



# EMPLOYMENT ALERT

## MAKE THE IRON HOT BY STRIKING IT...

The term 'strike season' has lost its meaning lately as reports of labour strike action appear in the press throughout the year. Last week, for example, an international steelmaker advised that it suspended its operation of its steel and vanadium asset in South Africa following a strike at its steel mill. This follows hot on the heels of the judgment delivered by the Constitutional Court confirming liability for loss or damage to property caused during strike action following destruction to and vandalising of property during industrial action. Strike season thus appears to start on 1 January and end on 31 December.

What can an employer do in anticipation of industrial action by its employees?

The first step is ensuring that industrial action is avoided where possible. In many instances, miscommunication between employers and trade unions or employees is a major contributor to industrial disputes. Effective communication channels should be a given in any organisation. These include simple, efficient and effective grievance procedures and mechanisms and regular, managed meetings between management and the trade union/s or worker representatives and regular feedback sessions to employees.

Where industrial action is unavoidable or even necessary, in some instances, to restore bargaining power where the constant threat of strike action becomes crippling to the business, an employer can take meaningful steps to limit the impact of a strike. These include:

- Regularly dusting off its strike contingency plan to ensure it remains relevant and updated. Responsible employees resign, are transferred or promoted and replaced with incumbents

who may not be intimately familiar with a contingency plan drafted two or three years ago. Schedule a standing meeting of the Contingency Team to discuss amendments required to the Contingency Plan. Team members should be allocated critical responsibilities to ensure that everyone knows what to do when the strike trigger is pulled.

- Keeping a strike diary. Ensure that at least one person is tasked with keeping a strike diary to detail the events, including times and descriptions of incidents, participants in the action, possible witnesses and so forth.
- Creating the infrastructure to easily gather evidence for use in possible court applications, disciplinary hearings or arbitrations. Modern technology makes it possible to readily record video and/or audio footage of incidents during strikes. Streetwise employers thus create a CCTV system that will allow them to record protests or misconduct committed at potential hot spots. The recordings gathered from a camera or two focused on the main entrance to a workplace can do wonders to convince the Labour Court that the employees are involved in unlawful action where, for instance, there are clear cases of assault, impeding access or egress or damage to property. Such footage will also assist an employer to discipline staff committing misconduct during strikes.
- Maintaining an updated list of active staff, detailing membership to various trade unions and attendance at the workplace. The list of staff on strike is a critical item in any application to interdict a strike or unlawful action during a strike.

*continued*

- Updating contact details of role-players that may be required during a strike, including after hours, cellular or alternative numbers for trade union leaders, the local SAPS commander, key personnel, attorneys, emergency services, suppliers of replacement labour and so forth.
- Updating standard forms that may be used during a strike, including ultimatums issued to workers participating in unprotected strike action, notices and affidavits that can be amended for an application to the Labour Court and communiques to non-striking staff, to name but a few.

In most instances, employers have a reasonable apprehension when their employees are about to embark on a strike. The time between the first signs of unhappiness to the issuing of the strike notice ought to be used wisely to ensure that an employer can limit the harm caused by a strike and take reasonable steps to discipline those who use the right to strike as an excuse for unlawful conduct.

Employers should take care, though, that they remain able to meet the demands of a strike at short or no notice as well. Some strikes are not preceded by a friendly invitation with an RSVP date...

*Johan Botes*

## CONTACT US

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



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



**Johan Botes**  
Director  
T + 27 (0)11 562 1124  
E johan.botes@dcladh.com

**Gillian Lumb**  
Director  
Regional Practice Head  
T + 27 (0)21 481 6315  
E gillian.lumb@dcladh.com

**Melanie Hart**  
Director  
T + 27 (0)11 562 1179  
E melanie.hart@dcladh.com

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

**Gavin Stansfield**  
Director  
T + 27 (0)21 481 6314  
E gavin.stansfield@dcladh.com

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

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

**Mabasa Sibanda**  
Senior Associate  
T + 27 (0)11 562 1182  
E mabasa.sibanda@dcladh.com

**Pranisha Maharaj**  
Senior Associate  
T + 27 (0)21 481 6460  
E pranisha.maharaj@dcladh.com

**Kirsten Caddy**  
Associate  
T + 27 (0)11 562 1412  
E kirsten.caddy@dcladh.com

**Mariam Jasset**  
Associate  
T + 27 (0)11 562 1355  
E mariam.jasset@dcladh.com

**Mark Meyerowitz**  
Associate  
T + 27 (0)11 562 1125  
E mark.meyerowitz@dcladh.com

**Ndumiso Zwane**  
Associate  
T + 27 (0)11 562 1231  
E ndumiso.zwane@dcladh.com

**Lerato Phashe**  
Associate  
T + 27 (0)11 562 1202  
E lerato.phashe@dcladh.com

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.

**BBBEE STATUS: LEVEL THREE CONTRIBUTOR**

©2012