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AADIL PATEL

CDH NATIONAL PRACTICE HEAD - EMPLOYMENT LAW

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## B-BBEE AND THE EMPLOYMENT EQUITY ACT

IMRAAN MAHOMED (MODERATOR),  
HEDDA SCHENSEMA & VERUSHCA  
PILLAY

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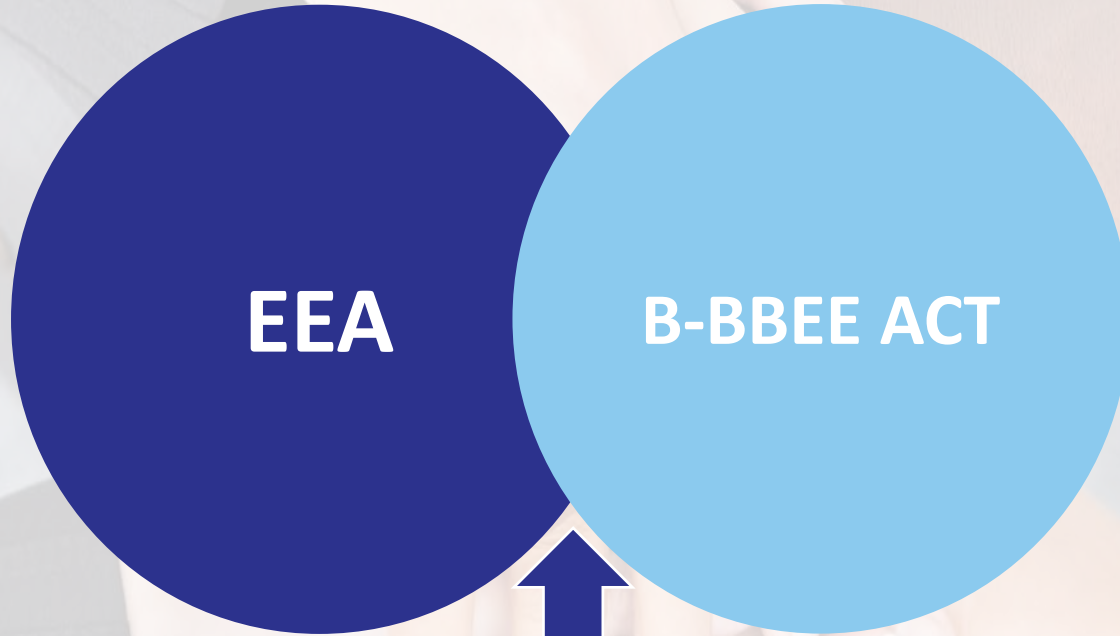


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# THE INTERPLAY BETWEEN THE EEA AND THE B-BBEE ACT



**EQUITY AND ECONOMIC  
EMPOWERMENT**

# MEASUREMENT OF B-BBEE COMPLIANCE



Ownership



Enterprise and supplier development; and

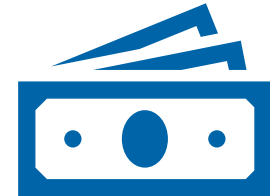


AREA OF INTERSECTION?

Management control



Skills development



Socio-economic development

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## INTERPLAY BETWEEN BUSINESS RESCUE AND RETRENCHMENTS (REDUNDANCY) IN KENYA

**DESMOND ODHIAMBO**

PARTNER, CDH DISPUTE RESOLUTION- NAIROBI

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# ADMINISTRATION (BUSINESS RESCUE)



TO MAINTAIN THE COMPANY AS A GOING CONCERN OR;

TO ACHIEVE A BETTER OUTCOME THAN WOULD HAVE BEEN THE CASE IF THE COMPANY WENT STRAIGHT INTO LIQUIDATION OR;

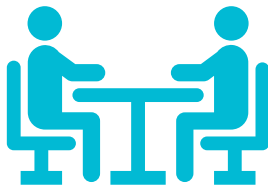
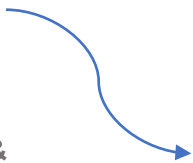
TO MAKE A DISTRIBUTION TO ONE OR MORE SECURED OR PREFERENTIAL CREDITORS; AND

