

11 DECEMBER 2020

EMPLOYMENT ALERT

IN THIS ISSUE

The issue is now settled: Resignation with immediate effect cannot be used as a mechanism to escape disciplinary action

The Labour Appeal Court (LAC) has finally resolved the debate as to whether an employee's resignation with immediate effect negates an employers' right to discipline an employee during their notice period. In the judgment of *Standard Bank of South Africa Limited v Chiloane* (handed down on 10 December 2020), the court confirmed an employers' right to discipline an employee during their notice period irrespective of whether an employee has resigned with immediate effect.

The issue is now settled: Resignation with immediate effect cannot be used as a mechanism to escape disciplinary action

The LAC confirmed that resignation with immediate effect does not terminate the employment relationship where the employee's contract of employment stipulates a notice period.

The Labour Appeal Court (LAC) has finally resolved the debate as to whether an employee's resignation with immediate effect negates an employers' right to discipline an employee during their notice period. In the judgment of *Standard Bank of South Africa Limited v Chiloane* (handed down on 10 December 2020), the court confirmed an employers' right to discipline an employee during their notice period irrespective of whether an employee has resigned with immediate effect.

The LAC confirmed that resignation with immediate effect does not terminate the employment relationship where the employee's contract of employment stipulates a notice period. Where an employee resigns with immediate

effect, notwithstanding their contractual obligation to serve a notice period, the employment relationship will terminate at the election of the employer, who may either waive the employees' obligation to serve a notice period or seek not to enforce it. Where an employer elects to enforce their rights to an employee working their contractual notice period, an employer may discipline an employee during their notice period, regardless of whether an employee has resigned with immediate effect.

Where parties have not agreed to a notice period, section 38 of the Basic Conditions of Employment Act 75 of 1997 will apply.

Aadil Patel and Riola Kok

TIS THE SEASON TO BE JOLLY....OR IS IT?

The COVID-19 pandemic has created a myriad of additional challenges for employers during the upcoming holiday season.

[CLICK HERE](#) to access our "Employers Guide to the COVID-19 Holiday Season"



CLIFFE DEKKER HOFMEYR

cliffedekkerhofmeyr.com



CLIFFE DEKKER HOFMEYR



**SEXUAL HARASSMENT
IN THE WORKPLACE**
Including the virtual
world of work

**A GUIDE TO MANAGING
SEXUAL HARASSMENT**

The purpose of our 'Sexual Harassment in the Workplace – Including the Virtual World of Work' Guideline, is to empower your organisation with a greater understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

[CLICK HERE TO ACCESS THE GUIDELINE](#)



**CDH'S EMPLOYMENT LAW PRACTICE
CONTINUES TO BLAZE ITS TRAIL,**
expanding on its strong offering to clients
by attracting a new suite of esteemed
employment law experts to the team.

CLICK HERE for further detail regarding  each expert and their areas of expertise.



EMPLOYMENT

RETRENCHMENT GUIDELINE

 **CLICK HERE** for the latest thought leadership and explanation of the legal position in relation to retrenchments, temporary layoffs, short time and retrenchments in the context of business rescue.



**A CHANGING
WORK ORDER**

**CASE LAW
UPDATE 2020**

CLICK HERE to access CDH's 2020 Employment Law booklet, which will assist you in navigating employment relationships in the "new normal".



COVID-19 WORKPLACE HEALTH AND SAFETY ONLINE COMPLIANCE TRAINING

Information. Education. Training.

We have developed a bespoke eLearning product for use on your learning management system, that will help you strengthen your workplace health and safety measures and achieve your statutory obligations in the face of the COVID-19 pandemic.

To purchase or for more information contact OHSonlinetool@cdhlegal.com.

- Our Employment practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.
- Fiona Leppan is ranked as a Leading Individual in Employment in THE LEGAL 500 EMEA 2020.
- Aadil Patel is recommended in Employment in THE LEGAL 500 EMEA 2020.
- Gillian Lumb is recommended in Employment in THE LEGAL 500 EMEA 2020.
- Hugo Pienaar is recommended in Employment in THE LEGAL 500 EMEA 2020.
- Michael Yeates is recommended in Employment in THE LEGAL 500 EMEA 2020.
- Jose Jorge is recommended in Employment in THE LEGAL 500 EMEA 2020.
- Imraan Mahomed is recommended in Employment in THE LEGAL 500 EMEA 2020.



CHAMBERS GLOBAL 2014 - 2020 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2020 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2018 - 2020 in Band 2: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2020 in Band 3: Employment.

Imraan Mahomed ranked by CHAMBERS GLOBAL 2020 in Band 3: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 2: Employment.

Michael Yeates ranked by CHAMBERS GLOBAL 2020 as an up and coming employment lawyer.



POPI AND THE EMPLOYMENT LIFE CYCLE: THE CDH POPI GUIDE

The Protection of Personal Information Act 4 of 2013 (POPI) came into force on 1 July 2020, save for a few provisions related to the amendment of laws and the functions of the Human Rights Commission.

POPI places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the right of employees to privacy.

[CLICK HERE](#) to read our updated guide.



CLIFFE DEKKER HOFMEYR

OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Gillian Lumb
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Imraan Mahomed
Director
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com



Bongani Masuku
Director
T +27 (0)11 562 1498
E bongani.masuku@cdhlegal.com



Phetheni Nkuna
Director
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Hedda Schensema
Director
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Mohsina Chenia
Executive Consultant
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Faan Coetzee
Executive Consultant
T +27 (0)11 562 1600
E faan.coetzee@cdhlegal.com



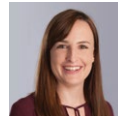
Jean Ewang
Consultant
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com



Avinash Govindjee
Consultant
M +27 (0)83 326 5007
E avinash.govindjee@cdhlegal.com



Riola Kok
Professional Support Lawyer
T +27 (0)11 562 1748
E riola.kok@cdhlegal.com



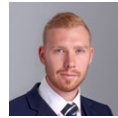
Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



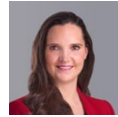
Sean Jamieson
Senior Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Asma Cachalia
Associate
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com



Jaden Cramer
Associate
T +27 (0)11 562 1260
E jaden.cramer@cdhlegal.com



Jordyne Löser
Associate
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com



Tamsanqa Mila
Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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.

PLEASE NOTE

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.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2020 9634/DEC



EMPLOYMENT | cliffedekkerhofmeyr.com

