

My werknemer het bedank - wat nou?

Deur Marelize Roets

Die diensooreenkoms kom outomaties tot 'n einde wanneer die werknemer sterf, aftree, 'n vrywillige skikkingsooreenkoms aangaan, of in die geval waar die werknemer vrywillig bedank.



Kennistydperk

Met bedanking is die werknemer verplig om kennis van bedanking te gee en ook gedurende hierdie kennistydperk te werk. Die statutêre kennistydperk verskil van bedryfsektor tot bedryfsektor, maar die Wet op Basiese Diensvoorwaardes spesifiseer die volgende periodes:

- **Een week kennis**, indien die werknemer in diens was vir minder as ses maande;
- **Twee weke kennis**, indien die werknemer in diens was vir meer as ses maande, maar minder as 12 maande;
- **Vier weke kennis**, indien die werknemer in diens was vir langer as 12 maande.

Wanneer die werknemer summier bedank sonder om genoegsame kennis aan die werkgever te gee, het die werkgever die opsie om:

- 'n hofbevel te bekom om die werknemer te dwing om die kennistydperk te werk;
- 'n siviele eis teen die werknemer in te stel vir skadevergoeding;
- die werknemer se verlof wat uitbetaal moet word af te speel teenoor die kennistydperk - let wel dat hierdie slegs gedoen kan word indien daar so in die dienskontrak op ooreengekom is.

Die werkgever moet die werknemer altyd betaal vir die kennistydperk, tensy die werknemer "met onmiddellike effek" bedank en nie die kennistydperk wil werk nie. 'n Werknemer wie bedank het, is ook nie geregtig daarop om werkloosheidsversekering te eis nie.

Kry dit op skrif

Die LWO beveel aan dat wanneer 'n werknemer bedank, die werkgever slegs die bedanking moet aanvaar indien dit skriftelik aan die werkgever gegee word. 'n SMS of e-pos kan ook aanvaar word, maar dit is die werkgever se plig om te bevestig dat die bedanking wel eg is (indien die werkgever twyfel, moet die werknemer genooi word

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.

vir 'n konsultasie om die beweerde bedanking te bespreek).

Wanneer die bedanking nie op skrif is nie, kan dispute ontstaan waar 'n werknemer moontlik 'n saak van onbillike ontslag aanhangig kan maak by die KVBA (Kommissie vir Versoening, Bemiddeling en Arbitrasie). Die werkgever moet ook waar moontlik 'n getuie inroep om gebeure te bevestig.

Die werkgever kan ook dispute vermy deur die bedanking skriftelik te aanvaar en te onderteken saam met 'n getuie. Hierdie dokument word dan aan die werknemer oorhandig (nadat 'n afskrif gemaak is vir die werknemer se personeellêer).

Terugtrek van 'n bedanking

'n Skriftelike bedanking is 'n eensydige en finale handeling deur die werknemer. Indien die werknemer vrywilliglik 'n bedanking by die werkgever ingedien het, sal die werknemer nie die bedanking kan terugtrek sonder die werkgever se toestemming en goedkeuring nie.

Hou 'n konsultasie

Die LWO beveel aan dat 'n werkgever altyd met 'n werknemer konsulteer nadat 'n bedanking ingedien is om die rede vir bedanking te bespreek en finale reëlings te tref met verwysing na die laaste werksdag, kennisperiode en uitbetaling. Indien daar enige dispuut ontstaan tussen die partye, kan daar gekonsulteer en onderhandel word en 'n ooreenkoms aangegaan word.

Kontak die LWO by 0861 101 828 vir enige advies en/of bystand wanneer 'n werknemer bedank - ons is 24/7 beskikbaar.

Plaaswerkers

Deur Elmari Lemmer

Sektorale Vasstelling 13 reguleer arbeidsverhoudinge in die Landbousektor en plaas sekere wetlike verpligtinge op die boer as werkgewer. 'n "Plaaswerker" is enige werknemer wie betrokke is by boerdery aktiwiteite, insluitende algemene werkers op 'n plaas, alle huiswerkers wie in en om die plaashuis werk, asook sekuriteitswagte wie die plaas en areas waar boerdery aktiwiteite plaasvind bewaak en nie in die Privaatsekuriteitsektor werksaam is nie.

Die nuwe minimum loon vir plaaswerkers is afgekondig wat op 1 Maart 2017 in werking getree het en geldig is tot 28 Februarie 2018. Die loon is soos volg:

Uurliks: R15.39

Daagliks (9 ure per dag): R138.52

Weekliks (45 ure per week): R692.62

Maandeliks (195 ure per maand): R3 001.13

Wanneer die werkgewer nie die minimum loon kan betaal nie, hou die redes hiervoor meestal direk verband met die boerdery se finansiële posisie. Indien die werkgewer nie die minimum loon kan bekostig nie, is daar alternatiewe wat die werkgewer kan oorweeg, insluitende:

- **Herstrukturering** om werksure en werkswyses te wysig om kostes te bespaar, maar steeds te verseker dat die onderneming optimaal funksioneer;
- **Personeelvermindering** waar werknemers ontslaan word op grond van operasionele vereistes;
- **Aansoek om kwytstelling** van betaling van die minimum loon by die Departement van Arbeid. Hierdie aansoek behels die hou van konsultasies, openbaarmaking van operasionele en finansiële inligting, asook die indiening van 'n plan oor hoe die

werkgewer gaan verseker om teen 28 Februarie 2018 die huidige minimum loon te betaal. Indien 'n aansoek afgekeur word, is die minimum loon terugwerkend betaalbaar.

