

YOUR RIGHTS AS AN EMPLOYEE

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A. INTRODUCTION

Because of human needs, members of society sell their labour in exchange for remuneration which puts them in a position to acquire goods and services they need for survival.

The interaction of the producer of goods and services and the provider of labour leads to a contract of employment which is reciprocal, *i.e.* both parties have rights and obligations arising out of this contract. The employer is entitled to the services of the employee on the one hand and the employee is obliged to render the specific services for which he has been employed on the other hand; the employer is obliged to remunerate the employee for his services and the employee has a right to such remuneration (Grogan 2001, 50).

This type of right arising out of a contract is referred to as a common law right.

B. LEGISLATION

The issue of the rights of employees is captured in the Declaration of Philadelphia and was adopted by the International Labour Conference and is now part of the ILO Constitution and reads thus:

"The General Conference of the International Labour Organisation, meeting in its twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of

the aims and purposes of the International Labour Organisation and of the principles which should inspire the policy of its Members.

Believing that experience has fully demonstrated the truth of the statement in the constitution of the ILO that lasting peace can be established only if it is based on social justice, that:

(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". (Constitution of the ILO, ANNEX May, 2004).

1. THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 108 of 1996

It lays the foundation for all legislation that governs labour relations in South Africa, and pertaining to the rights of employers and employees. Section 23 of the Constitution stipulates thus:

- (i) "everyone has the right to fair labour practices
- (ii) everyone has the right to:
 - (a) to form and join a trade union
 - (b) to participate in the activities and programmes of a trade union, and
 - (c) to strike".

Further, the issue of equality needs to be taken into consideration when one deals with the right of employees. The Constitution makes the following provision in this regard:

- 1) Everyone is equal before the law and has the rights to equal protection and benefit of the law;

2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislation and other measures designed to protect or advance persons, or categories of persons disadvantaged by unfair discrimination may be taken;

3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth!

4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination;

5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair". (Section 9 Constitution).

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 was enacted with the following objectives, *inter alia*:

- (a) "to enact legislation required by section 9 of the Constitution;
- (b) to give effect to the letter of the constitution, in particular -
 - (i) the equal enjoyment of all rights and freedoms by every person
 - (ii) the promotion of equality
 - (iii) the values of non-racialism; and
 - (iv) the prevention of unfair discrimination and protection of human dignity as contemplated in section 9 and 10 of the Constitution". (Act 4 of 2000).

2. THE LABOUR RELATIONS ACT 66 of 1995 AS AMENDED.

The objectives of the Act are:

- (a) "to give effect to and regulate the fundamental rights conferred by Section 23 of the Constitution;
- (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation.
- (c) to provide a framework within which employers and their trade unions, employers and employers organisation can -
 - (i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and
 - (ii) formulate industrial policy; and
- (a) to promote -
 - (i) orderly collective bargaining
 - (ii) collective bargaining at sectoral level
 - (iii) employee participation in decision making in the workplace.
 - (iv) the effective resolution of labour disputes". (Chapter 1 LRA).

Chapter II defines the right of employees to freedom of association, *i.e.* to participate in the formation of a trade union and its lawful activities.

The Act further protects employees and persons seeking employment against discrimination, *e.g.* not to be a member of a union, etc.

The Act guarantees trade unions the right to determine their own constitution and rules and to hold elections for their office bearers, officials and representatives, and other related activities.

Chapter IV affords every employee the right to strike whilst every employee has recourse to lock-out under certain circumstances. No employee may be unfairly dismissed or be subjected to unfair labour practise according to Section 185 of the Act.

3. BASIC CONDITIONS OF EMPLOYEMENT ACT 75 OF 1997

The Act defines its purpose as follows:

- (a) "to give effect to and regulate the rights to fair labour practise conferred by section 23(1) of the Constitution.
 - (i) by establishing and enforcing basic conditions of employment; and
 - (ii) by regulating the variation of basic conditions of employment
- (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation".

Chapter II is devoted to the regulation of working time.