NO AUTOMATIC DISMISSAL OF EMPLOYEES

# ROLE OF THE ADMINISTRATOR (INSOLVENCY PRACTITIONER)



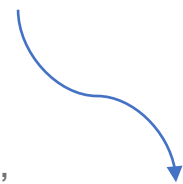
APPOINTMENT &  
INVESTIGATION



NO REQUIREMENT TO HOLD  
CONSULTATIONS

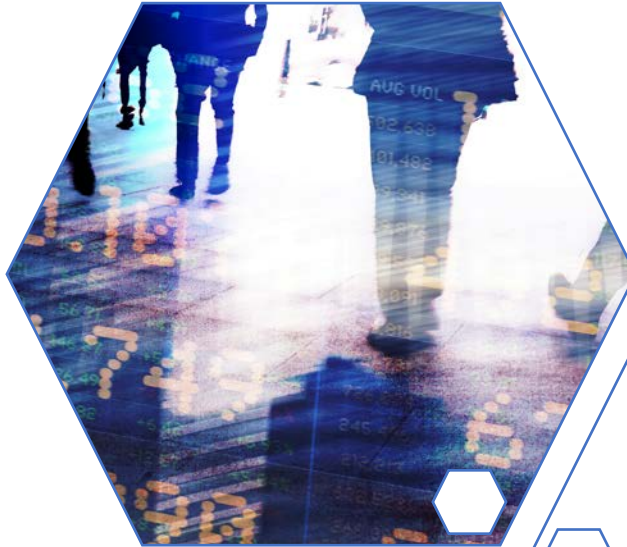


NO REQUIREMENT TO  
CONSIDER SENIORITY, SKILL,  
ABILITY & RELIABILITY



ADMINISTRATOR'S STATEMENT  
OF PROPOSALS

# COMPENSATION – RETRENCHED EMPLOYEES



**SEVERANCE PAY**  
**NOTICE PAY**  
**UNPAID SALARIES**  
**LEAVE PAY**



## INVESTORS OR CONNECTED PARTIES (INSOLVENT COMPANY)



**Prepackaged sale** – agreement with investor,  
administration order (Section 522 (1) c) or d)



- No consultations with employees
- No severance payment
- Unpaid salary, leave, notice period – NSSF



Clean slate theory – New Company is leaner & more  
efficient

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## MANDATORY VACCINATIONS

JOSE JORGE

DIRECTOR, CDH EMPLOYMENT LAW – CAPE TOWN  
SECTOR HEAD: RETAIL

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# CONSOLIDATED DIRECTIONS - 11 JUNE 2021

## Risk Assessment and Plans for Protective Measures



**UNDERTAKE A RISK  
ASSESSMENT**



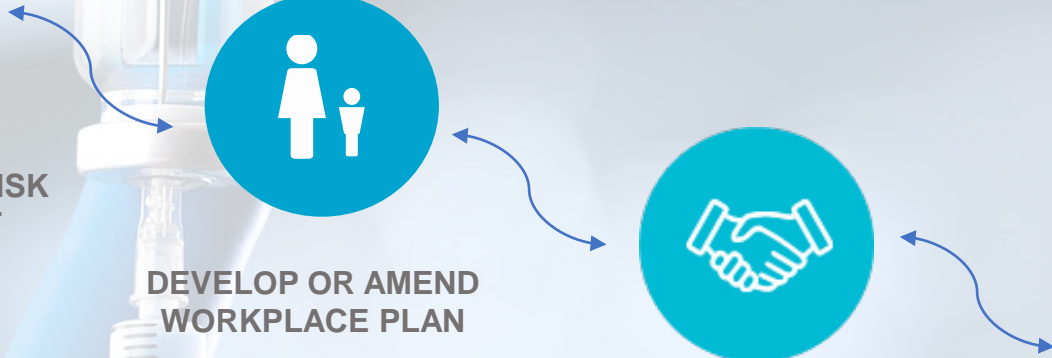
**DEVELOP OR AMEND  
WORKPLACE PLAN**



**CONSULT**



**MAKE PLAN  
AVAILABLE FOR  
INSPECTION**



# ADMINISTRATIVE MEASURES



Disclose health issues/ comorbidities  
Implement special measures



Notify workers of Directive and plans to  
implement



Provide workers with information and raise awareness  
Assist employees to register  
Paid time off for vaccination

