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EMPLOYMENT LAW ALERT

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Many employers are all too aware of the potential pitfalls associated with engaging deemed employees, i.e. employees who earn less than the annual earnings threshold set by the Minister of Employment and Labour from time to time, which is currently R211,596.30 and who, in terms of section 198A(3)(b) of the Labour Relations Act, 1995 (LRA), are deemed to be employees of the client for purposes of the LRA, and not employees of the temporary employment service (TES).

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Rule 11 of the Rules for the Conduct of Proceedings in the Labour Court (the Labour Court Rules) is commonly referred to as the *"catch all"* rule in view of the fact that it enables litigants in the Labour Court to bring an application for anything that is not expressly provided for in the Labour Court Rules.

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Beware who disciplines and dismisses a deemed employee

One of the grounds on which the employee challenged the fairness of his dismissal was that he had been disciplined and dismissed by the TES, arguing that the TES was not his employer and as a result, had no authority to discipline and dismiss him.

Many employers are all too aware of the potential pitfalls associated with engaging deemed employees, i.e. employees who earn less than the annual earnings threshold set by the Minister of Employment and Labour from time to time, which is currently R211,596.30 and who, in terms of section 198A(3)(b) of the Labour Relations Act, 1995 (LRA), are deemed to be employees of the client for purposes of the LRA, and not employees of the temporary employment service (TES).

One of these potential pitfalls was the focus of a recent CCMA award in SA Commercial Catering & Allied Workers Union obo Noda and Sovereign Foods & Another (2021) 42 ILJ 929 (CCMA). Sovereign Foods (SF) made use of the services of a TES. The TES placed the employee in question at SF's workplace. After a few years the employee was disciplined for misconduct and dismissed. The employee referred a dispute to the CCMA challenging the substantive fairness of his dismissal. It was common cause in the arbitration proceedings that the employee was deemed to be an employee of SF for purposes of the LRA. One of the grounds on which the employee challenged the fairness of his dismissal was that he had been disciplined and dismissed by the TES, arguing that the TES was not his employer and as a result, had no authority to discipline and dismiss him.

The TES had issued the employee with notice to attend a disciplinary enquiry and notice of his dismissal. The TES and SF argued that the TES was providing these services in terms of its service level agreement with SF and that it was permitted to take this action given the triangular relationship between the parties - the TES, SF and the employee.

The commissioner considered the decision of the Constitutional Court in *Assign Services (Pty) Limited v National Union of Metalworkers of South Africa & Others* 2018 (6) SA 232 (CC) and its interpretation of section 198A(3)(b). In particular, he referred to and relied on the Constitutional Court's finding that when the deeming provision applies, the client becomes the sole employer of the employee for purposes of the LRA. The commissioner found that given the finding in Assign Services and the fact that SF was the sole employer, the TES had no authority to discipline and dismiss the employee.

The commissioner did not accept the TES and SF's evidence that the disciplinary enquiry was conducted by the TES, which made recommendations to SF and based on those recommendations, SF instructed the TES to proceed with the sanction of dismissal. The commissioner was not convinced by this, finding that the TES and SF had not placed any evidence before him that showed that the TES made a recommendation to SF as to the outcome and sanction and that SF endorsed the recommendation.

Beware who disciplines and dismisses a deemed employee...*continued*

The commissioner concluded that once the deeming provision is triggered, the TES is no longer an employer of the placed employee and the client as the sole employer, is the party who has the authority to discipline and dismiss the employee.

The commissioner found that the notice served on the employee to attend the disciplinary enquiry was on the letterhead of the TES, the witness statements indicated that the TES was in control of the disciplinary enquiry and the outcome of the disciplinary enquiry was also issued on the letterhead of the TES. The commissioner reasoned that all of this was an indication that the TES initiated and concluded the disciplinary process, without SF having any say in the matter.

The commissioner concluded that once the deeming provision is triggered, the TES is no longer an employer of the placed employee and the client as the sole employer, is the party who has the authority to discipline and dismiss the employee. In the circumstances, the commissioner found the employee's dismissal substantively unfair and order that he be reinstated with nine months' backpay.

