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Nuusbrief van die LWO Werkgewersorganisasie

Newsletter of the LWO Employers Organisation

## Die LWO: 'n werkgewersorganisasie bestuur deur werkgewers

Die Suid-Afrikaanse arbeidsmark word met reg as hoogs gereguleerd beskou. Hierdie siening word beaam in die Wêreld Ekonomiese Forum se Globale Mededingendheidsverslag van 2015/2016 en word Suid-Afrika 138ste uit 140 lande in terme van aanstel- en afdankpraktyke gerangeer. Die verslag rangeer Suid-Afrika verder 127ste vir betaling teenoor produktiwiteit en 140ste in terme van samewerking in werkgewer/werknemer verhoudinge. Oor die algemeen dui die verslag daarop dat beperkende arbeidsregulasies gesien word as die mees problematiese faktor by die doen van besigheid in Suid-Afrika.

Dit is dus duidelik dat dit uiters belangrik is om op hoogte te bly en te voldoen aan die vereistes van arbeidswetgewing, asook klem te lê daarop om arbeidsverhoudinge proaktief te bestuur.

Die LWO speel 'n belangrike rol deur arbeid as besigheidsrisiko in werkgewers se ondernemings, aan te spreek. Hierdeur ondersteun ons ons lede in die skep van welvaart in 'n uiters uitdagende omgewing.

### Voordele om aan 'n lede-organisasie te behoort:

Die LWO is 'n lede-organisasie sonder winsbejag, wat bestuur word deur 'n Raad (saamgestel uit suksesvolle sakelui en toonaangewende akademië), wat uit lede van die organisasie bestaan.

Die LWO Raad bestaan dus uit werkgewers en is gevolglik in die posisie om die LWO te bestuur met eerstehandse ervaring ten opsigte van die unieke uitdagings en behoeftes van werkgewers in Suid-Afrika.

Die LWO Raad word tweejaarliks verkies en die volgende ledevergadering vind plaas in Julie 2016 waarna alle LWO lede uitgenooi word. Hierdeur word verseker dat lede se belange deurlopend gedien word.

### Voordele om aan die LWO Werkgewersorganisasie te behoort:

Die volgende eienskappe plaas die LWO in die posisie om dienste van uitstaande gehalte aan ons lede te bied:

- Die LWO is geregistreer as werkgewersorganisasie by die Departement van Arbeid. Dit beteken dat ons gemagtig is om ons lede te verteenwoordig in die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA), Bedingingsrade en Arbeidshof.
- Soos genoem, is die LWO 'n organisasie sonder winsbejag wat bepaal dat die finansies bestuur word in die belang van LWO lede met die volgende wetlike verpligtinge:
  - Die LWO se finansiële state moet jaarliks ge-oudit word deur 'n geoktrooieerde rekenmeester volgens algemeen aanvaarde oudit maatstawwe.

### 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 lede-organisasie sonder winsbejag 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 uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste 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 labour law.

The LWO is a non-profit 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 excellence for employers based on the professional manner in which members of the LWO is served with labour law services.

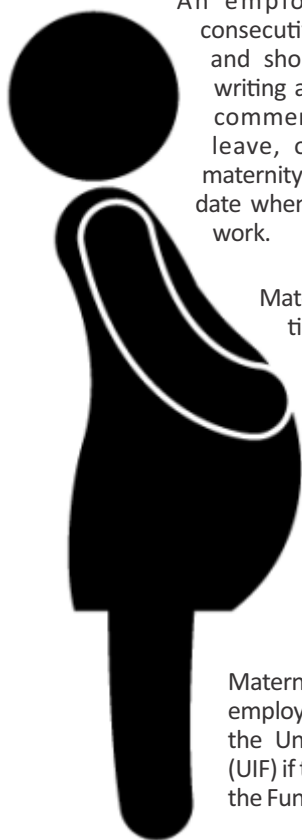
- Hierdie finansiële state moet jaarliks by die Registrateur van Arbeidsverhoudinge by die Departement van Arbeid ingedien word. Hierdie verpligtinge skep gerusstelling by ons lede ten opsigte van die wyse waarop die LWO se finansies bestuur word.
- Die LWO beskik oor 'n span hoogsopgeleide Regsadviseurs - huidiglik lê nagenoeg 235 jaar se toepaslike ervaring op die gebied van arbeidsreg opgesluit in ons Regsafdeling.
- Die LWO het 'n nasionale voetspoor.
- Die LWO is apolities.
- Die LWO is trots op ons waardes:
  - Respek - ons lede en personeel word na waarde geag en staan ons billike behandeling van ons lede en personeel voor.
  - Dinamiese ingesteldheid - ons is daarop ingestel om die verwagtinge van ons lede deurlopend te oortref.
  - Kwaliteit - ons neem elkeen verantwoordelikheid vir die kwaliteit van ons werk.
  - Leierskap - ons demonstreer leierskap in alles wat ons doen.
  - Integriteit - ons demonstreer integriteit in al ons aksies.

