union for purposes of assessing a union's representativeness in terms of Chapter III of the LRA. Any purported admission of such employees as members is *ultra vires* the union's constitution and invalid.

Play by the book: Unions prohibited from recruiting outside the scope of their constitutions...*continued*

The LAC held that NUMSA was not permitted in terms of the common law or the LRA to allow workers to join it where such workers were not eligible for admission in terms of NUMSA's own constitution.

Upholding the appeal and setting aside the Labour Court's order, the LAC held that although the commissioner was correct in finding that NUMSA had the standing to apply for organisational rights and refer a dispute to the CCMA, this did not mean that it had an entitlement to those rights in terms of the requirements of the LRA. The critical issue was whether NUMSA qualified to be granted organisational rights given that Lufil's employees were ineligible to be its members. The LAC found that there was no valid amendment to the scope of NUMSA's constitution to include the packaging industry. It went on to point out that s4(1)(b) of the LRA states that every employee has the right to join a union, subject to its constitution. The implication being that to join a union one must be eligible to join in terms of that union's constitution.

Relying on the Labour Court judgment in *Van Wyk and Taylor v Dando and Van Wyk Print (Pty) Ltd* [1997] 7 BLLR 906 (LC), the LAC found that if it is shown that the persons concerned are precluded by the union's constitution from becoming its members, any purported admission of such employees as members is *ultra vires* the union's constitution and invalid.

The LAC held that NUMSA was not permitted in terms of the common law or the LRA to allow workers to join it where such workers were not eligible for admission in terms of NUMSA's own constitution. As such, NUMSA was not entitled to exercise any organisational rights in relation to Lufil's workplace and its employees.

This case makes it clear that where a union's registered scope does not include a specific industry, the union cannot use its purported members within that industry in an attempt to exercise organisational rights within that industry.

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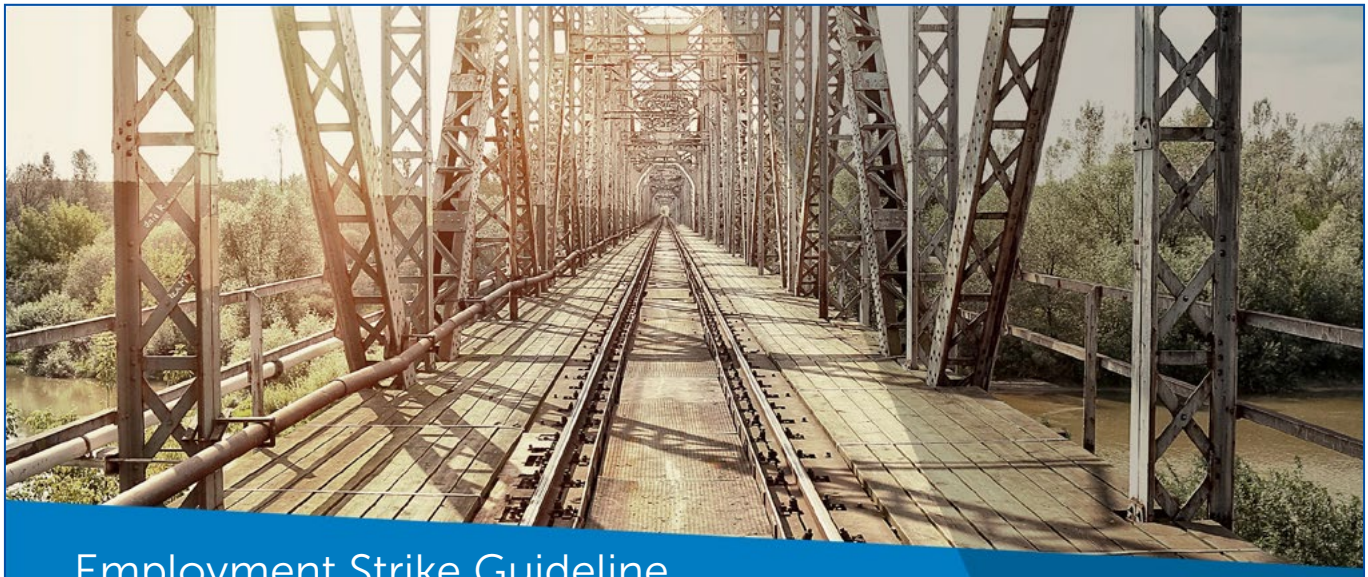

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Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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