Employment Law

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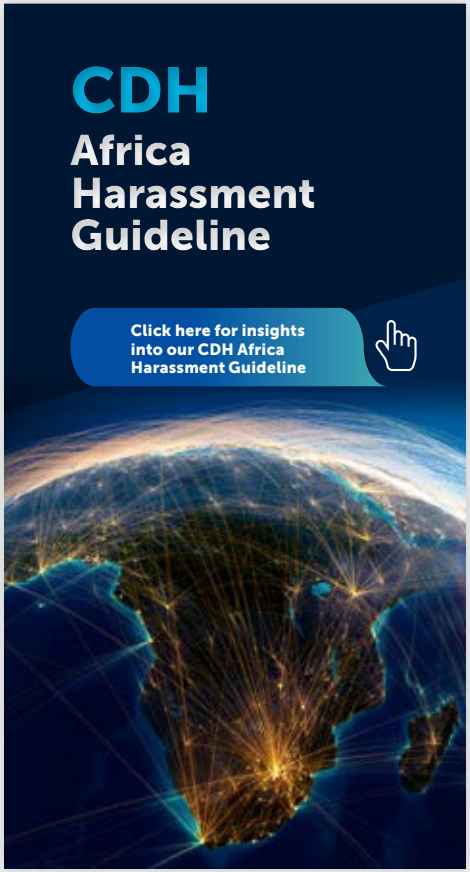
Minister publishes proposed Draft Regulations for comments in terms of section 97 COIDA



On 17 May 2024, the Minister of Employment and Labour (Minister) published a number of regulations in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA), affording interested parties a period of 30 days to comment on the Draft Regulations. The deadline for public comment is 16 June 2024.

Context

To recap, on 17 April 2023, the Compensation for Occupational Injuries and Diseases Amendment Act 10 of 2022 (COIDA Amendment Act) was published, the aim of which has been to amend, substitute, insert, delete and repeal certain of COIDA's definitions and sections. The Minister has recently published a number of Draft Regulations, which will sit alongside the COIDA Amendment Act. The Minister is affording interested parties an opportunity to comment on these Draft Regulations.

Draft Regulations regarding the prescription period of claims

The purpose of these is to ensure that the period of prescription of claims is more clearly defined. They also deal with the application of the prescription period and reporting of an accident by an employee and their employer in terms of sections 38 and 39 of COIDA. The prescription period is three years from the date of the accident, diagnosis of a disease or date of death.

Draft Regulations regarding inspections in terms of Chapter XA

These deal with inspections, compliance and enforcement in terms of Chapter XA of COIDA. Further, these Draft Regulations seek to deal with the powers of an inspector during investigations or inspections into alleged non-compliance; the notice periods for investigations and inspections; as well as the exercise of the discretion of an inspector when conducting inspections to inform employers and employees of their respective rights and obligations under COIDA.

Draft Regulations regarding third parties who transact with the Compensation Fund

These deal with issues relating to third parties who transact with the Compensation Fund in terms of section 73(4) of COIDA. They set out the proposed terms and conditions for transacting with the Fund. Third parties would then need to meet the requirements in order to be able to register with the Fund. Similarly, there are requirements to be met by employer representatives appointed and acting on behalf of an employer in such circumstances.

With the COIDA Amendment Act expected to come into force and effect in the near future, it is necessary for the Regulations to be revisited, to ensure that they are aligned to the COIDA Amendment Act. This is more so where these Regulations would apply to all occupational injuries and diseases claims, including death.

Keep a look out for our further updates on these aspects. To view the published Draft Regulations, click here.

Fiona Leppan, Biron Madisa and David de Goede

Take care before you share: The dangers of social media use in the workplace

Advancements in technological gadgets such as smart phones and laptops, as well as the recent breakthroughs made with artificial intelligence, have undoubtedly made our lives easier by enabling us to access information seemingly at the speed of light. Furthermore, social media platforms such as Facebook, Instagram and X (formerly Twitter) have enabled users to connect and communicate with people who are on the other side of the world with a few strokes on a keyboard.

It is not uncommon for users of social media platforms to take advantage of the fact that they are engaging in a virtual reality (and not physical reality) by posting and sharing information or statements that are untrue and offensive to others.

Some of these untrue statements may amount to defamation, which is defined as the unlawful publication of a statement made by a person (defamer) against another person (defamed). Publication generally refers to instances where a third party hears or reads the statement.

