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Special Interest Articles:

- **Employer Compliance**
- **Workplace romance**

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Employer compliance

In a Business Day article: ‘Labour Department to Conduct Inspections’ (2009/08/11), Thobile Lamati, the Chief Inspector at the DoL (Dept of Labour) said: *“It is the minister’s position that workers’ lives are sacrosanct and that employers should not sacrifice workers’ lives for profit”*.

This statement was made as motivation for the Department’s intention to institute a blitzkrieg of inspections particularly amongst employers in the metal and engineering industry.

Despite the fact that employers have more important issues to worry about (such as survival in a recessive economy), employers are obligated by law to ensure that they comply with certain legislative requirements.

Unions will often make life difficult for employers by reporting an employer to the DoL whether they comply or not. If the

employer does comply then there is obviously no problem. If the employer does not comply, the DoL, represented by a Labour inspector, can get quite nasty.

It is advisable to regularly (at least annually) contact the GEO office to arrange for an official to conduct an IR audit on all documentation required under the Labour legislation.

At the very least, here are a few pointers on BCEA documentation that you should have in place:

- A summary of the BCEA in *each* workplace (S 30)
- A wages register as per BCEA 2 form (S31)
- Attendance register as per BCEA 3 form
- Information about remuneration paid as per BCEA 4 form (s33)
- Record of overtime worked
- Record of public

holidays and Sundays worked

- Written particulars of employment for each employee (s29)
- Certificate of service for a dismissed employee (s29) ...

Besides this, other legislation also requires of employers to have:

- Proof of UIF, Skills Development and Workmen’s Compensation payment and registration
- Employment Equity Act plans and reports
- Summary of the Labour Relations Act and Occupational Health and Safety Act.

Under the BCEA, records need to be kept for a period of three years.

*If you need any help or an IR audit, please contact the GEO urgently!
Ed-Andre Rabe*

**Remember to contact the GEO should you need any Labour Law advice. The GEO represents employers in all sectors, nationwide.
0861436436**



CASES AND COMMENTS

NB NB NB NB NB

Labour Court and Labour Appeal court cases interpret the meaning and intention of our Labour Legislation. It is a good idea to keep you and your managers up to date on the latest developments in case law. For an interesting workshop in this regard contact Philippa Swan on 0861436436.

Quote

The newly appointed labour director-general Jimmy Manyi said in Parliament that the DoL would like to see businesses fined 10% of their turnover for failing to comply with employment equity legislation:

“only one language that business understands and that is the language of the bottom line”.

(Business Day, Linda Ensor, 2009/09/04)

(In this recession? - Ed)

FISHING OF THE COMPANY JETTY – WORKPLACE ROMANCES

Most people will agree that workplace affairs occur fairly regularly. This is not surprising given that the work environment is a place where people associate socially for eight hours or longer. Employees often travel or work alone together. On occasion they may even spend time or socialize together after work. The reality is that work relationships do not always remain professional. Friendships will naturally occur and on occasion, become more intimate.

At some point however, despite the two parties having been initially quite captivated with each other, the relationship may sour. It may happen that one of the party’s spouses finds out about the office frolics and becomes, quite understandably, very upset. The jilted party may seek to retaliate by claiming that she (or he) had been sexually harassed by the other party and/or begin behaving in an obsessive, embarrassing or irrational manner. This may of course result in a work environment that becomes increasingly unpleasant. Staff gossip and rumours will no doubt help to worsen the situation.

In Van Tonder v Barnard & van der Merwe (2007) 16 CCMA 6.13.1 a relationship developed between a medical practitioner

employed by the respondent and one of the partners in the business. It came to an abrupt end when the latter’s spouse learned of the affair. Without going into detail, the affair had been quite intimate with encounters apparently occurring both extramurally as well as on the premises.

The partner informed the applicant that he could no longer work with her as a result of the discovery. She left the practice and instituted proceedings in the CCMA claiming constructive dismissal. She claimed firstly that the affair was one-sided and as such she had been sexually harassed. She also claimed that she had been constructively dismissed because:

- He had told her that she could no longer work there;
- Her consultations had been reduced and;
- Some of her belongings had been removed by the partner’s wife.

The commissioner found on the evidence presented that the affair had been consensual. He found however, that even though an affair may be consensual, it did not give the employer the right to exert such unfair pressure on an employee. He found that she had been constructively dismissed and awarded her five months salary.

What does an employer do when two employees are having an affair?

Can an employer have a

disciplinary rule preventing employees from engaging in affairs with one another?

Affairs are not unlawful. People have the right to choose with whom they wish to have a consensual relationship with.

The critical issue is the effect that the affair has on the employment relationship.

The most that an employer can do is to have a counseling meeting with the two employees. They should be advised that their affair has a number of risks associated with it (not least of which is the loss of their jobs). It should be impressed upon the two that the company has a code of conduct that deals with appropriate and inappropriate behaviour on the company premises. They should be reminded that inappropriate behaviour, physical or otherwise, will not be tolerated on the property.

They must be informed that they will be held liable for any consequence of their liaison such as spouses storming onto the property, fights, arguments, dissension, etc.

They should be informed that should their work or that of any other employee be affected in any way as a result of the liaison, they will be held responsible either individually or collectively.

Finally, especially if either party is married, advise them to carefully consider the consequences of their actions and possible repercussions of being exposed. (*pun intended - Ed*).