**Die LWO het ten doel om die werkgewersorganisasie van uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste bedien word. Kontak ons by 0861 101 828 - ons is 24/7 beskikbaar.**

# Maternity leave?

By Anneline Scriven

Employers should be aware of what their employees are entitled to when they are pregnant and what obligations they have towards the employer.



An employee is entitled to four consecutive months' maternity leave and should inform the employer in writing at least four weeks before the commencement of the maternity leave, of the date on which the maternity leave will commence and the date when the employee will return to work.

Maternity leave may begin at any time from four weeks before the birth of a child, or earlier if a medical practitioner certifies that it is necessary. An employee may not work for a period of six weeks after the birth of a child, unless a medical practitioner certifies that the employee is able to do so.

Maternity leave is unpaid leave. The employee may however claim from the Unemployment Insurance Fund (UIF) if they have been contributing to the Fund.

In the event of a miscarriage during the third trimester of pregnancy, or if the employee bears a stillborn child, the employee is entitled to six weeks' maternity leave after the miscarriage or stillbirth, whether or not the employee has commenced maternity leave at the time of the miscarriage or stillbirth.

The Basic Conditions of Employment Act prohibits employers from requiring or permitting a pregnant employee or an employee who is nursing her child to perform work that is hazardous to the health of the employee or the health of her child.

An employer must offer suitable alternative employment to an employee during pregnancy and for a period of six months after the birth of her child, if the employee is required to perform night work, or if her work poses a danger to her health or safety or that of her child, unless it is not practicable to do so. Alternative employment must not be less favourable than the employee's ordinary terms and conditions of employment.

When employees return after maternity leave, they should be placed back in their position. Employees may not be dismissed during the period of maternity leave. This will be regarded as an automatically unfair dismissal and may result in an award at the Commission for Conciliation Mediation and Arbitration (CCMA) for compensation of an amount up to 24 months' remuneration.

Contact the LWO at 0861 101 828 for more information.

# LWO bewusmakingsveldtog in Mpumalanga - Maart 2016

Die LWO beoog om 'n bewusmakingsveldtog in die Laeveld te loods wat ten doel het om werkgewers op 'n praktiese wyse te bemagtig. Besprekingspunte sluit in die minimum loon, dissipline in die werksplek, asook wat die werkgewer se regte is en hoe dit toegepas moet word.

'n Volledige program met besonderhede sal binnekort aan alle LWO lede in Mpumalanga per e-pos gestuur word. Lede in nabye areas is welkom om ook die geleentheid by te woon - kontak die kantoor vir meer besonderhede. Kontak die LWO met enige navrae by 0861 101 828 | [info@lwo.co.za](mailto:info@lwo.co.za)

## Equal pay for work of equal value

By Jan Swanepoel

On 01 June 2015, the Minister of Labour issued a Code of Good Practice on Equal Pay for Work of Equal Value (Code) in terms of the amended Employment Equity Act (EEA).

The principle of equal pay for work of equal value entails that employees who occupy the same, or similar positions and, who renders substantially the same work or services, should be remunerated equally regardless of their gender, race, sex, age, disability, religion etc.

The Code is structured for the purpose of ensuring that employees are treated fairly, consistently and to eliminate unfair discrimination in the workplace.

This also extends to any benefits such as bonuses, company vehicles and any other benefits extended to employees, which means that an employer may not extend certain benefits to one employee but exclude another.

The Code therefore imposes a positive duty on every employer to take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

It is, however, not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following factors:

- The individuals' respective seniority

- or length of service;
- The individuals' respective qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;
- The individuals' respective performance, quantity or quality of work, provided that employees are equally subjected to the employer's

performance evaluation system, and that the performance evaluation system is consistently applied;

- Where an employee is demoted as a result of organisational restructuring

or for any other legitimate reason without a reduction in pay / remuneration and fixing the employee's salary at this level until the pay / remuneration of employees in the same job category reaches this level;

- The existence of a shortage of relevant skill in a particular job classification; and
- Any other relevant factor that is not unfairly discriminatory.

Employers should therefore be proactive and examine all aspects of their remuneration/benefit policies to ensure compliance and to protect themselves from possible unfair discrimination disputes.

Contact the LWO for advice or assistance at 0861 101 828.



# Siekverlof - mediese sertifikaat

Deur Morné Venter

Wanneer 'n werknemer afwesig is weens siekte en 'n mediese sertifikaat indien, ontstaan die vraag dikwels by werkgevers of so 'n sertifikaat korrek en aanvaarbaar is.

