

Kontak die LWO / Contact the LWO

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Please note: All articles are available in English/Afrikaans. Please consult the LWO office for more details.

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Nuusbrief van die LWO Werkgeversorganisasie

Newsletter of the LWO Employers Organisation



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Vakbond aktiwiteite neem toe in die werksplek

Deur Jakkie Giani

Lede-werwing deur vakbonde is aan die toeneem en het ten doel om op 'n kollektiewe basis by die werksplek die weg te baan vir onderhandelinge rondom lone/voordele en werksomstandighede. Daar kan verskeie redes aangevoer word vir hierdie verhoogde aktiwiteite maar meer belangrik, is die vraag tot in watter mate dit geneutraliseer of voorkom kan word?

Onder die algemeenste dryfvere vir werknemers om by 'n vakbond aan te sluit, tel:

- ① Werksekuriteit;
- ② Lone en voordele;
- ③ Werksomstandighede;
- ④ Billike behandeling;
- ⑤ Behoeftes om aangehoor te word; en
- ⑥ Behoeftes om te behoort.

Arbeidsonrus en ekonomiese druk na aanleiding van hoër lone dwing werkgewers om herstrukturering van hul besighede te oorweeg in terme van vermindering van werksure, asook personeelafleggings wat opsigself 'n invloed op werksekuriteit het. Die toename in voedselinflasie en lewensstandaarde noep werknemers om gedurig te beding vir hoër lone en voordele. Veranderinge in werksomstandighede en omgewingsinvloede dra ook by tot 'n negatiewe ervaring deur werknemers, veral in die histories benadeelde werkerskorps. Dit behoort met omsigtigheid effektief deurgekommunikeer word. Werkstandaarde en vereistes is noodsaaklik om doelwitte en maksimum produktiwiteit te behaal en by nie-nakoming daarvan, word korrektiewe dissipline toegepas. Dit is eweneens belangrik dat alle werknemers bewus is van hierdie standaarde en vereistes en dat hulle deurlopend daaraan herinner moet word. In menslike gedrag speel die behoefte om aangehoor te word, asook om deel te neem / aan 'n groep te behoort, 'n baie groot rol in persoonlike-, sowel as professionele lewens van werknemers.

Werkgevers behoort deurlopend hul besighedsrisiko's, ook in terme van vakbond aktiwiteite, te ontleed en pro-aktief op te tree. Daar is nie 'n eenvoudige oplossing vir die toenemende arbeidsonrus of die onbehoorlike druk en invloede van buite die werksplek nie, maar daar is wel verskeie opsies om verhoudinge in die werksplek op 'n gesonde vlak te hou asook maksimum produktiwiteit te verkry.

Enkele gedagtes word aan u voorgedhou:

- ① Effektiewe en deurlopende kommunikasie op grondvlak;
- ② 'n Komitee/Forum in die werksplek as platform vir werknemers om deel te neem aan sake wat hulle raak;
- ③ Duidelike riglyne in terme van werkstandaarde/vereistes en gereelde bewusmaking/motivering daarvan;
- ④ Konsekwente/Korrektiewe toepassing van dissipline in die

Wie is die LWO?

Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdiens, asook verwante dienste op die gebied van Arbeidsreg. Die LWO is 'n nie-winsgewende ledeorganisasie en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

Die doel van die LWO

Die LWO het ten doel om die werkgewersorganisasie van voorkeur te wees vir werkgewers op 'n nasionale basis, gegrond op die professionele en effektiewe wyse waarop lede van die LWO met regsdiens, asook verwante dienste op die gebied van die Arbeidsreg, bedien word.

Who is the LWO?

The LWO was established during 1990 as an employers organisation in order for employers to be provided with legal services within the field of the Labour Law.

The LWO is a non-profitable members organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure through which members can be served effectively on a national basis.

The purpose/goal of the LWO

The LWO aims to be the employers organisation of choice for employers on a national basis, based on a professional and effective manner in which members of the LWO can be served with legal services as well as services related to the Labour Law.