Die werkgewer is verplig om aan alle toepaslike wetgewing te voldoen, insluitend die betaling van 'n minimum loon. Indien 'n werkgewer nie die minimum loon betaal nie en dus nie aan wetgewing voldoen nie, is daar sekere regsimplikasies en gevolge vir die werkgewer.

Kontak gerus die LWO by 0861101828 vir meer inligting en/of bystand. Ons is 24/7 beskikbaar.



Being untruthful in a CV...

By Anneline Scriven

It often happens that prospective employees are dishonest about their qualifications or experience and in certain instances, their criminal records. Sometimes employers only realise this after appointing the employee. Dishonesty is a serious offence and although the employee was not in your service when he/she lied to you, there was intent to mislead in order to gain employment and the employer may proceed with a disciplinary hearing to prove that the person lied and would not have been appointed had the employer known the truth.

Forms of dishonesty on a CV and during an interview can include the following:

- The necessary qualification
- Previous work experience
- Falsification of references
- Not disclosing previous misconduct committed which may be relevant to the specific position
- Failing to provide important information relevant to the employer

Once the employee has accepted the offer of employment, the employee has to provide a specific service to the employer in return for remuneration. If the employee is unable to provide such a service, it becomes difficult for the employment relationship to continue.

How does dishonesty affect the working relationship?

The employment relationship is essentially built on trust and confidence. It is the employee's legal duty to always act in good faith, be loyal and to have the employer's best interest at heart.



Dishonest conduct can negatively impact the employment relationship, rendering trust irreconcilable. Once the employer becomes aware of the employee's dishonesty, a disciplinary hearing should be scheduled immediately. Take note of the following:

- The employee should receive sufficient notice (at least 48 hours) of the disciplinary hearing;
- This notice should list the charges of

dishonesty providing sufficient details;

- The employer should have all the evidence available at the hearing to prove the case should the employee dispute the charge at the disciplinary hearing;
- All dismissals must be procedurally and substantively fair.

Be proactive

We advise all employers to be proactive and contact previous employers before appointing an employee to enquire about the prospective employee's employment and reason for the contract terminating. If necessary, the employer can also use available search engines to verify the existence of a previous employer. Employers should also request proof of the candidate's qualifications before making a decision.

When an employee is appointed, it is important to provide the employee with an employment contract with the job specifications and list of duties which should be signed by both parties and witnesses.

Contact the LWO at 0861 101 828 or info@lwo.co.za for advice and/or assistance.

What happens at the CCMA?

By Morné Venter

The Commission for Conciliation, Mediation and Arbitration (CCMA) was established as an independent, apolitical dispute resolution body in terms of the Labour Relations Act (LRA), Act 66 of 1995 and is aimed at promoting fair practises and resolving labour disputes within the working environment.

I have received notice to attend a CCMA case – now what?

The employer will receive two documents from the CCMA regarding a case. First is the referral form (form 7.11), which states the reasons why this matter is referred to the CCMA, as well as what outcome the employee is seeking (in terms of compensation and/or reinstatement). The second document is the notice of set down and states the date, time and place of the proceedings, as well as what process will be followed on the day. CCMA cases are held at the CCMA in your area or at the local Department of Labour in smaller regions.

It is vital to attend the CCMA case, as failure to do so can result in dire consequences. Should you not be able to attend, it is strongly advised that you contact the CCMA and make arrangements – it will then be on the discretion of the commissioner to reschedule or to continue with the proceedings in your absence.

There are three CCMA processes:

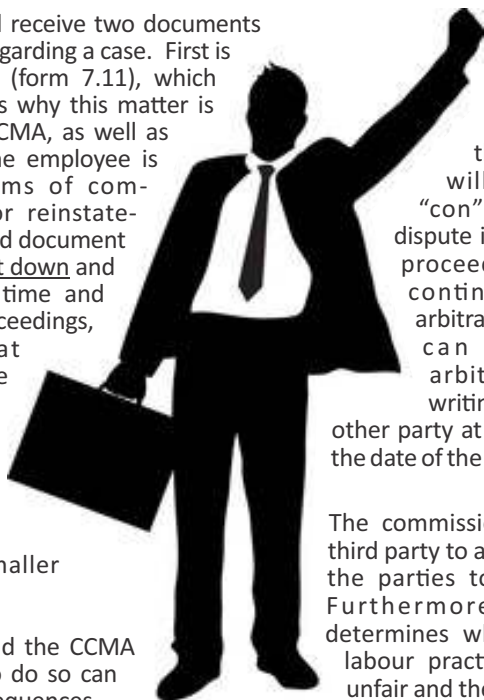
Conciliation

This is an informal and confidential process aimed at reaching an agreement to settle a particular dispute. In some circumstances the CCMA might first try to resolve the dispute telephonically.