In the context of social media, defamation may include conduct such as publishing inaccurate information (also referred to as "*fake news*"), making comments, or even sharing false information about someone or an organisation to portray them in a negative light and cause harm to their reputation and good name. For conduct to amount to defamation, there must be:

- a publication of a statement (verbal or written);
- the defamer must have intended to defame a person;
- there must be harm and injury; and
- the publication must violate a person's right to their good name, reputation and dignity.

The test for defamation is an objective assessment of how an average person would interpret the statement, considering both its explicit and implied meaning. Differently put, the question would be whether the statement, in its ordinary sense, would likely diminish an individual or entity's standing in the eyes of society. Defamation must, of course, be juxtaposed with the right to freedom of expression. However, this right is not without limitation.

Steps are, however, being taken by the legislature to address the growing army of social media warriors who share false information on social media platforms. One such step is the introduction of the Prevention and Combating of Hate Crimes and Hate Speech Bill (Act) which was assented to by President Ramaphosa on 9 May 2024.

Take care before you share: The dangers of social media use in the workplace

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The purpose of the Act is to, among other things, give effect to constitutionally enshrined rights, including human dignity, equality and the right to freedom and security. However, the Act also contains implications for employers as it is important to read the Act in conjunction with other employment law legislation such as the Employment Equity Act 55 of 1998 (EEA) and the harassment code published in terms of the EEA (Code).

The Act criminalises hate crime and hate speech and, consequently, an employer may institute disciplinary proceedings in conjunction with any criminal proceedings that may be underway against an individual.

Protective steps that employers can take

Employers may ultimately take the following proactive measures to protect themselves from the dangers associated with social media:

- Implementing social media policies and training employees on the use of social media.
- Regularly monitoring their social media channels for negative or false statements.
- Responding promptly and professionally to negative or defamatory statements.
- Correcting false information.
- Considering legal action in cases of defamation.
- Insurance coverage for defamation claims.

As we move further into the digital age, employers and employees alike need to be conscious of the material that they share online as this may have legal and reputational ramifications. For employees in particular, the cardinal rule is to take care before you share as you might see your social media posts again at a disciplinary hearing. If an employee's social media post refers to or references their employer or, alternatively, if the employee is publicly associated with the employer, there would be a sufficient link to the workplace for the employer to discipline an employee for an inappropriate post.

Anli Bezuidenhout, Phetheni Nkuna, Katekani Mashamba, Serisha Hariram and Thato Maruapula

National politics at work: Avoiding conflict and managing reputation in the workplace

The issue of political affairs in the workplace is perennial and, given the imminent elections on 29 May 2024, which has been declared a public holiday, the appearance of politically motivated conduct in the workplace or on workplace platforms as well as on social media may be more likely.

The term "*political opinion*" was defined by the Labour Appeal Court (LAC) in *Cape Peninsula University of Technology v Mkhabela* [2021] 42 ILJ 2384 (LAC) as "*a broad category of attitudes that a person might hold on matters of concern to [them] concerning the state, government or society*".

Employers may have an interest and duty to create and maintain a harmonious and politically neutral workplace. In doing so, an employer may wish to prohibit and regulate certain conduct that could threaten this aim. As with many employment issues, the best approach is to regulate conduct in the workplace by implementing reasonable policies consistently that provide clarity on best practice and prohibited conduct. This includes adopting policies and guidelines for appropriate behaviour, dress code, communication and interaction.

However, an employer cannot generally restrict an employee's entitlement to join a political party or participate in political activities outside of the workplace. In the recent judgment of *SAMWU v Minister of Cooperative Governance and Traditional Affairs* [2024] 2 BLLR 221 (LC) (SAMWU), the Labour Court found section 71B of the Local Government: Municipal Systems Act 32 of 2000 (Act) unconstitutional.

Section 71B extended a prohibition of holding office in political parties for municipal managers and those reporting directly to them, to all municipal employees, regardless of their position or status.

The South African Local Government Association (SALGA) supported the prohibition by placing before the court investigations into political killings in the municipal sector and the Human Rights Commission's recommendation of depoliticising municipalities. This was presented as justification for its attempt to prevent political patronage in the workplace. SALGA further argued that the prohibition would promote equality between municipal employees. The court found that there was no rational connection between the purpose of the prohibition (professionalising the municipal sector and improving service delivery) and the limitation of the constitutional right to form, join and participate in political parties.