This award is an important reminder to clients who engage the services of deemed employees that if a TES is in any way involved in the disciplining of deemed employees that the client must ensure that any steps taken by the TES are at the instance and on behalf of the client, and that it is the client who must make the decision to discipline and ultimately, approve or endorse the sanction.

Gillian Lumb and Mbulelo Mango

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An employer's recourse to lockout and appoint replacement labour

On 5 December 2019, SAA was placed under voluntary business rescue. A rescue plan was adopted on 14 July 2020. Pursuant to the adoption of the rescue plan, SAA issued a Notice in terms of section 189(3) of the LRA to all its employees.

Airline Pilots Association of South Africa (ALPA-SA), as represented by the South African Airways Pilots Association (SAAPA), a branch of ALPA-SA obo Members v South African Airways (SOC) Limited and Others (J398/21) [2021] ZALCJHB 57.

The Applicant, Airline Pilots Association of South Africa (ALPA-SA), as represented by the South African Airways Pilots Association (SAAPA) represents about 89% of the Pilots employed by South African Airways (SOC) Limited (SAA). Since December 2001, SAA tried to renegotiate and/or cancel a long-standing Collective Agreement (Regulating Agreement) governing the pilots' terms and conditions of employment. It contended that the agreement is unduly onerous and unsustainable given its financial position. There was private arbitration held, the outcome of which was that the Regulating Agreement could not be terminated, even on notice. It could only be rescinded through a subsequent agreement. This did not deter SAA. In December 2019, it launched applications in the Labour Court and High Court to declare the agreement unconstitutional. These had not been determined as at the hearing before the Labour Court.

Business rescue and section 189A LRA process at SAA

On 5 December 2019, SAA was placed under voluntary business rescue. A rescue plan was adopted on 14 July 2020. Pursuant to the adoption of the rescue plan, SAA issued a Notice in terms of section 189(3) of the LRA to all its employees. Facilitation was conducted by the CCMA. When the parties could not come to an agreement regarding re-negotiating new terms and conditions of employment for its employees, SAA made various demands including termination of the Regulating Agreement and any other collective agreements between the parties. It also tabled revised salaries, and terms and conditions of employment. These were rejected. Thereafter, SAA referred a mutual interest dispute to the CCMA. The parties deadlocked. SAA then issued a notice of lockout in terms of section 64(1)(c) of the LRA. In response, SAAPA sought a final order from the Labour Court on an urgent basis declaring the lockout unlawful and unprotected. The court differed and dismissed that application. SAAPA appealed, however, were unsuccessful.

Basis for SAAPA's interdict

On 30 March 2021, SAAPA gave notice of its intention to embark upon strike action in response to the lockout. SAA continued with the lockout. On April 2021, SAAPA approached the Labour Court on an urgent basis seeking an order declaring that the lockout effected by SAA was not in response to a strike on its part, SAA is not permitted to employ replacement labourers in place of its members who were engaged in industrial action, and SAA's re-employment of pilots whose services were previously terminated to perform the functions of the striking pilots constituted a contravention of section 76 of the LRA.

An employer's recourse to lockout and appoint replacement labour

...continued

Essentially, the issue that the Labour Court was whether SAA's conduct infringes the provisions of section 76(1)(b) of the LRA, and whether it was appropriate to interdict them from doing so pending the main application on 15 June 2021.

Issue before the Labour Court

Essentially, the issue that the Labour Court was whether SAA's conduct infringes the provisions of section 76(1)(b) of the LRA, and whether it was appropriate to interdict them from doing so pending the main application on 15 June 2021. Section 76 provides that-

(1) An employer may not take into employment any person-

(a) to continue or maintain production during a protected strike if the whole or a part of the employer's service has been designated a maintenance service; or

(b) for the purposes of performing the work of any employee who is locked out, unless the lockout is in response to a strike.

The court held that SAA was permitted to employ replacement labour even if it had initially instituted a lockout before the commencement of the strike, on the ground that the individuals who would ordinarily have performed the work in question, were not initially locked-out, but had refused to perform those duties. SAA was also not prohibited from doing so even if it had initially imposed a lockout. When the SAAPA commenced its strike action, SAA confirmed the continuation of its lockout in response to that strike. This entitled SAA to engage replacement labour. SAAPA had not satisfied the requirements of the relief it sought, and the application was dismissed.

