



S189 RETRENCHMENT PROCESS

You will recall that in the What's Up! issued on 30 April 2015, we alerted our members to a S189 consultation with Management as a result of the compliance with the new LRA amendments. 9 contract posts were identified by the employer as redundant. The union was however not convinced that these posts were in fact redundant as the information uncovering process proved otherwise.

An employer who made up his mind about retrenching the employees prior to the consultation process and who is only going through the motions of consultation will constitute a sham and will not pass the test of section 189.

After attending meeting upon meeting, we can say that this process is drawing to a close and that the employer could not prove redundancy of any of the incumbents to date. The union predicts that this process should be concluded by end July 2015.

One thing that is very evident from this whole process is that staff members who have not aligned themselves with a recognised union, were left vulnerable. However, our NTEU representatives provided advice, support and representation to ALL those affected by the S189 process to ensure that there will NO job losses at the NMMU!

VIVA NTEU VIVA!!

Suspicious dismissals: Can employers dismiss on suspicion of misconduct?

Section 188 of the Labour Relations Act, No 66 of 1995 permits an employer to dismiss an employee for reasons related to the employee's misconduct. Employers have tried to broaden the ambit of this form of dismissal, by arguing that employees can be dismissed based on a suspicion of misconduct alone.

In the leading case of *Algorax (Pty) Ltd v Chemical Industrial Workers Union* and another [1995] 10 BLLR 1 (LAC), the court held that an employee may be dismissed based on a suspicion provided the suspicion is bona fide, reasonable and renders the continued employment relationship intolerable. In the more recent case of *Senzeni Mbanjwa v Shoprite Checkers (Pty) Ltd and Others* (DA 4/11) [2013] ZALAC, the Labour Appeal Court (LAC) was tasked with considering whether this ground of dismissal was still permissible.

Senzeni Mbanjwa (Employee) was employed by Shoprite Checkers (Pty) Ltd (Employer) in the position of cashier. On 28 April 2006, the Employee proceeded to ring up items for a customer, Ms Magoso (Customer), who worked as a car guard outside of Checkers' place of business. On the day in question, the Employee rang up the items at the kiosk as opposed to the normal tills. The Customer did not have the total amount of money with her and subsequently left the store, returning ten minutes later to pay for all of the items. The Employer's assistant manager, Ms Pillay (Manager), watched the Employee ring up the items and had also seen the Employee and Customer talking to each other on the previous day. For a number of reasons, some of which are mentioned above, the Manager was suspicious of the Employee's behaviour. Following this suspicion, the Employee was called to attend a disciplinary hearing for allegedly committing 'gross misconduct' in that she attempted to under ring items while operating the till. The Employee was found to have committed the said allegation and was summarily dismissed. Questioning the fairness of her dismissal, the Employee referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA).

During arbitration, the Customer conceded that the allegation levelled against the Employee was based only on her suspicion that the Employee attempted to under ring items based on what she had witnessed. After considering the evidence, the commissioner concluded that the Employee's dismissal was substantively unfair.

On review, the Labour Court concluded that there had not been a full and fair hearing and remitted the matter to the CCMA to conduct the hearing anew. This decision was taken on appeal to the LAC.

The LAC held that the main issue was not whether dismissal was the appropriate sanction, but rather whether the Employee had committed the misconduct in the first place. The Court found that where an employer suspects that an employee has dishonest intentions, the employer can't rely on the suspicion as a ground of dismissal. Emphasising this point, the LAC stated that, "suspicion, however strong or reasonable as it may appear to be, remains a suspicion and does not constitute misconduct".

Employers should thus ensure that they have tangible evidence to support dismissals, rather than relying on ungrounded suspicions.

SOURCE:
<http://www.cliffedekkerhofmeyr.com/en/news/publications/2015/employment/employment-alert-11-may-suspicious-dismissals-can-employers-dismiss-on-suspicion-of-misconduct.html>

Why is tolerance so important?

We're not born with a chip on our shoulder but as we're exposed to society's norms, we develop our own opinions, idiosyncrasies and beliefs that don't always fall in line with that of our colleagues. These differences have the potential to get in the way of establishing and strengthening relationships in the workplace. In some cases, disagreements arise and escalate, when they could have been avoided.

On the flip side, when we adopt an attitude of inclusion and tolerance, we open up a world of possibilities. Think of the benefits that come with a conscious adoption of tolerance including:

- *Open and honest communication*
- *Creativity fostered by an open exchange of ideas from across a broad spectrum of expertise*
- *Respect and trust between individuals*
- *Teamwork, cooperation, and coordination among professionals in the workplace*
- *Loyalty and productivity, both of which are crucial for organisational efficiency*

Tolerance is the foundation of all good working relationships, so instead of burying your head in the sand or muttering frustrations at the water cooler, consider our steps to a trouble free (and tolerant) workplace.

Top tips for tolerance

It must be emphasised that tolerance is the responsibility of both the manager and the worker. Keep in mind that tolerance is an individual responsibility that organisational initiatives can strengthen. There is no sure fire method for each and every situation but these guides will certainly get you moving in the right direction.

Encouraging tolerance in the workplace can include the following initiatives from management:

- ✓ Implement a comprehensive tolerance policy in the workplace. The policy must encourage employees to adopt an attitude of tolerance whilst also detailing acceptable words, actions, and behaviours as well as the appropriate redress measures.
- ✓ Set an example. Managers, who are in the position of authority, must set an example for their peers and subordinates. Workers can follow their lead which then, in turn, increases the depth and width of the culture of tolerance in and out of the office.
- ✓ Draw the line. Tolerance does not extend to tolerating, much less condoning, the words, behaviours and actions that are legally, morally, and ethically unacceptable in modern society. Lines must be drawn between "acceptable" and "unacceptable" in the employee handbook and memos, for example.

Closing thoughts

The bottom line: Embracing the differences in your personal and professional relationships will promote a greater sense of understanding and, in the process, better working relationships and ultimately higher productivity in the workplace.

Tolerance should be a daily commitment made by all employees in the organisation.

Source: <http://jobs.personneltoday.com/article/getting-along-with-your-colleagues-what-does-tolerance-at-work-mean-to-you/>

PEROMNES JOB EVALUATIONS REMINDER

TIMEFRAMES FOR SUBMISSIONS: The application form (see Annexure A, pages 7-9, of the Peromnes Evaluation Policy) plus the updated job description must be submitted (ELECTRONICALLY, in Word format) to your dedicated HR Consultant for approval. A SIGNED HARD COPY of the job description and the application form, containing the line manager's motivation must simultaneously be forwarded to your HR Consultant. The due date for submission of these documents is **06 July 2015**. No late applications will be entertained.

