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EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

IN THIS ISSUE

DO WORKERS HAVE A RIGHT TO CARRY TRADITIONAL WEAPONS WHILE STRIKING?

Although the right to strike is constitutionally entrenched, sadly in South Africa many strikes are accompanied by violence and intimidation. The carrying of traditional weapons in such a situation adds to the intimidation and threats to fellow employees who wish to exercise their right of disassociation.



[CLICK HERE](#) to view our NEW Employment Strike Guideline

DO WORKERS HAVE A RIGHT TO CARRY TRADITIONAL WEAPONS WHILE STRIKING?

It is common to see striking employees carrying traditional weapons (loosely interpreted to include pangas, spears, knobkerries, sjamboks, clubs and sticks) during a strike.

While employees have the right to freedom of culture and the right to participate in cultural activities, a strike or picket is not a cultural or religious activity.



Although the right to strike is constitutionally entrenched, most strikes in South Africa are accompanied by violence and intimidation. The carrying of traditional weapons in such a situation adds to the intimidation and threats to fellow employees who wish to exercise their right of disassociation.

Given all the protections afforded by the Labour Relations Act, No 66 of 1995 (LRA), the Dangerous Weapons Act, No 15 of 2013 (Weapons Act) and a host of other statutes, strikers and picketers must be peaceful and unarmed.

Our Constitution does not recognise the "right to bear arms". Notwithstanding this, it is common to see striking employees carrying traditional weapons (loosely interpreted to include pangas, spears, knobkerries, sjamboks, clubs and sticks) during a strike.

While employees have the right to freedom of culture and the right to participate in cultural activities, a strike or picket is not a cultural or religious activity.

A balance must be maintained between the right to cultural expression and the right of individuals to be free from all forms of violence and intimidation. Another factor worthy of consideration is the duty of the employer, under the occupational safety legislation, to protect their employees and to provide a safe working environment.

This issue no doubt contributed to the legislature implementing and subsequently amending both the Weapons Act and the Regulation of Gatherings Act, No 205 of 1993 (Gatherings Act).

The Weapons Act regulates possession of dangerous weapons by prohibiting any dangerous weapon in circumstances which reasonably suggest that the possessor intends to use the weapon to unlawful ends.

The definition of a "dangerous weapon" under the Weapons Act is "any object, other than a firearm, designed as a weapon and capable of producing death or serious bodily harm, if it were used for an unlawful purpose" [emphasis added].

Although the Gatherings Act essentially deals with gatherings outside of the scope of picketing, it is a useful reference. Thus, the Gatherings Act provides in Chapter 3, item 4, that participants at any gathering or demonstration shall abide by any law in respect of the carrying of dangerous weapons, and the convenor and marshals, if any, shall take all reasonable steps to ensure that the said laws are complied with.

Item 6 of the Gatherings Act provides that no person present at or participating in a gathering or demonstration shall perform any act or utter any words which are calculated or likely to cause or encourage violence against any person or group of persons.

DO WORKERS HAVE A RIGHT TO CARRY TRADITIONAL WEAPONS WHILE STRIKING?

CONTINUED

A proactive approach for employers would be to conclude comprehensive picketing rules prior to any strike or picket which prohibit the carrying of traditional weapons.



According to item 7(a) of the National Economic Development and Labour Council (Nedlac) Code of Good Practice on picketing, picketers may not commit any action which may be unlawful, including but not limited to any action which is or may be perceived to be violent.

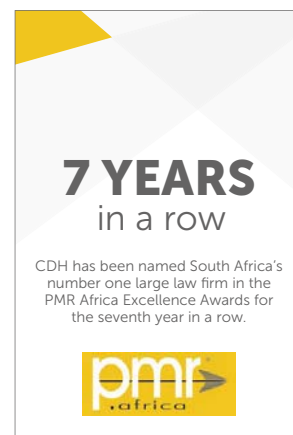
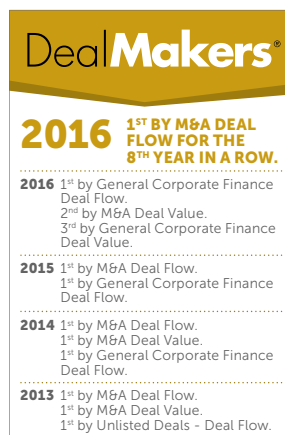
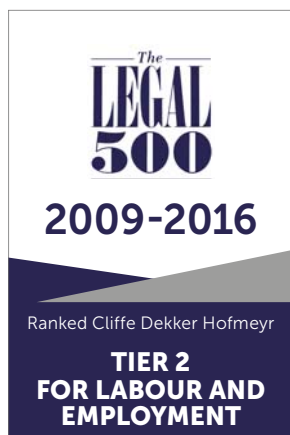
Having regard to the aforementioned Acts and Code as well as other sources, it is reasonable to classify a traditional weapon as a "dangerous object" or "weapon" within the labour sphere. In light of this, it is also reasonable to prohibit the carrying of traditional weapons at all labour disputes on the basis that they are likely to cause or encourage violence, or may be perceived to be violent.

Such an approach is in line with our courts interdicting the carrying of traditional weapons in a number of decisions.

It is reiterated that a strike or picketing is a form of labour protest and not a cultural event.

A proactive approach for employers would be to conclude comprehensive picketing rules prior to any strike or picket which prohibit the carrying of traditional weapons. Employers should specify a list of weapons which are prohibited.

Hugo Pienaar and Prinoleen Naidoo



Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

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