

EMPLOYMENT ALERT

24 September 2012

REQUESTS FOR FURTHER PARTICULARS PENDING A DISCIPLINARY ENQUIRY

Employers are often confronted with voluminous requests for information or further particulars in relation to disciplinary charges levelled against an employee.

The kneejerk reaction of most employers to such requests is that this is simply a delaying tactic initiated by the accused employee and/or his representative trade union and should be ignored.

The matter of *Mhlambi v Matjhabeng Municipality & Another (2003) 24 ILJ 1659 (O)* provides guidance to employers on how to address such a request for further particulars.

The Applicant employee was served with a notice of a disciplinary enquiry to be instituted against him in respect of two charges of misconduct. The employee requested further particulars in relation to each charge, but was dissatisfied by the response received from the municipality. The employee launched an urgent interdict seeking to prevent the municipality from proceeding with the enquiry until such time as the requested further particulars had been furnished.

The Court held that a request for further particulars is to enable the accused employee to prepare for the hearing, which is an ingredient of the right to a fair trial. The principles of natural justice demanded that a person facing such a hearing should be furnished with such information reasonably required for the purposes of preparation.

It was permissible to order the furnishing of further particulars in pending disciplinary proceedings if the circumstances warranted it. The power to order further particulars to be furnished was, however, not a power to be lightly exercised by the courts - they should be slow to intervene in routine disciplinary enquiries.

IN THIS ISSUE

- **Requests for further particulars pending a disciplinary enquiry**

The Court went further to qualify that the mere fact that a request for further particulars could not be ignored did not mean that voluminous requests of this nature should be countenanced. The employer could confine itself to providing what was reasonably necessary.

Based on the above, it is incumbent on employers to address requests for further particulars received from the accused employee and/or his representative trade union. However, the test for the disclosure of such particulars is whether such information is reasonably necessary for the employee to conduct his defence in relation to the charges levelled against him.

Melanie Hart

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



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



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



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



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



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



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



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



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



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



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



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



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

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@dcladh.com

CAPETOWN

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@dcladh.com

www.cliffedekkerhofmeyr.com

©2012

EVERYTHING MATTERS

Cliffe Dekker Hofmeyr is a member of DLA Piper Group,
an alliance of legal practices