

# EMPLOYMENT ALERT

## LET OUR STRIKE GUIDELINES BE THE STARTING POINT FOR YOUR STRIKE STRATEGY

At Cliffe Dekker Hofmeyr we pride ourselves in providing our clients with practical solution driven information in line with the current challenges faced by our clients.

Due to the increase in strikes and strike violence in South Africa, our employment practice developed useful strike guidelines for our clients' benefit. These guidelines will provide clients with practical information about strikes, lock-outs and picketing and answer some of the more complex questions around these topics. The guidelines are definitely the starting point when considering a strike strategy and when preparing for industrial action. Our strike guidelines can be accessed on our website.

## IN THIS ISSUE

### CV MISREPRESENTATION CONSTITUTES GROSS DISHONESTY

The case of *LTE Consulting (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (JR1289/14) [2017] ZALCJHB 291 (8 August 2017) dealt with misrepresentation in a CV. The employee in this case employed in the position of financial manager in 2009 was charged in 2013 by his employer, LTE Consulting (Pty) Ltd for having misrepresented his qualification in his CV at the time of his appointment. The employee was dismissed for gross dishonesty following a disciplinary inquiry. Unhappy with the dismissal, he referred an unfair dismissal dispute to the CCMA.

# CV MISREPRESENTATION CONSTITUTES GROSS DISHONESTY

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**The case of *LTE Consulting (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (JR1289/14) [2017] ZALCJHB 291 (8 August 2017) dealt with misrepresentation in a CV. The employee in this case employed in the position of financial manager in 2009 was charged in 2013 by his employer, LTE Consulting (Pty) Ltd for having misrepresented his qualification in his CV at the time of his appointment. The employee was dismissed for gross dishonesty following a disciplinary inquiry. Unhappy with the dismissal, he referred an unfair dismissal dispute to the CCMA.**

At the time of his appointment, the employee was 82 years' old which was way past the company's retirement age of 65. Prior to being offered the position of finance manager, the employee was offered a 5-month fixed term contract as assistant company secretary, an offer he refused. The employee was then re-offered the position of company secretary on a permanent basis, which he again refused. It was in the process of considering these offers that the company came across the employee's CV. Certain qualifications that were listed in his CV were missing from his file, these were a B.Com Chartered Accountant (SA) qualification and an MBA from Wits. It transpired that the company's HR department had requested the outstanding qualifications from the employee but they were never provided by him.

At the CCMA arbitration, the company testified that during the interview, the position was heavily contested as there were two other candidates but the employee was the preferred candidate based on his tertiary qualifications, as reflected in his CV; as well as his job knowledge. He scored high for formal qualification on his interview score cards with written annotations such as "the employee was financially qualified and experienced; and that he was a Chartered Accountant".

The employee admitted that he did not have the qualifications in question, however, he had similar qualifications that were the equivalent to the outstanding qualifications. The employee testified that he wrote an examination for B.Com first year accountancy, which is equivalent to a Chartered Accountant degree. He argued that equivalent certificates and diplomas were often better than degrees and that his impression was that a very few people knew this. He further alleged that the company had been trying to put him in a position to force him to retire since he was beyond the company's normal retirement age, and that is why they come up with "all these stupid things".

The employee's representative further argued that in so far as the employee misrepresented his qualification, the misrepresentation was not material as it was not a requirement for appointment to the finance manager position. In any event, it was argued that the employee was not guilty because the company had failed to prove that the employee was not qualified for the position.

In considering the evidence led, the commissioner concluded that the employee's dismissal was unfair and that the company, after realising that the employee was passed retirement age, had come up with a plan to force the employee

# CV MISREPRESENTATION CONSTITUTES GROSS DISHONESTY

CONTINUED

*The Acting Judge concluded that, the fact that the qualifications were not a requirement for the position does not detract from the employee's dishonesty in misrepresenting that he was a qualified Chartered Accountant.*



out of employment. The commissioner held that the CV was not an entry gate into the position for the employee, therefore it could not be an issue, in any event, the employee had an equivalent qualification. An assessment of factors in mitigation and aggravation demonstrated that dismissal was an inappropriate sanction.


On review, the Labour Court found the arbitration award was not one which a reasonable commissioner would have made. It held that there was no merit in the employee's arguments because the employee could not contend to be qualified as he has not passed the board examination, nor was he a registered Chartered Accountant as he had confirmed during the interview by handing in his CV. It held that it is evident that his formal qualifications were a material consideration for his appointment to the position as he had received a significantly high score card on formal qualification, resulting in him being the preferred candidate.

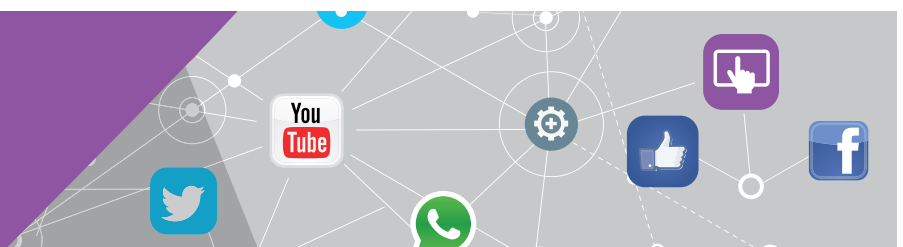
The Acting Judge concluded that, the fact that the qualifications were not a requirement for the position does not detract from the employee's dishonesty

in misrepresenting that he was a qualified Chartered Accountant. The employee's dishonesty was gross and he had shown no remorse for his misconduct, to the extent that he referred to the company's concerns as being "stupid little things". It held that the award is not that which a reasonable commissioner would have made as dismissal was patently warranted in this case. In referring to numerous LAC decisions, the court concluded that to place an employee who was guilty of gross dishonesty back in a position where honesty and integrity are paramount to the execution of duties is grossly unreasonable. Accordingly, the dismissal was found to be substantively fair and the arbitration award was set aside.

This Labour Court decision on gross dishonesty regarding CV misrepresentations follows a plethora of other Labour Court and LAC decisions that have dealt with this issue and have consistently held that this constitutes gross dishonesty which warrants dismissal and renders continued employment intolerable.

*Gavin Stansfield and Zola Mcaciso*

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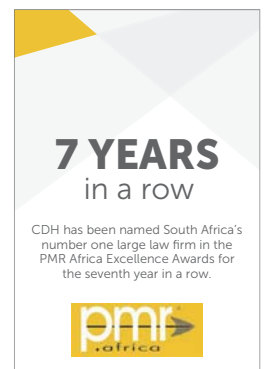
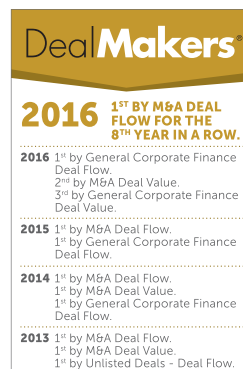




## Employment Strike Guideline

Find out when a lock-out will be protected.

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Michael Yeates named winner in the **2015** and **2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



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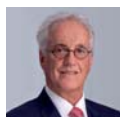
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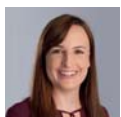
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### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 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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