

# 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

### YOU WERE NOT FIRED, YOU DECIDED TO RETIRE

In the case of *Green v Hartog* (C88/2016) [2017] ZALCCT 40 (5 September 2017), the employee approached the Labour Court alleging that she was dismissed because of her age. She argued that there was no agreed retirement age and that her "dismissal", when she was 56 years old, was automatically unfair.

# YOU WERE NOT FIRED, YOU DECIDED TO RETIRE

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*Her employer argued that he discussed the employee's poor work performance and absenteeism with her and suggested that she retire instead of facing a disciplinary process.*



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The employee claimed that she was given a letter of termination stating that she had reached her retirement age. She also argued that her contract did not contain a clause pertaining to the retirement age. Her case was that the employer "dishonestly inserted a retirement age into the contract she signed."

Her employer, on the other hand, argued that he discussed the employee's poor work performance and absenteeism with her and suggested that she retire instead of facing a disciplinary process. The employer alleged that she accepted the option of retirement.

Although, the employee's initial employment contract did not contain a retirement age, the employer argued that the employee together with other employees signed an amended contract that included a retirement age of 55. The employer also gave evidence that the employees signed the amended contracts in each other's presence and that they signed as each other's witnesses.

The Labour Court considered the conflicting evidence regarding whether there was an agreement to retire. It held that the employee's version that she did not sign the amended contract in the presence of the other employees was improbable and that, in the Court's view "cast doubt on the veracity of [the employee's] evidence as a whole..."

The Court held that "[i]t is common cause that she signed the final version of the contract and initialled it on every page. She therefore expressly indicated her acceptance of the terms on each page.

Our courts have made it clear that a person will not escape the consequences of her signature if they have not read the document in question. One is expected to read what one signs."

The Court found that the employee knew what she was signing and signed the contract with full knowledge that it contained a clause with a retirement age.

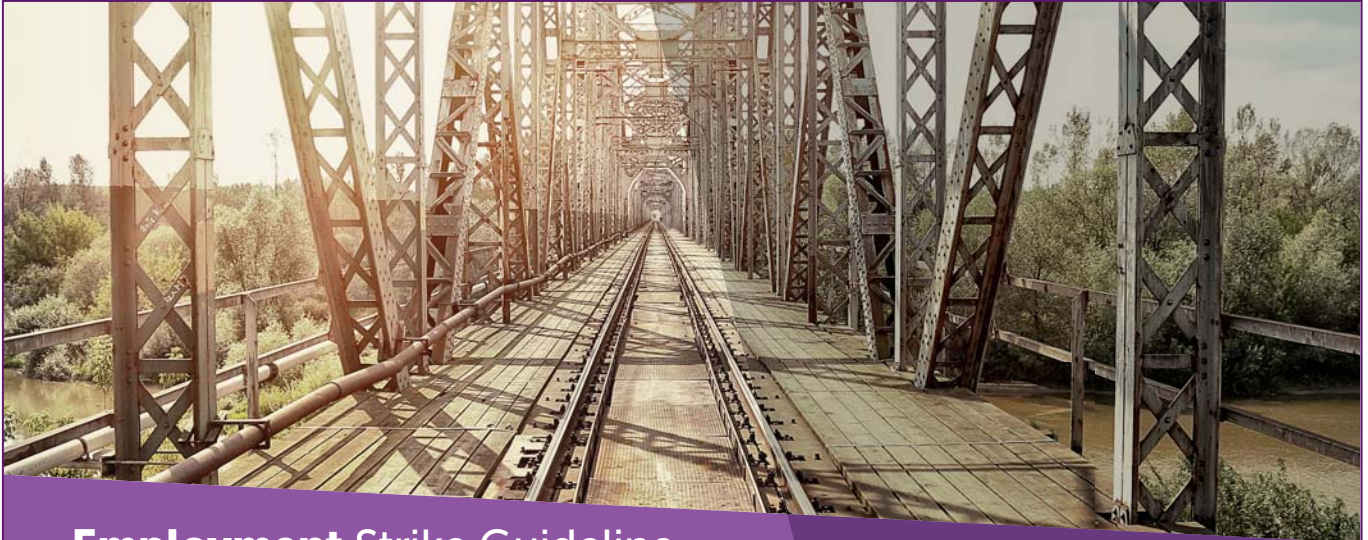
In dealing with whether the employee was dismissed, the Court considered the employer's evidence that the employee was given repeated warnings over a number of years and given this history, the employer's evidence was more probable that the employee agreed to retire after she was called into a meeting about her conduct and performance and given the option of retiring or submitting to a disciplinary process.

The Court found that the employee's credibility was undermined by her version that she did not sign the amended agreement together with the other employees.

The Labour Court found that on a balance of probabilities the employee was not dismissed. It agreed with the employer that the employee agreed to resign instead of facing disciplinary action. As there was no dismissal, the Court did not need to determine the question of an automatically unfair dismissal. The employee's claim was dismissed with costs.

***Thabang Rapuleng***





## Employment Strike Guideline

**Find out what steps an employer can take when striking employees ignore court orders.**

 [Click here to find out more](#)

CHAMBERS GLOBAL 2014 - 2017 ranks our Employment practice in Band 2: Employment.

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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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### 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.

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.

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