In determining the reasonableness of an employer's policy and potential sanctions for misconduct, the context is important. In *National Union of Metalworkers of South Africa v Transnet SOC Ltd* [2019] 2 BLLR 172 (LC) the Labour Court was confronted with a policy which prohibited employees from wearing political party clothing or other non-recognised union regalia during working hours. The Labour Court stated that the right to participate in the lawful activities of a union, as protected by sections 4 and 5 of the Labour Relations Act 66 of 1995, has been given a wide interpretation and includes a range of lawful activities such as the right to recruit and represent members. This includes the right to wear union T-shirts. The Labour Court qualified its finding by stating that the right to wear union T-shirts may be limited where this poses a threat to safety or sparks union rivalry, or for some other valid operational reason.

National politics at work: Avoiding conflict and managing reputation in the workplace

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In the context of industrial action where some striking workers sang a struggle song that contained lyrics that could possibly be considered contextually offensive or racist, the Constitutional Court stated that while the singing of the song at the workplace was inappropriate and offensive in the circumstances, the sanction of dismissal did not automatically follow (*Duncanmec (Pty) Limited v Gaylard N.O. and Others* [2018] ZACC 29).

In a workplace context, where political partisanship or political statements are prohibited because they affect the integrity of the business or its reputation, arbitrators have generally not condoned these actions by employees where a link can be established between the misconduct, the employer's policies and the negative impact of the misconduct on the employer's workplace or business.

Conclusion

The LAC noted the harm that a politically charged environment can cause and noted that "*the frequently highly charged racial or political atmosphere of the workplace can be extremely detrimental to working relationships and disruptive of the entire business operation*" (*Lebowa Platinum Mines Ltd v Hill* [1998] 19 ILJ 1112 (LAC).

An employer is entitled to adopt workplace rules and policies which limit the rights to freedom of association, opinion, belief and expression in the interest of maintaining an apolitical and harmonious workplace and where political activity may negatively impact the integrity of its work. Rules against politicking in the workplace must be reasonable and limit these rights only insofar as is necessary.

Employment Law Practice

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:

Aadil Patel
Practice Head & Director:
Employment Law
Joint Sector Head:
Government & State-Owned Entities
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com

Anli Bezuidenhout
Director:
Employment Law
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com

Asma Cachalia
Director:
Employment Law
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com

Jose Jorge
Director:
Employment Law
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com

Fiona Leppan
Director:
Employment Law
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com

Imraan Mahomed
Director:
Employment Law
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com

Nadeem Mahomed
Director:
Employment Law
T +27 (0)11 562 1936
E nadeem.mahomed@cdhlegal.com

Yvonne Mkefa
Director:
Employment Law
T +27 (0)21 481 6315
E yvonne.mkefa@cdhlegal.com

Phetheni Nkuna
Director:
Employment Law
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com

Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Hugo Pienaar
Sector Head:
Infrastructure, Transport & Logistics
Director: Employment Law
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com

Thabang Rapuleng
Counsel:
Employment Law
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com

Njeri Wagacha
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com

Mohsina Chenia
Executive Consultant:
Employment Law
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com

Jean Ewang
Counsel:
Employment Law
T +27 (0)11 562 1499
E jean.ewang@cdhlegal.com

Ebrahim Patelia
Legal Consultant:
Employment Law
T +27 (0)11 562 1000
E ebrahim.patelia@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:

Rizichi Kashero-Ondego
Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E rizichi.kashero-ondego@cdhlegal.com

Jordyne Löser
Senior Associate:
Employment Law
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com

Lee Masuku
Senior Associate:
Employment Law
T +27 (0)11 562 1213
E lee.masuku@cdhlegal.com

Leila Moosa
Senior Associate:
Employment Law
T +27 (0)21 481 6318
E leila.moosa@cdhlegal.com

Christine Mugenyu
Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E christine.mugenyu@cdhlegal.com

Kgodisho Phashe
Senior Associate:
Employment Law
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com

Taryn York
Senior Associate:
Employment Law
T +27 (0)11 562 1732
E taryn.york@cdhlegal.com

Malesela Letwaba
Associate:
Employment Law
T +27 (0)11 562 1710
E malesela.letwaba@cdhlegal.com

Biron Madisa
Associate:
Employment Law
T +27 (0)11 562 1031
E biron.madisa@cdhlegal.com

Thato Maruapula
Associate:
Employment Law
T +27 (0)11 562 1774
E thato.maruapula@cdhlegal.com

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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.

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JOHANNESBURG
1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN
11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI
Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH
14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

CDH INCORPORATED