Employers may be justified in locking out employees who refuse to perform their duties, even before receipt of a strike notice. The Labour Court held that this lockout was protected and lawful. Furthermore, the employer will have the right to appoint replacement labour in respect of striking employees. After receipt of SAAPA's strike notice, SAA did not issue a new lockout notice. It simply advised the union that the already imposed lockout would continue, and then appointed replacement labour.

Phetheni Nkuna and Mthokozisi Zungu

KENYA

Should employers offer employees incentives to get vaccinated?

The Occupational Safety and Health Act imposes an obligation on employers to maintain the workplace in a condition that is safe and without risks to the health of employees.

As the second round of COVID-19 vaccinations kicks off this month, the Kenyan government aims to vaccinate at least 60% of the population by June 2022. Employers are also keen on their employees being vaccinated so that they are safer at the workplace and to facilitate a full re-opening of the economy. Is it permissible though for employers to offer employees incentives to get vaccinated?

The Occupational Safety and Health Act imposes an obligation on employers to maintain the workplace in a condition that is safe and without risks to the health of employees. The Directorate of Occupational Safety and Health Services also provides a non-binding recommendation that all workplaces should develop infection control plans and policies aimed at minimising the spread of COVID-19 in workplaces. For example, promotion of hygiene, observing social distance techniques, and promotion of remote working amongst others. While there is nothing preventing an employer from encouraging its employees to be vaccinated, employers should, however, be careful when issuing blanket vaccination policies or incentives to employees since such policies and incentives may easily be considered discriminatory.

The Constitution and the Employment Act protects employees from both direct and indirect discrimination on the basis of their health status, religion, conscience, belief or culture. Vaccination incentives may be considered discriminatory for the following reasons:

1. Vaccination is not suitable for everyone. Some of the vaccines are not suitable for certain individuals with suppressed immune systems. An employee with certain allergies may also be advised against vaccination. Other employees may refuse the vaccine for mental health reasons. These employees would be disqualified from enjoying the incentive available whether monetary or non-monetary.
2. Certain religions or beliefs held by employees may result in apprehension in receiving the vaccine. Such employees would also be disqualified from enjoying the incentives that are available to others.

In the cases of *Kenya Legal and Ethical Network on HIV & AIDS (KELIN) & 3 others v Cabinet Secretary Ministry of Health & 4 others [2016] eKLR* and PAO & 2 others v Attorney General, Aids Law Project (Interested Party) [2012] eKLR, the courts held that the right to health contains both freedoms and entitlements and that the freedoms include the right to control one's health and body and the right to be free from interference. An employer should therefore be careful to balance its obligation to provide a safe workplace with the employee's freedom and right to control one's health and the right to be free from interference.

The above cases may however be distinguished because they did not deal with a pandemic. It remains to be seen whether a COVID-19 court case that addresses the question of vaccination especially for industries such as health care which may have a strong case for their employees to be vaccinated for their own protection.

In the meantime, employers may consider collective consultation with employees or their trade union representatives to develop internal sensitisation plans which may contribute towards voluntary take-up of the vaccine without having to give incentives.

Desmond Odhiambo and Peter Mutema

What is a Rule 11 application in terms of the Labour Court rules?

On 19 July 2010, NUMSA advised the employer's attorneys of record (Macsteel) that it had uplifted the record and was in the process of having it transcribed.

Rule 11 of the Rules for the Conduct of Proceedings in the Labour Court (the Labour Court Rules) is commonly referred to as the *"catch all"* rule in view of the fact that it enables litigants in the Labour Court to bring an application for anything that is not expressly provided for in the Labour Court Rules. The rule itself provides that interlocutory applications, or any other applications incidental to, or pending proceedings that are not specifically provided for in the rules of the Labour Court should be brought on notice and supported by affidavits. Over and above this, any other applications for directions that may be sought from the Labour Court are also included in this ambit.

In light of this, litigants may rely on Rule 11 to dismiss a review application, referral application or a regular application in the Labour Court for failure to take further steps to prosecute a matter within reasonable timeframes provided for in the Practice Manual. This is commonly referred to as a Rule 11 application.