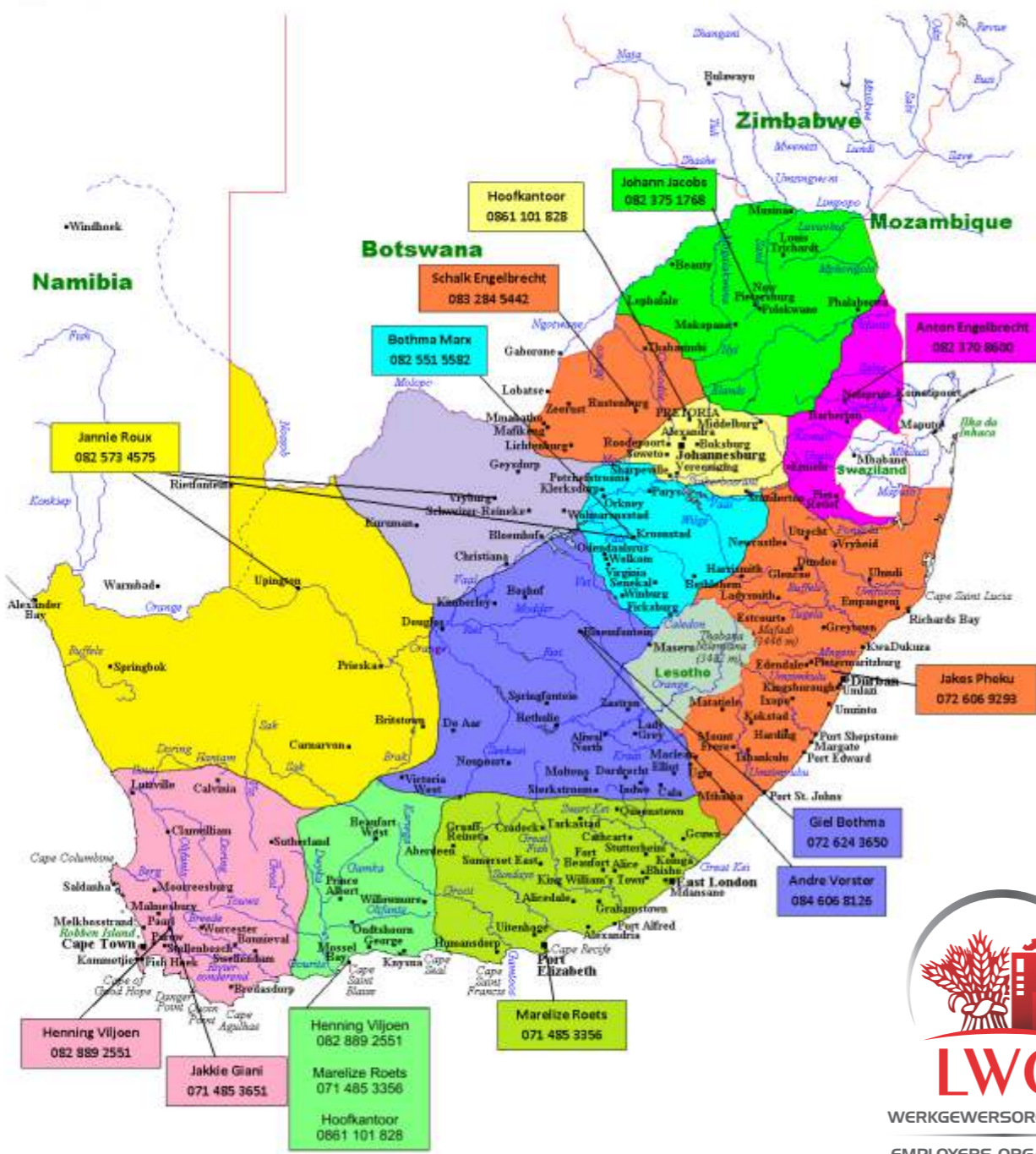
werksplek. 'n Dissiplinêre gedragskode moet korrek toegepas word en gerig wees op die oortreding en nie die persoon nie;

- ⑤ Kontrakteer slim per taak/projek/aktiwiteite;
- ⑥ Geleidelike infasering van nuwe toepassings en/of aftrekkings.

Werkgevers moet verseker dat hul eksklusiewe reg om die besigheid te bestuur verskans is, asook om menslike hulpbronne tot voordeel van die besigheid op 'n redelike en billike wyse te benut. U moet dus in beheer van die werksplek bly om sodoende produktiwiteit en die voortbestaan daarvan te verseker. Daar word voorsien dat onderhandeling met werknemers gaan toeneem, asook dat verhoudinge in die werksplek in die toekoms met groot omsigtigheid bestuur moet word. Daar is geen maklike of eenvoudige oplossing vir arbeidsonrus nie en weens beperkte ruimte kan alle voorstelle/mondelike remedies nie hier bespreek word nie.

'n Oop-deur beleid, effektiewe kommunikasie en deelname van werknemer(s) is prioriteite vir gesonde verhoudinge in die werksplek. Baie werkgewers stel egter hierdie belangrike aspek uit en moet dan reaktiewe optrede loods.

Kontak gerus die LWO Werkgeversorganisasie by 0861 101 828 om u by te staan met advies of voorstelle aan die hand te doen om hierdie bedreiging die hoof te bied / alternatiewelik te bestuur.