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# ANNEXURE C



**PURPOSE**



**KEY  
PRINCIPLES**



**INFORM IDENTIFIED  
EMPLOYEES**



**ADDITIONAL  
ASSISTANCE**

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# ANNEXURE C

## (CONTINUED)



**Refusal to be vaccinated**  
(constitutional or medical grounds)

**Reasonable accommodation -**  
*Modification or adjustment to a job or working environment that allows employee to remain in employment:*

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## THE INTERPLAY BETWEEN BUSINESS RESCUE AND RETRENCHMENTS

TOBIE JORDAAN

CDH SECTOR HEAD: BUSINESS RESCUE, RESTRUCTURING &  
INSOLVENCY

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# THE RIGHTS OF EMPLOYEES IN A BUSINESS RESCUE



Section 128(1)(b) of the Companies Act 71 of 2008 – “**Business rescue**”: “*proceedings to facilitate the rehabilitation of a company that is financially distressed*”



Section 128(1)(a)(ii) of the Companies Act 71 of 2008 – “**affected person**”: “*any registered trade union representing employees of the company*”



Section 136 of the Companies Act 71 of 2008 – terms and conditions of employment during business rescue proceedings

# THE ROLE OF THE BUSINESS RESCUE PRACTITIONER IN THE RETRENCHMENT PROCESS



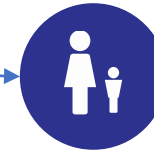
Section 141 (2) of the Companies Act 71 of 2008



BRP to draw up a **business rescue plan** which must be published within 25 business days after the date upon which the BRP was appointed

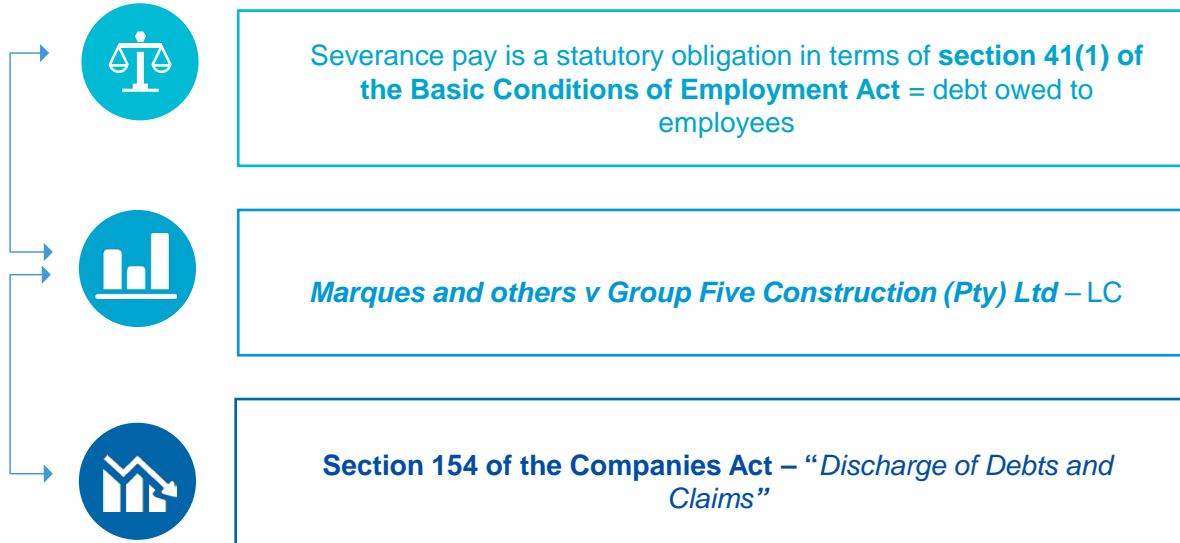


*South African Airways (SOC) Ltd (in Business Rescue) and Others v National Union of Metalworkers of South Africa obo Members and Others* (3) [2020] 8 BLLR 756 (LAC)



BRP to conduct **meaningful consultations** with employees in terms of **sections 189 and 189A of the LRA**

# SEVERANCE PAY IN A BUSINESS RESCUE



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## THE EVOLUTION OF THE EMPLOYMENT AGREEMENT IN THE NEXT NORMAL

GILLIAN LUMB

DIRECTOR, CDH EMPLOYMENT LAW – CAPE TOWN

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# DETERMINING CONTINUED REMOTE WORKING AND THE FORM OF REMOTE WORKING

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# THE GIG ECONOMY AND ATYPICAL OR NON-STANDARD EMPLOYMENT



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# ARE OUR LABOUR LAWS ABLE TO RESPOND TO THE SIGNIFICANT AND ONGOING CHANGES IN THE LABOUR MARKET?