Conflicting caselaw

The position regarding Rule 11 applications to dismiss a matter still remains tremulous in the sphere of labour law because a number of conflicting judgments exist. We set out the position with reference to some of the most recent caselaw to outline the different approaches that the Labour Court has taken in terms of when and how a Rule 11 application may be initiated as well as the approach that is most legally sound.

Macsteel Trading Wadeville v Van der Merwe NO & others (2019) 40 ILJ 798 (LAC)

In this case, the employee (Mr. Chiloane) was aggrieved by the outcome of an arbitration award and instructed the trade union representing him to institute review proceedings on his behalf. The National Union of Metalworkers of South Africa (NUMSA) accordingly instituted review proceedings on 22 June 2010. On *19 July 2010*, NUMSA advised the employer's attorneys of record (Macsteel) that it had uplifted the record and was in the process of having it transcribed. However, the transcription of the record was only completed in May 2011, some 10 months after NUMSA had uplifted it. When NUMSA subsequently filed an incomplete copy of the record 17 months later in December 2012, it failed to explain its incompleteness or the delay in filing it. In January 2013, NUMSA filed the full record which was approximately 19 months after the record had been transcribed and NUMSA once again failed to explain the excessive delay. In Macsteel's answering affidavit, the issue of NUMSA's undue delay in filing the record was raised in support of its contention that the Labour Court dismiss the review application. Unsurprisingly in reply, NUMSA failed to provide any explanation or seek condonation for the excessive delay and denied prosecuting the review with *"a high degree of negligence."* Consequent to NUMSA's delay, the review application was only heard on 24 February 2016, almost six years after the review application was instituted. Since NUMSA did not explain the delay in setting the matter down for hearing, Macsteel sought to persuade the Labour Court to dismiss the review application because of the dilatory manner in which NUMSA had prosecuted it, and its total failure to explain the delays. The outcome, however, was that the Labour Court refused to consider this issue on the basis that Macsteel had not brought an application in terms of Rule 11 of the Labour Court Rules to dismiss the review application.

What is a Rule 11 application in terms of the Labour Court rules?*...continued*

This Labour Appeal Court emphasises the serious consequences of delaying the prosecution of a review application.

The Labour Appeal Court appeal, stated that while there was nothing specific in the Labour Relations Act (LRA) that provided for the dismissal of a review application on the ground of undue delay, there were certain provisions in the Rules that gave a reviewing court wide discretion to take any action to achieve the objectives of the LRA, namely effective and expeditious dispute resolution. This Labour Appeal Court emphasises the serious consequences of delaying the prosecution of a review application. Litigants must therefore always ensure that the time periods recorded in the LRA, the Rules and the Practice Manual are complied with because failure to do so could may in a court refusing to hear a review application which potentially had good prospects of success

The Labour Appeal Court held that the review application in this case had been archived and was regarded as lapsed, where NUMSA filed the review record approximately 20 months after instituting the review application and where the application was set down six years after being instituted. In such circumstances, and in absence of NUMSA seeking condonation for the delay, the court *a quo* had no jurisdiction to determine the review application. Further to this, the Labour Appeal Court held that a Rule 11 application was not a prerequisite for the Labour Court to consider whether the review ought to have been dismissed, or struck off the roll, on the grounds of undue delay. In the absence of NUMSA applying for the reinstatement of the review or seeking condonation for the undue delay in filing the record, the Labour Court was obliged to strike the application from the roll on the grounds of lack of jurisdiction where the relevant provisions of the Practice Manual had not been complied with by NUMSA. Furthermore, the Appeal Court stated that even if the Labour Court was not inclined to strike the matter off the roll, it ought to have given Macsteel an opportunity to bring a Rule 11 application rather than delving into the merits of the review. Macsteel's appeal was upheld, and the order of the Labour Court was set aside and replaced with an order striking NUMSA's review application from the roll.

