



7 JANUARY 2019

# EMPLOYMENT ALERT

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## IN THIS ISSUE

### CODE OF GOOD PRACTICE FOR THE HANDLING OF S\*XUAL HARASSMENT CASES

Until 19 December 2018, employers had to apply two Codes of Good Practice for the handling of s\*xual harassment cases in the workplace. The first code was issued in 1998 (Government Notice R1367 of 17 July 1998). This code was amended on 4 August 2005, by the Amendments to the Code of Good Practice on the Handling of S\*xual Harassment Cases in the Workplace (General Notice 1357).

### PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2019

Every year, there are a number of public holidays in South Africa.

# CODE OF GOOD PRACTICE FOR THE HANDLING OF S\*XUAL HARASSMENT CASES

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Until 19 December 2018, employers had to apply two Codes of Good Practice for the handling of s\*xual harassment cases in the workplace. The first code was issued in 1998 (Government Notice R1367 of 17 July 1998). This code was amended on 4 August 2005, by the Amendments to the Code of Good Practice on the Handling of S\*xual Harassment Cases in the Workplace (General Notice 1357).

The amended code introduced a new definition for what constitutes s\*xual harassment - it provided guidance on what factors to consider in determining whether an act of s\*xual harassment has occurred, and it placed a greater onus on employers to take positive steps to implement a s\*xual harassment policy.

Logically, the amended code should have replaced the previous code, however, the first code was never repealed. This meant that both codes applied, and employers had to consider the provisions of both codes when dealing with cases of s\*xual harassment.

As the Labour Appeal Court held in *Campbell Scientific Africa (Pty) Ltd v Simmers and Others* (CA 14/2014) [2015] ZALCCT 62:

*"In spite of it being termed the "Amended" Code, this Code does not replace or supersede the 1998 Code, which to date has not been withdrawn. The result is that in terms of s203(3), both Codes are "relevant codes of good practice" to guide commissioners in the interpretation and application of the LRA."*

On 19 December 2018, the Minister of Labour issued a notice formally repealing and replacing the 1998 code with the amended code of 2005. This brings certainty to employers and CCMA commissioners about which code to apply. The clarity provided by the notice of repeal is welcomed.

*Jose Jorge and Steven Adams*



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# PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2019

*Two consecutive public holidays can have a significant impact on working arrangements and shifts.*

*There is bad news for employees who are on strike on public holidays in that they are not entitled to any remuneration.*

**Every year, there are a number of public holidays in South Africa.**

The public holidays for 2019 are:

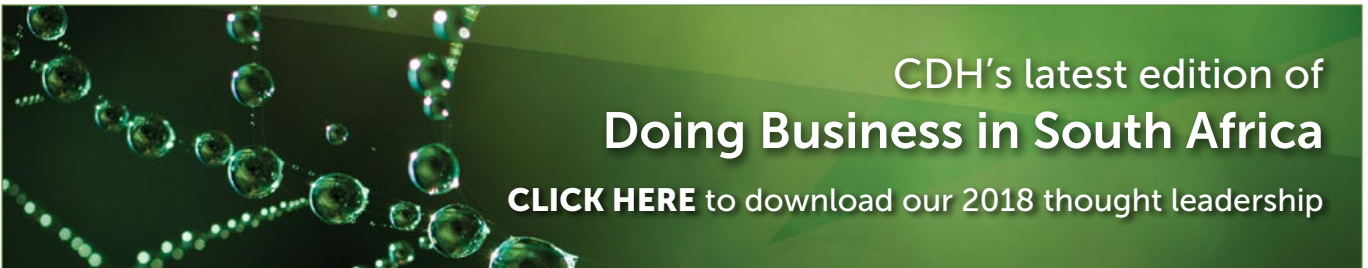
- New Year's Day, Tuesday, 1 January 2019;
- Human Rights Day, Thursday, 21 March 2019;
- Good Friday, Friday, 19 April 2019;
- Family Day, Monday, 22 April 2019;
- Freedom Day, Saturday, 27 April 2019;
- Workers' Day, Wednesday, 1 May 2019;
- Youth Day, Sunday, 16 June 2019;
- Additional Public Holiday, Monday, 17 June 2019;
- National Women's Day, Friday, 9 August 2019;
- Heritage Day, Tuesday, 24 September 2019;
- Day of Reconciliation, Monday, 16 December 2019;
- Christmas Day, Wednesday, 25 December 2019;

- Day of Goodwill, Thursday, 26 December 2019; and
- New Year's day, Wednesday, 1 January 2020.

Youth Day (16 June 2019) is the only public holiday that falls on a Sunday. The next day, Monday (17 June 2019) becomes an additional public holiday in terms of the Public Holidays Act. Both 16 and 17 June 2019 are thus public holidays.