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## MANAGING PERFORMANCE AND DISCIPLINE IN THE REMOTE WORKPLACE

**NJERI WAGACHA**

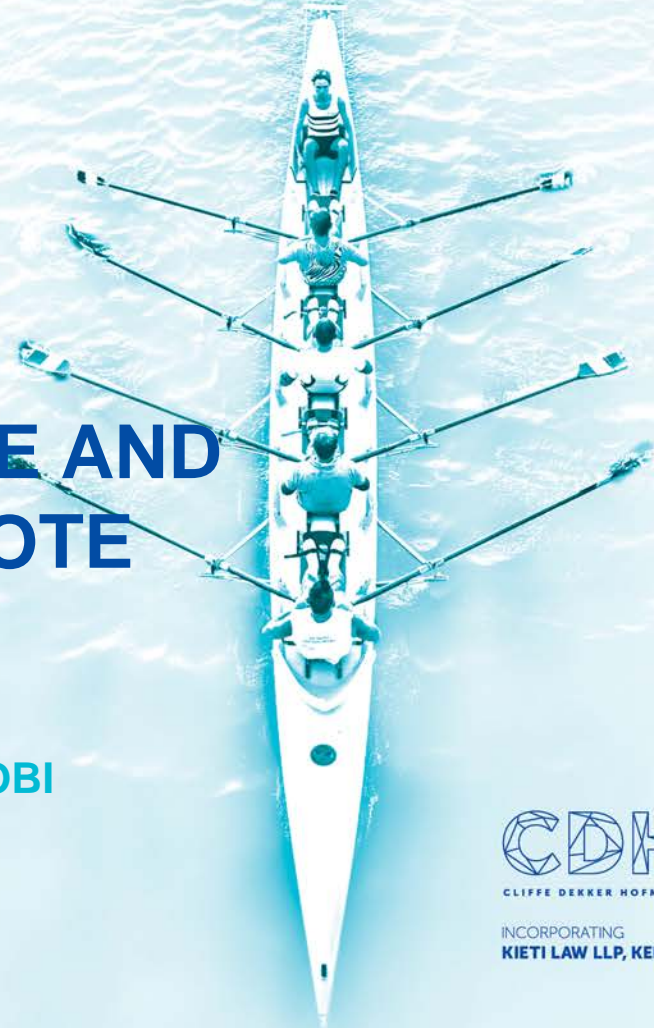
**DIRECTOR, CDH EMPLOYMENT- NAIROBI**

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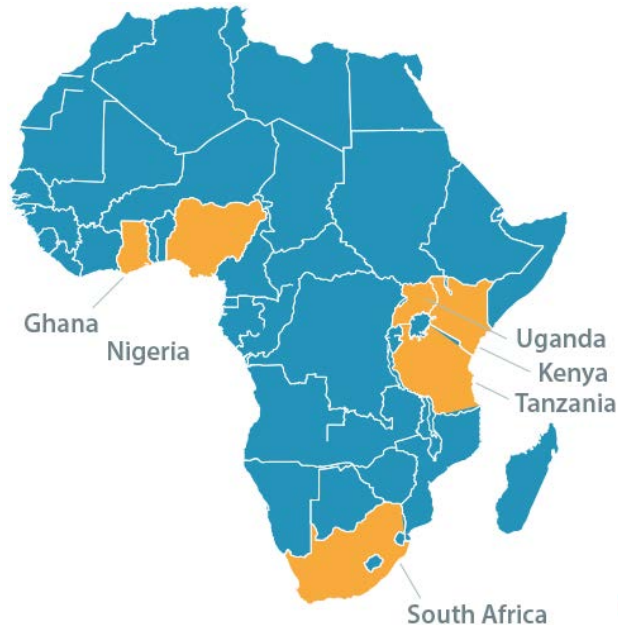
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# MANAGING PERFORMANCE AND DISCIPLINE REMOTELY