Mthembu v Commission for Conciliation, Mediation & Arbitration & others (2020) 41 ILJ 1168 (LC)

The court in *Mthembu v Commission for Conciliation, Mediation & Arbitration & others* (2020) 41 ILJ 1168 (LC) held that a Rule 11 application ought to be granted in the interests of expeditious resolution of labour disputes. The court held that a party bringing a Rule 11 application once it has been placed in a position to file an answering affidavit and raise the issue of non-compliance defeats the concept of expeditious resolution of disputes. The court accordingly held that:

> *"Once a matter is deemed withdrawn, and the reviewing party does nothing by way of an application to reinstate or to seek condonation for non-compliance with the time frames for the matter to be resurrected, it cannot be expected of the opposing party to wait endlessly. Instead the court was of the view that the only way of putting an end to the matter would be by way of a Rule 11 application do avoid effectively placing the opposing party in a review application at the mercy and whim of the reviewing party."*

What is a Rule 11 application in terms of the Labour Court rules?*...continued*

The court in this case consequently concluded that the fact that the employee's review application was deemed to be withdrawn did not imply that the employer was precluded from immediately taking steps to bring it to finality.

Thus, the court in Mthembu held that there is nothing that prevents the court from considering and dismissing a review application in the face of a Rule 11 application, even in circumstances where the review application is deemed to have been withdrawn, given the wide discretion of the Labour Court when interpreting and applying the provisions of the Practice Manual. It also held that it's view is reinforced by the provisions of Rule 11(4) of the Labour Court Rules, which provides that in the exercise of its powers and the performance of its functions, a reviewing court may act in a manner that it considers expedient in the circumstances to achieve the objects of the LRA. In other words a court may grant a Rule 11 application to dismiss a review application in order to resolve a dispute as speedily as possible without having to wait for the reviewing party to take further steps to bring the matter to finality or to resurrect the matter after it has been deemed withdrawn due to non-compliance with timeframes.

The court in this case consequently concluded that the fact that the employee's review application was deemed to be withdrawn did not imply that the employer was precluded from immediately taking steps to bring it to finality. Instead the employer was entitled to continue with its affairs, without having to wonder whether the employee would ever take steps to prosecute the review and bring the matter to finality. The court therefore dictated that in such circumstances the Rule 11 application ought to be granted in the interests of expeditious resolution of labour disputes.

The court in Mthembu further laid out examples of conduct which is inconsistent with the expeditious resolution of a dispute and constitutes an intolerable abuse of the court's process. This conduct includes situations where the reviewing party has been notified of the opposing party's intention to oppose the review application, and no further steps were taken either to prosecute or reinstate the review application after it was deemed withdrawn or if the reviewing party is aware of the Rule 11 application and takes no steps in either opposing the application or indicating an intention to pursue the review application.

SG Bulk A division of *Supergroup South Africa (Pty) ltd v Khumalo & another* and *Nkuna v NBCRFLI and others*

These two judgments were delivered together on 13 April 2021 by Honourable Judge Moshoana. The former case deals with a referral by the ex-employee (Mr. Khumalos) on 20 May 2019 who filed a statement of claim alleging an unfair dismissal based on operational requirements from the respondent-employer (SG Bulk). SG Bulk then filed their statement of response on 30 May 2019. However, no further steps were taken in terms of the parties holding a pretrial conference. A period of one year and four months lapsed until the applicant launched a Rule 11 application to dismiss the referral on the basis of undue delay. In the latter judgment Mr. Nkuna launched a review application on 19 March 2013, but the review application was deemed withdrawn because Nkuna failed to take further steps to prosecute the matter for two years. Imperial Distribution then launched an application to dismiss the review application.

In the *SG Bulk* case, the court dismissed the Rule 11 application on the grounds that the Rule 11 application was inappropriate by virtue of the fact that Rule 11 applications only strictly cater for matters which are not provided for by the

What is a Rule 11 application in terms of the Labour Court rules?*...continued*

The court disagreed with the legal principle in Macsteel namely that, the Labour Court is obliged to strike the matter from the roll on the grounds of lack of jurisdiction or allow the litigant affected by the undue delay to file a separate Rule 11 application demonstrating why the matter should be dismissed or struck from the roll.

Labour Court rules. The court held that the referral application was governed in terms of Rule 4(a) of the Labour Court rules which provides that parties are obliged to hold a pre-trial conference 10 days after a statement of response is delivered and failure to do so in terms of subrule (7) provides that the matter may be enrolled for hearing on the directions of a Judge where the Judge would most likely direct parties to convene the pretrial.