Arbitration

This process is more formal than conciliation and is recorded. During arbitration the employer and the employee

gets the opportunity to state their case before the commissioner in order to settle the dispute. All the evidence and the witnesses must be present and both parties will be allowed to call and cross-examine the witnesses. The settlement can be in the form of an arbitration award imposed by the commissioner based on evidence presented by both parties. This award is legally binding.



Con/Arb

This is a combination of the abovementioned processes and is held on the same day. The process will commence with the “con” – conciliation. If the dispute is not resolved or settled, proceedings will immediately continue with the “arb” – arbitration. A party to a con/arb can object against the arbitration proceedings in writing to the CCMA and the other party at least seven days prior to the date of the “con/arb” hearing.

The commissioner is an independent third party to act as a facilitator assisting the parties to reach an agreement. Furthermore, the commissioner determines whether the dismissal or labour practices was indeed fair or unfair and then makes a binding award if applicable. This award can be either reinstatement or compensation, which is limited to a payment of a maximum of 12 months of the employee’s salary for unfair dismissals or labour practices, but 24 months of the employee’s salary for automatically unfair dismissals (on account of discrimination). **The onus of proof is on the employer to prove that the dismissal or labour practices were fair.**

As a registered employers’ organisation, the LWO can represent our members at the CCMA, Bargaining Councils and Labour Court. Contact us at 086 110 1828 or info@lwo.co.za for assistance advice.

Myth BUSTER Labour Law

Myth:

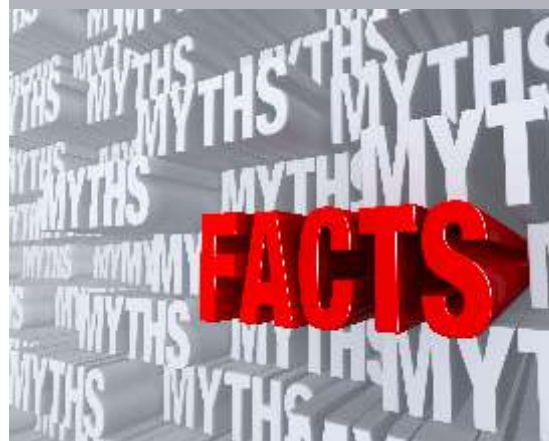
“The employer can dismiss an employee immediately”

Fact:

An employer cannot dismiss an employee under any circumstances, even with valid reason, without holding a disciplinary hearing to ensure that a fair procedure is followed and that there is substantive reason (proof) for the employee to be dismissed.

Advice:

A disciplinary code is vital to ensure that there are clear rules and procedures in the workplace to be followed by employees. Clear rules and guidelines ensure that friction and misunderstandings are kept to a minimum, which in turn promotes productivity and a positive working environment. Ensure that your disciplinary code is relevant and up to date regarding offences and appropriate sanctions. Also ensure that all employees are aware of what the disciplinary code entails.



Die skrif is teen die muur!

Arbeidswetgewing vereis dat die volgende plakkate in die werksplek vertoon moet word: die Wet op Basiese Diensvoorwaardes, die Wet op Billike Werksgeleenthede en die Wet op Beroepsgesondheid en -veiligheid.

Die LWO se opsommende plakkate (gelamineer en tweetalig) is uitsluitlik ontwerp vir hierdie doeleinde en sluit die volgende in:

- Die Wet op Basiese Diensvoorwaardes
- Die Wet op Billike Werksgeleenthede

- Die Wet op Beroepsgesondheid en -veiligheid
- ’n Dissiplinêre kode – die LWO beveel ons lede sterk aan om ’n relevante en op datum dissiplinêre kode met die werkgewer se reëls en voorgestelde sanksies, in die werksplek te vertoon waar alle werknemers dit gereeld kan sien.

Stuur ’n e-pos na info@lwo.co.za om hierdie plakkate te bestel of kontak die kantoor by 086 110 1828.

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

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HOOFKANTOOR

Voorsitter

Hoof Uitvoerende Beampte

Bestuurder: Bemarking

Bestuurder: Finansies & Admin

Bestuurder: Regsdienste

Senior Regsadviseur

Regsadviseur

Regsadviseur

Regsadviseur

Regsadviseur

Regsadviseur

Pieter Muller

Pieter Breytenbach

Ansofie van der Walt

Daniel van der Vyver

Christo Bester

Mariëtte Redelinghuys

Elmari Lemmer

Crystal McLauchlin

Morné Venter

Maryna Theron

Alexandra Small

082 853 8711

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