*It is unlikely that an employer will know exactly what employees are doing at every moment whilst working remotely. However, it is still possible to effectively manage performance and discipline employees.*

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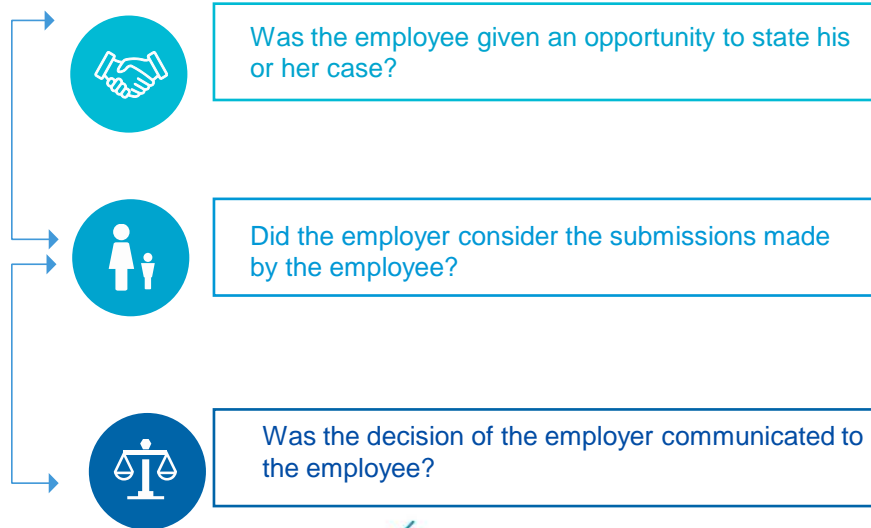
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# MANAGING DISCIPLINE REMOTELY AND A DECRIMINALIZED HEARING

*MOVING AWAY FROM THE CRIMINAL JUSTICE MODEL*



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## STRIKES

PROFESSOR HUGO PIENAAR

DIRECTOR, CDH EMPLOYMENT LAW – JOHANNESBURG  
SECTOR HEAD: TRANSPORT AND LOGISTICS

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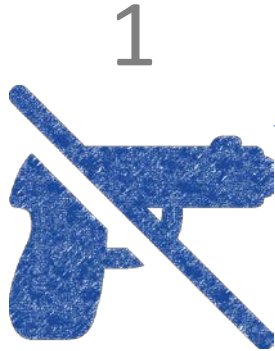
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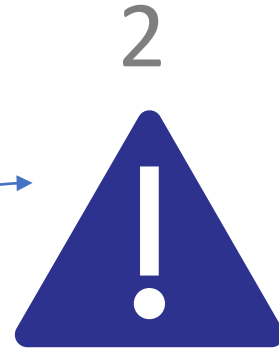
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# OVERVIEW



CARRYING WEAPONS



ULTIMATUMS



SYMPATHY STRIKES

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# CARRYING OF WEAPONS DURING STRIKES

*Pailpac (Pty) Ltd v De Beer NO and Others (DA 12/2018) [2021] ZALAC 3*



**Code of Good Practice:** Collective Bargaining, Industrial Action and Picketing, items 6.5 to 6.5.6



Dangerous objects or weapons include any object that could be used to **injure or threaten a person or damage property**



Section 1 of the Dangerous Weapons Act 15/2013, defines “**dangerous weapon**” as any object, other than a firearm, **capable of causing death or inflicting serious bodily harm**, if it were used for an unlawful purpose.

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# ULTIMATUMS



1.  
**CLEAR AND  
UNAMBIGUOUS**

2.  
**WHAT IS REQUIRED OF  
THE EMPLOYEES**

3.  
**WHAT SANCTION WILL BE  
IMPOSED**

4.  
**SUFFICIENT TIME TO  
RESPOND AND TO  
REFLECT**

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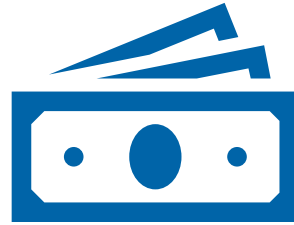
# SYMPATHY STRIKES