The Labour Relations Amendment Bill: The expectation of permanent employment

By Mariëtte Redelinghuys

Employees often refer matters to the CCMA claiming that their employers created an expectation of permanent employment in that a fixed term contract has been renewed consecutively or even indefinitely over a period of time or because the fixed term position became a permanent position.

This creates considerable risk for employers, taking into account that an award may be made against employers of:

- ordering the employer to employ the person in such position; or
- payment to the employee of up to 12 months of his salary.

The proposed amendment (per the draft Amendment Bill), amongst many other proposed amendments, intends to increase this risk for employers. We hereby intend to provide clarity regarding the current legal position, as well as the proposed amendment and also to assure our members that the LWO Employers Organisation has already made written submissions to Government whereby we strongly opposed the proposed amendments.

Section 186(1)(b) of the Labour Relations Act (hereinafter referred to as the "LRA") defines "dismissal" under these circumstances as follows:

"an employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms, but the employer offered to renew it on less favourable terms, or did not renew it;"

It is clear from the above that the LRA currently does not make provision to enable employees to extend their expectations to include an expectation for permanent or

indefinite employment.

The Labour Appeal Court tested the question whether the employee's expectation of permanent employment is included in Section 186(1)(b) in the matter of *University of Pretoria vs the Commission of Conciliation Mediation and Arbitration and others (2012) 32 ILJ 183 (LAC)*, which Court stated that this legislation specifically limits the expectation of the employee to fixed term contracts and that the expectation of permanent employment cannot be dealt with under the current Section 186(1)(b).



The Labour Relations Amendment Bill was adopted in August 2013 by the National Assembly of Parliament, but still needs to be adopted by the National Council of Provinces.

The amendments to Section 186 of the LRA will have far reaching implications for employers in South Africa and might be amended to read as follows:

"an employee employed in terms of a fixed term contract of employment reasonably expected the employer—

(i) to renew a fixed term contract of employment on the same or similar terms, but the employer offered to renew it on less favourable terms, or did not renew it; or

(ii) to retain the employee in employment on an indefinite basis, but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee;"

The implication of the amendment is that the employee will be able to claim that he had a reasonable expectation that he would be appointed indefinitely based on prior behavior of the employer. The onus of proof would be on the employee to prove the existence of the expectation and that the expectation was reasonable.

Surrounding circumstances, such as undertakings by the employer and general practice of the employer when permanent appointments are made, the availability of employment and the nature of the business are only a few considerations to be evaluated.

As a result an arbitrator will, if and after the Bill is accepted, be able to order permanent employment if the employee has discharged his onus of proof.

The LWO gladly provides our members with advice regarding employment contracts in all regards and urges our members to constantly make use of our specialised services in this regard.

Our contact number is 0861 101 828.

Wees gereed vir arbeidsinspeksies

Deur Morné Venter



Na die onlangse stakings in die landbousektor, asook die drastiese verhoging van die minimum loon het die Minister van Arbeid, Me. Mildred Oliphant, op Donderdag 18 Oktober 2013 gesê dat haar Departement nie sal skroom om aksie te neem teen boere wat nie voldoen aan arbeidswette nie. Daar sal nie net in die Wes-Kaap nie, maar ook in ander provinsies meer gereeld besoek afgelê word op plase.

Inspekteurs, asook die Minister self, het onlangs plase in die Citrusdal en Clanwilliam distrik besoek en klem gelê op die betaling van die minimum loon, asook die veiligheid van werknemers. Van die sowat 189 plase wat besoek was, het blykbaar slegs 107 voldoen aan nodige veiligheidsreëls en -regulasies.

Die volgende punte is van belang:

Gesondheids- en veiligheidsgevaare:

Dit sluit onder andere in: gifstowwe, koue, stof, elektrisiteit, handgereedskap, lewendehawe hantering, masjinerie, gebruik van openbare paaie, silo's, trekkers, damme en putte. Om te weet wat die algemene gevare is, verminder reeds u risiko.

Hoë risiko faktore:

- ① Ouderdom: meeste ongelukke gebeur met werknemers jonger as 15 jaar en met werknemers ouer as 65 jaar.
- ② Toerusting en masjinerie: meeste ongelukke en sterftes gebeur tydens die gebruik van masjinerie of toerusting.

- ③ Beskermende toerusting: die risiko kan verminder word deur die gebruik van veiligheidsgordels, handskoene, oorpakke, stewels, hoede, voorskote en brille.
- ④ Mediese sorg: in die landelike gebiede is hospitale en mediese sorg problematies.