Two consecutive public holidays can have a significant impact on working arrangements and shifts, especially in workplaces that run a 24/7/365 operation. Employers should consider the effect on the workplace and implement measures to address the impact on work. Employers should also consider collective agreements and Bargaining Council agreements that impact public holidays, working arrangements and shifts.

There is bad news for employees who are on strike on public holidays in that they are not entitled to any remuneration. They are only entitled to be remunerated for public



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# PLANNING FOR PUBLIC HOLIDAYS AND EXTRA PUBLIC HOLIDAYS IN 2019

## CONTINUED

*It is expected that the election will be held in May 2019. Election Day usually is proclaimed as a public holiday.*

holidays if they "ordinarily worked" on the public holiday (see section 16 of the Basic Conditions of Employment Act, No 75 of 1997). As they would not ordinarily work on any day during the strike, they would not ordinarily work on a public holiday that falls in the strike period. Thus, they are not entitled to remuneration for the public holiday during the strike.

Employers can expect requests for additional leave days on Friday, 22 March 2019, around Wednesday,

1 May 2019, Monday 23 September 2019 as these dates are convenient to employees to create long weekends.

It is expected that the election will be held in May 2019. Election Day usually is proclaimed as a public holiday.

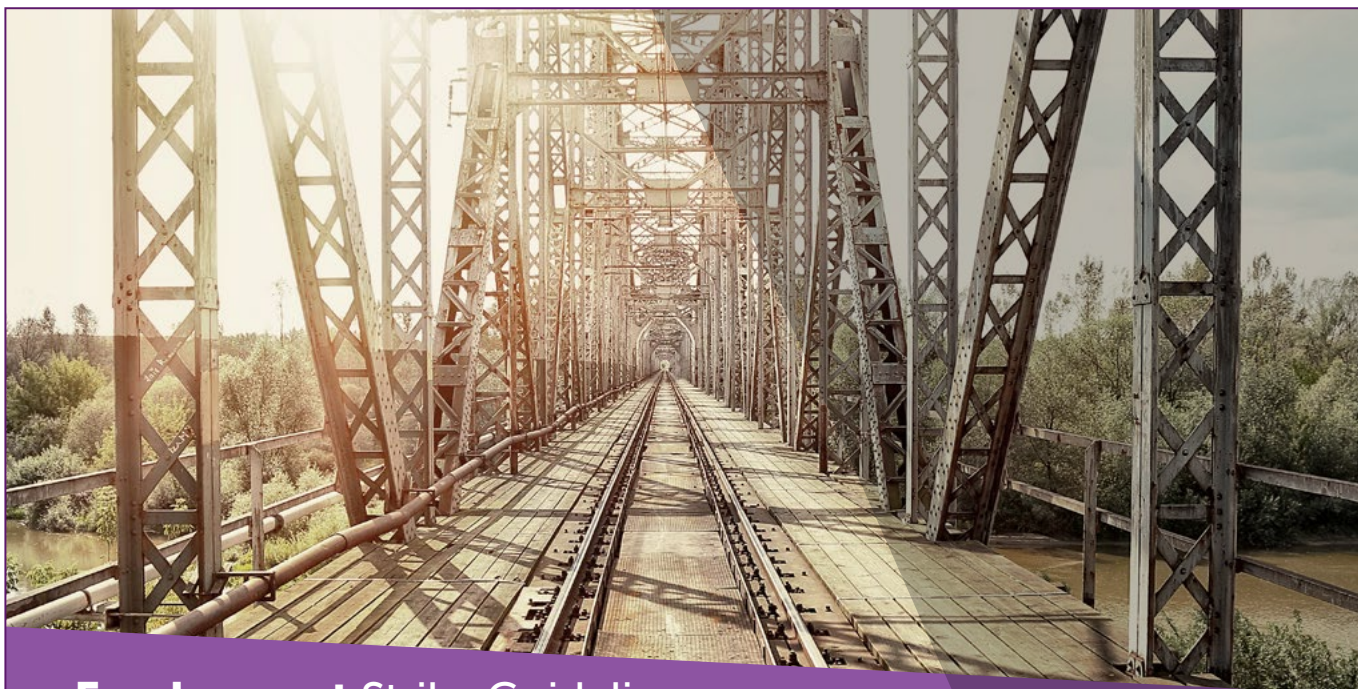
For additional information contact the Employment Law Department or [Faan.Coetzee@cdhlegal.com](mailto:Faan.Coetzee@cdhlegal.com)

**Faan Coetzee**



Michael Yeates was named the exclusive South African winner of the **ILO Client Choice Awards 2015 – 2016** in the category Employment and Benefits as well as in **2018** in the Immigration category.





## Employment Strike Guideline

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

 [Click here to find out more](#)



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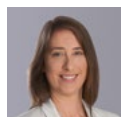


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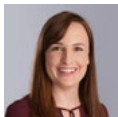
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### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 2 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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