Moreover, the court held that the practice manual provides that if 6 months lapses without steps taken, the registrar must archive a file. The court was of the view that in order to achieve the dismissal of a referral, the respondent party must request the Registrar to archive the file instead of approach the court to seek a dismissal by way of a Rule 11 application.

In the latter judgment Mr. Nkuna launched a review application on 19 March 2013 but the review application was deemed withdrawn because Mr. Nkuna failed to take further steps to prosecute the matter for two years. Imperial Distribution then launched an application to dismiss the review application.

The court disagreed with the legal principle in Macsteel namely that, the Labour Court is obliged to strike the matter from the roll on the grounds of lack of jurisdiction or allow the litigant affected by the undue delay to file a separate Rule 11 application demonstrating why the matter should be dismissed or struck from the roll. Instead the court referred to the legal principle established in *SAPU obo Mnisi v SSSBC & Others*. The court in this case established that:

> *"Once a case has been withdrawn, such a case is not justiciable in a court of law. The dismissal of a review that has been withdrawn no longer affect the interest of the parties. It has no practical effect to the parties, nor does it serve the interests of justice. A review application that is deemed to be withdrawn does not exist. Put differently, there is nothing before the court to be dismissed. This court will have no jurisdiction to dismiss a non-existent review application. A review application that is set down for a hearing after having been deemed withdrawn ought to be struck off the roll rather than being dismissed."*

Correct approach?

In terms of the most recent case law, Rule 11 applications to dismiss an application in the Labour Court are evidently dealt with differently. The Macsteel case provides that the Labour Court is obliged to strike the matter from the roll on the grounds of the lack of jurisdiction or may allow the litigant affected by the undue delay to file a separate Rule 11 application which would demonstrate why the matter should be dismissed or struck from the roll in instances where a review application is archived and consequently regarded as lapsed as a result of a party's failure to comply with the Practice Manual. This is even more pertinent where there is no

What is a Rule 11 application in terms of the Labour Court rules?*...continued*

The correct approach therefore seems to be the approach followed in the *SG Bulk* and *Nkuna* cases.

substantive application for reinstatement of the review application, or no condonation sought for the undue delay in filing the record.

Additionally, the *Mthembu* case has piggybacked off of the principle established in the Macsteel case but has held that the opposing party in a review application can institute a Rule 11 application as soon as a matter is deemed withdrawn, and the reviewing party does nothing by way of an application to reinstate or to seek condonation for non-compliance with the time frames for the matter to be resurrected. The reason for this is to prevent the opposing party from waiting endlessly for the reviewing party to act which is antithesis to the objectives of the LRA to resolve disputes expeditiously.

The *SG Bulk* case on the other hand has provided that in the instances where an application is governed by the Rules of the Labour Court, a Rule 11 application is unsuitable and should accordingly be dismissed. This is because Rule 11 applications only apply to applications which are not governed by the Rules of the Labour Court. In this case the referral application was governed in terms of Rule 4(a) of the Labour Court rules and was therefore dismissed. The Nkuna matter also dismissed the Rule 11 application in terms of a review application and relied upon principles established in the case of *SAPU obo Mnisi v SSSBC & Others*. Instead of following the approach in Macsteel, Moshoana J held that once a case has been deemed withdrawn, such a case is not justiciable in a court of law because there is essentially nothing before the court to be dismissed. And technically the court will have no jurisdiction to dismiss a review application which is deemed as non-existent. A review application that is set down for a hearing after having been deemed withdrawn ought to be struck off the roll rather than being dismissed.

The correct approach therefore seems to be the approach followed in the *SG Bulk* and *Nkuna* cases. Thus, a litigant should opt to have the Registrar archive a matter should there be delays in the prosecution thereof instead of making an application to dismiss proceedings before the Labour Court. This is because essentially once a matter is deemed withdrawn the application loses its existence and the court therefore has no jurisdiction to dismiss the matter.

When may a matter be archived?