## (section 66(2)(c) of the LRA)

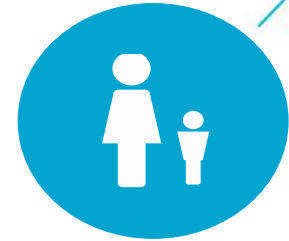
*AngloGold Ashanti Ltd and Others v Association of Mineworkers and Construction Union and Others [2019] 40 ILJ 1552 (LC)*



WEIGHING THE **REASONABLENESS, NATURE AND EXTENT** OF THE SECONDARY STRIKE



THE **ECONOMIC CONSEQUENCES** FOR THE **SECONDARY EMPLOYER** MUST BE TAKEN INTO ACCOUNT



AGAINST **EFFECT** OF THE SECONDARY STRIKE **ON THE PRIMARY EMPLOYER'S BUSINESS**

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## STRIKES

*BONUS PAYMENTS AND THE ROLE OF  
POLITICAL PARTIES*

**BONGANI MASUKU**

**DIRECTOR, CDH EMPLOYMENT LAW – JOHANNESBURG**

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**DOES THE PAYMENT  
OF BONUSES TO  
NON-STRIKING  
EMPLOYEES  
AMOUNT TO UNFAIR  
DISCRIMINATION OR  
CURTAIL THE RIGHT  
TO STRIKE?**

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# ORGANISATIONAL RIGHTS – WHAT ARE THEY AND WHO IS ENTITLED TO THEM ?

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**Brokin**



## THE ROLE OF POLITICAL PARTIES IN THE WORKPLACE?

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## OHS IN THE REMOTE ENVIRONMENT AND ERGONOMIC ASSESSMENTS

MICHAEL YEATES

DIRECTOR, CDH EMPLOYMENT LAW – JOHANNESBURG

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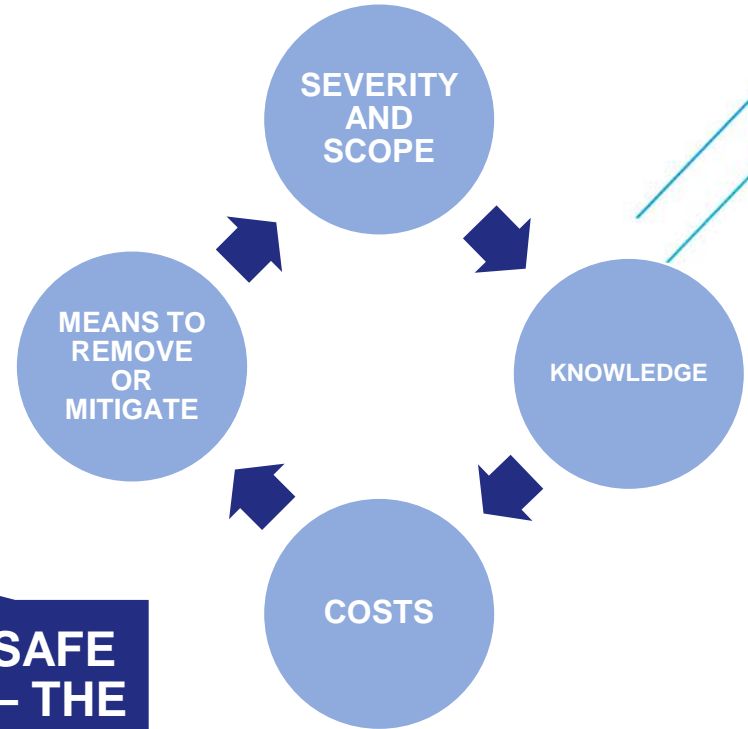
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**THE DUTY TO PROVIDE A SAFE WORKING ENVIRONMENT – THE LIMITS OF REASONABLY PRACTICALLY POSSIBLE?**



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# THE ROLE OF EMPLOYEES



**COOPERATE WITH  
THE EMPLOYER**



**BE RESPONSIBLE FOR THEIR  
OWN HEALTH AND SAFETY**



**REPORT UNSAFE  
SITUATIONS OR  
ACCIDENTS**

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# ERGONOMIC RISK ASSESSMENTS (ERA)

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## DOES COIDA EXTEND TO THE REMOTE WORKING ENVIRONMENT?

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## STRIKE DISCIPLINE AND CIVIL UNREST - WHAT DO THE CASES SAY?