Hoe om veiligheid op plase te bevorder:

- Bewusmaking. Deur op die uitkyk te wees vir potensiële gevare, asook deur gevare te bespreek met werknemers.
- U en u werknemers moet uself vergewis van die handleiding ten opsigte van masjinerie of toerusting. Verseker dat werknemers wat masjinerie, toerusting of gifstowwe gebruik, vertrouwd is met die voorgeskrewe manier van die gebruik daarvan.
- Inspekteer gereeld masjinerie en toerusting.
- Implementeer en monitor alle moontlike veiligheidsmiddele, -strukture en -prosedures.

Die LWO stel die kundigheid en ervaring van deskundiges op die gebied van Beroepsgesondheid en -veiligheid beskikbaar aan alle lede. Kontak ons gerus om u in kontak te plaas met hierdie spesialiste.

Kontak ons hoofkantoor by 0861 101 828 of u plaaslike Streekvertegenwoordiger om advies en bystand te bied om inspeksies met gemak te slaag.

What will justify a valid medical certificate?

By Marius Rieger

Employers often find themselves in a difficult situation when employees hand in questionable medical certificates upon their return from sick leave. Especially since the RSA's labour legislation allows an employee considerable paid sick leave, employers need to be informed of their rights in this regard to manage their businesses as effective as possible.



According to the Basic Conditions of Employment Act, Section 23(1) provides that an employer is not required to pay an employee if the employee has been absent from work for more than two consecutive days, or on more than two occasions during an eight-week period and on request by the employer, the employee does not produce a (valid) medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

Clause 16 of the Ethical Rules of Conduct for practitioners registered under the Health Professions Act of 1974 (as amended) states:

- ① "A practitioner shall only grant a certificate of illness if such certificate contains the following information, namely:
 - the name, address and qualification of the practitioner;
 - the name of the patient;
 - the employment number of the patient (if applicable);
 - the date and time of the examination;
 - whether the certificate is being issued as a result of personal observations by the practitioner during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds;
 - a description of the illness, disorder or malady in layman's terminology, with the informed consent of the patient, provided that if the patient is not prepared to give such consent, the medical practitioner or dentist shall merely specify that, in his or

her opinion based on an examination of the patient, the patient is unfit to work;

- whether the patient is totally indisposed for duty or whether the patient is able to perform less strenuous duties in the work situation;
- the exact period of recommended sick leave;
- the date of issuing of the certificate of illness; and
- the initial and surname in block letters and the registration number of the practitioner who issued the certificate.

- ② A certificate of illness referred to in sub rule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.
- ③ If preprinted stationery is used, a practitioner shall delete words which are not applicable.
- ④ A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself."

Employers need to have three aspects in place to manage sick leave and to eliminate misuse thereof:

- ① It is extremely important that there is a sick leave policy in the workplace and that it can be proved that all employees are aware of the sick leave policy as well as the procedure to follow when applying for leave;
- ② Proof that all employees are aware of the requirements of a valid sick note; and
- ③ Proof that all employees are aware of your disciplinary code and suggested warnings for misconduct.

If there is any uncertainty whether or not a medical certificate is valid, feel free to contact the LWO Employers Organisation for advice at 0861 101 828.

Die LWO Werkgeversorganisasie herinner werkgevers (wie aan die minimum vereistes voldoen) graag daaraan dat Billike Werksgeleenthede ("Employment Equity") Verslae 'n wetlike verpligting is per Artikel 21 van die Wet op Billike Werksgeleenthede, Wet nommer 55 van 1998 en ingedien moet word op/teen die volgende datums:

- September 2013 tot 1 Oktober 2013 vir per hand indienings by u naaste Departement van Arbeid kantoor, of;
- **Woensdag 15 Januarie 2014 vir elektroniese indiening.**

Vir meer inligting is u welkom om vir Elmari Lemmer te kontak by 0861 101 828 | 071 485 3531 | elmari@lwo.co.za

Hiermee 'n opsomming van dienste wat die LWO in hierdie verband bied:

DIENS	PAKKET	KOSTE
Verslae (EEA2 & EEA4)	Verwerking, samestelling van inligting en indiening van verslae	R2,200.00
Billike Werksgeleenthede Plan	• Opstel van Plan • 1 x Konsultasie - maksimum 2 ure (daarna R456.00 per uur) • 300 km gratis (daarna R2.00 per km ekstra)	R2,000.00
Ekstra konsultasie	Enige addisionele konsultasies ter nakoming van die vereistes, soos gestel deur die Wet op Billike Werksgeleenthede wat lede op hul besigheidspersoneel verlang	R456.00 per uur R3.56 per km

Alle kostes sluit BTW in