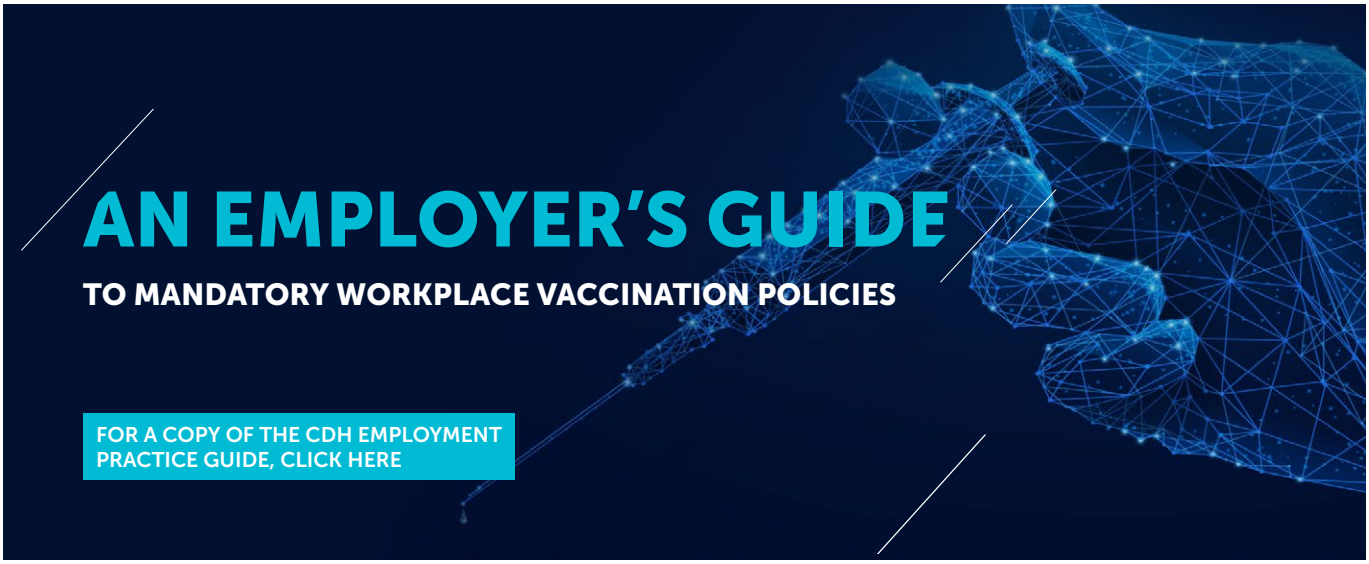
An application may be archived in the case of an application in terms of Rule 7 or Rule 7A, when a period of six months has elapsed without any steps taken by the applicant from the date of filing the application, or the date of the last process filed. In the case of referrals in terms of Rule 6, when a period of six months has elapsed from the date of delivery of a statement of case without any steps taken by the referring party from the date on which the statement of claim was filed, or the date on which the last process was filed or when a party fails to comply with a direction issued by a judge within the

What is a Rule 11 application in terms of the Labour Court rules?*...continued*

If the applicant fails to file the record within the prescribed period, the applicant will be deemed to have withdrawn the application unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given.

stipulated time limit. In addition to this matters may be archived once the registrar has notified the applicant in terms of rule 7A(5) that a record has been received and may be uplifted, the applicant must collect the record within seven days. For the purposes of Rule 7A(6), records must be filed within 60 days of the date on which the applicant is advised by the registrar that the record has been received. If the applicant fails to file the record within the prescribed period, the applicant will be deemed to have withdrawn the application unless the applicant has during that period requested the respondent's consent for an extension of time and consent has been given. If consent is refused, the applicant may, on notice of motion supported by affidavit, apply to the Judge President in chambers for an extension of time. The application must be accompanied by proof of service on all the other parties and answering and replying affidavits may be filed within the time limits prescribed by rule 7. The Judge President will then allocate the file to a judge for a ruling, to be made in chambers, on any extension of time that the respondent should be afforded to file the record. Lastly, a review application may be archived and regarded as lapsed when the applicant has not ensured that all the necessary papers in the application are filed within twelve (12) months of the date of the launch of the application (excluding Heads of Arguments) and the registrar is informed in writing that the application is ready for allocation for hearing. Where this time limit is not complied with, the application will be archived and be regarded as lapsed unless good cause is shown why the application should not to be archived or be removed from the archive.

Michael Yeates and Shanna Eeson



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