**THABANG RAPULENG**  
DIRECTOR, CDH EMPLOYMENT LAW -  
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# DOCTRINE OF COMMON PURPOSE



AGREEMENT



WAIVER



ESSTOPEL

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# DEALING WITH EMPLOYEES DURING CIVIL UNREST – DISMISSAL FOR MISCONDUCT?

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# DOES INCARCERATION CONSTITUTE GROUNDS FOR INCAPACITY?

*Samancor Tubatse Ferrochrome v MEIBC (Maloma & Stemmett NO) [2010] JOL 257 48  
(LAC)*

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## RELIGIOUS, CULTURAL AND/OR POLITICAL SYMBOLOLOGY IN THE WORKPLACE - EMPLOYER POLICIES OF NEUTRALITY

FIONA LEPPAN

DIRECTOR, CDH EMPLOYMENT LAW – JOHANNESBURG  
SECTOR HEAD: MINING

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### Introduction

Religious beliefs, Cultural Identity and Political Ideology are central to the lives of many South Africans. As such, a balance must be struck between:

- An Employee's right to Freedom of Religion, Belief and/or Opinion (including the right to Freedom of Association);
- Their Co-Employee's right to same; and
- The Commercial Interests of their Employer.

The Constitution



The Employment Equity Act



The Labour Relations Act



***Christian Education South Africa v Minister of Education (CCT4/00)***  
**[2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000).**

*'There are a number of other provisions designed to protect the rights of members of communities. They underline the constitutional value of acknowledging diversity and pluralism in our society and give a particular texture to the broadly phrased right to freedom of association contained in section 18. Taken together, they affirm the right of people to be who they are without being forced to subordinate themselves to the cultural and religious norms of others, and highlight the importance of individuals and communities being able to enjoy what has been called the "right to be different".'*

# The Right to Freedom of Religion

The right to Freedom of Religion, Belief and Opinion is the Cornerstone of Human Rights. The right wholistically encompasses:



The right to have a belief;



Express that belief publicly; and



Show or display that belief through worship and practice.



In the workplace, however, our case law indicates even handedness is crucial.

Bias in favour of a particular religion or even 'complete neutrality' would not find favour in our Courts without a reasonable justification.

## South African Case Law to Note in this Regard



*Dlamini and Others v Green Four Security* (LD671/03 , D671/2003) [2006] ZALC 4; [2006] 11 BLLR 1074 (LC) (25 April 2006)

*MEC for Education: Kwazulu-Natal and Others v Pillay* (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007)

*FAWU & others v Rainbow Chicken Farms* (2000) 21 ILJ 615 (LC)

*Department of Correctional Services & another v POPCRU & Others* (2013) 34 ILJ 1375 (SCA)

*SACTWU v Berg River Textiles* (2012 ) 33 ILJ 972 (LC)

*Lewis v Media 24 Ltd* (C88/2007) [2010] ZALC 218; (2010) 31 ILJ 2416 (LC) (4 May 2010)

*Kievits Kroon Country Estate (Pty) Ltd v Mmoledi and Others* (875/12) [2013] ZASCA 189; 2014 (1) SA 585 (SCA); [2014] 3 BLLR 207 (SCA); [2014] 1 All SA 636 (SCA); (2014) 35 ILJ 209 (SCA) (29 November 2013)

# Recent European Court of Justice Decision Regarding Religious Neutrality in the Workplace



ECJ Case  
No. C-  
804/18 : IX  
vs *WABE*  
eV  
("WABE")

ECJ Case  
No. C-  
341/19 : MJ  
vs *MH*  
*Muller*  
*Handels*  
*GmbH*  
("MH")



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## CYBER BULLYING, VACCINATIONS AND DISCRIMINATION

PHETHENI NKUNA

DIRECTOR, CDH EMPLOYMENT LAW – JOHANNESBURG

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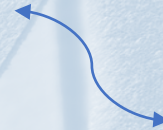
# BACKGROUND



**Draft Code of Good Practice on the Prevention of Violence and Harassment in the Workplace**



**Bullying a form of violence and harassment – unfair discrimination**



**Bullying & cyber bullying, online violence**





# MANDATORY VACCINATIONS AND UNFAIR DISCRIMINATION – WHERE DO THEY INTERSECT?

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