Die Wet op Basiese Diensvoorwaardes en die Raad van Gesondheidsberoepes van Suid-Afrika se etiese reëls gee riglyne oor aanvaarbare mediese sertifikate. 'n Mediese sertifikaat moet die volgende inligting bevat:

- naam, adres en kwalifikasie van die mediese praktisyn;
- naam van die pasiënt;
- indiensnemingsnommer van die pasiënt (indien van toepassing);
- datum en tyd van die ondersoek;
- datum van uitreiking van die mediese sertifikaat;
- presiese tydperk van siekteverlof (afwesig vanaf spesifieke datum en kan diens hervat op spesifieke datum);
- duidelike aanduiding van die identiteit van die mediese praktisyn wat die oorspronklike sertifikaat onderteken het;
- of die sertifikaat uitgereik is as gevolg van persoonlike waarnemings deur die mediese praktisyn tydens 'n ondersoek, of

as gevolg van inligting soos verskaf deur die pasiënt;

- beskrywing van die ongesteldheid wat verstaanbaar is, met die nodige toestemming van die pasiënt. Indien daar nie sodanige toestemming gegee is nie, kan die mediese praktisyn spesifiseer dat volgens hom/haar die pasiënt ongeskik is om te werk;
- of die pasiënt heeltemal ongeskik is vir werk en of die pasiënt in staat is om minder veeleisende take te verrig.

## Belangrik om ook te onthou:

- Indien die sertifikaat vooraf gedruk is, moet die mediese praktisyn die gedeeltes skrap wat nie van toepassing is nie.
- Diagnose deur 'n verpleegster of enige ander persoon wat nie gekwalifiseerd is om mediese toetse te doen, of om 'n diagnose te maak nie, is nie aanvaarbaar nie.



In die volgende gevalle word siekverlof nie toegestaan nie:

- roetine ondersoek;
- mediese toetse;
- afhaal van medisyne by apteek;
- besoeke aan 'n spesialis.

Indien 'n mediese sertifikaat verdag lyk, kan die werkgever die nodige ondersoek instel deur byvoorbeeld die mediese praktisyn te kontak.

**Kontak die LWO vir meer inligting en/of bystand by 0861 101 828.**

# Sleeping while on duty

By Elmari Lemmer

Few things are as enjoyable or relaxing as a nap when you know you're supposed to be doing something important. However, sleeping while on duty can be grounds for dismissal - just imagine an air traffic controller falling asleep at his desk - this is a dereliction of duty. If you're sleeping, you're negligent as you didn't take the proper precautions to get enough rest to ensure you don't arrive for duty fatigued.

## **How should you treat employees who fall asleep while on duty?**

Falling asleep on duty is usually accidental as employees drift off or doze without premeditation. However, some employees have been known to sneak off to an out of the way, or difficult to access location to sleep, or even arrange their office furniture or surroundings into a makeshift bed. If this is the case, you're dealing with premeditation which may constitute gross misconduct.

## **Sleeping on duty is a serious matter**

Sleeping on duty should be addressed in your company's disciplinary code and procedure. Apart from adversely affecting productivity, it may also be dangerous in circumstances where the offender's duty is to be alert and

prevent hazardous situations, or to protect people or property. It also projects an unprofessional appearance and blackens the company's name.

## **Employers have different views concerning sleeping on duty**

Some employers are lenient and have even adopted a formal power-nap policy to try and improve productivity. Other employers are strict and employ high-tech means, such as video surveillance and constant supervision, to weed out offenders.

However, there is no guideline in law directing employers to institute such policies and employers who don't allow 'siesta' time are expected to act against offenders. That being said, an employer should always first conduct an investigation to determine the true facts of each matter.



Whether the offence was intentional or unintentional, it remains an act of misconduct, subject to a disciplinary inquiry. If the incident or its potential fall-out is found to be severe and the employee is found guilty at such an inquiry an offender may earn a formal warning or even be dismissed.

## **What evidence can be presented?**

Many employers have video surveillance that can be used as evidence. Take note that the employer can only make use of cameras in the workplace with employee's permission as this can be seen as violation of the employee's rights. An eye witnesses can also testify to the incident, or even a picture on a cell phone may be used. When taking a picture it is advised that the person taking the picture has a witness present to testify to the authenticity of the picture.

**Please contact the LWO at 0861 101 828 for more information or assistance in this matter.**



# Kontak die LWO / Contact the LWO

Tel: 0861 101 828 | Faks/Fax: 012 664 2703 | E-pos/E-mail: info@lwo.co.za | Web: www.lwo.co.za

Adres/Address: Privaatsak/Private bag x121, Centurion, 0046 | Eenheid/Unit 16, Central Office Park, Jeanlaan 257 / 257 Jean Avenue, Centurion

## HOOFKANTOOR

**Voorsitter**

**Hoof Uitvoerende Beampte**

**Bestuurder: Bemarking**

**Bestuurder: Finansies & Admin**

**Bestuurder: Regsdienste**

**Senior Regsadviseur**

**Regsadviseur**

**Regsadviseur**

**Regsadviseur**

**Pieter Muller**

**Pieter Breytenbach**

**Ansofie van der Walt**

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## LWO bedieningspunte / service points

Nota: dienste sal gelewer word vanaf die naaste bedieningspunt / Note: services will be rendered from the closest service point