Chapter III deals with the forms of leave to which employers are entitled.

The Act devotes Chapter IV to matters that deal with remuneration.

Termination of employment is regulated by Chapter V.

Chapter VI deals with the prohibition of employment of children and forced labour.

4. EMPLOYMENT EQUITY ACT No 55 of 1998.

This Act seeks to achieve equity in the workplace by:

- (a) "promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups in order to ensure their equitable representation in all occupational categories and levels in the workforce". (Employment Equity Act).

A call is made to all employers in chapter II to take steps to eliminate unfair discrimination in policies or in practice.

Employers are called upon to take affirmative action measures, *i.e.* "measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in

all occupational categories and levels in the workforce of a designated employer". (Chapter III/15).

Section 16 provides that designated employers should take reasonable steps to consult with employees on affirmative measures and that the employer must disclose all relevant information.

5. CODE OF GOOD PRACTICE ON KEY ASPECTS OF HIV/AIDS AND EMPLOYMENT: GOVERNMENT GAZETTE 21815 OF DECEMBER 2000.

The HIV/AIDS pandemic needs to be taken into consideration in each and every workplace as some workers will be infected or affected by it and this will have a negative effect on the overall productivity of the staff.

The objective of the Code primarily is: "to set out guidelines for employers and trade unions to implement so as to ensure individuals with HIV infection are not unfairly discriminated against in the workplace". (Code of Good Practice).

The following steps should be taken:

- (i) to create a non-discriminatory environment
- (ii) to deal with HIV testing with confidentiality and disclosure
- (iii) to provide equitable employee benefits
- (iv) to deal with dismissals, and
- (v) to manage grievance procedures.

The secondary objectives of the code are to provide guidelines for employer, employees and trade unions on how to manage HIV/AIDS in the workplace. The following principles are provided:

- (i) creating a safe working environment for all employers and employees
- (ii) developing procedures to manage occupational incidents and claims for compensation

- (iii) introducing measures to prevent the spread of HIV
- (iv) developing strategies to assess and reduce the impact of the epidemic upon the workplace, and
- (v) supporting those individuals who are infected or affected by HIV/AIDS so that they may continue to work productively for as long as possible". (Code)

6. SKILLS DEVELOPMENT ACT 97 OF 1998

The Act defines its purposes as follows:

- (a) "to develop the skills of the South African workforce -
 - (i) to improve the quality of life of workers, their prospects of work and labour mobility;
 - (ii) to improve productivity in the workplace and the competitiveness of employers;
 - (iii) to promote self-employment; and
 - (iv) to improve the delivery of social services.
- (b) to increase the levels of investment on education and training in the labour market and to improve the return on that investment.
- (c) to encourage employers -
 - (i) to use the workplace as an active learning environment;
 - (ii) to provide employees with the opportunities to acquire new skills;
 - (iii) to provide opportunities for new entrants to the labour market to gain work experience; and
 - (iv) to employ persons who find it difficult to be employed.
- (d) to encourage workers to participate in learnerships and other training and other training programmes

- (e) to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages
- (f) to ensure the quality of education and training in and for the workplace;
- (g) to assist -
 - (i) work-seekers to find work;
 - (ii) retrenched workers to find work;
 - (iii) employers to find qualified employees". (Skills Development Act).

Although no specific section in the Act entitles employees, from the mentioned purposes of the Act, workers derive certain rights, e.g. training that will enable them to increase their skills and productivity.

7. OCCUPATION HEALTH & SAFETY ACT 85 OF 1993

The Act provides for the health and safety of persons at work and other related matters.

Section 8 deals with the duties of employers to their employees, e.g. provision and maintenance of a safe environment, etc.

Section 13 deals with the duty of Employers to inform workers of existent hazards to their health and safety measures.

However, employees also have a duty to take reasonable care for their health and safety.

8. CONCLUSION

The issue of equality at work has received the attention of the International Labour Organisation and continues unabated in all discussions around the subject.

"The elimination of discrimination at work is central to social justice which lies at the heart of the ILO's mandate. It underpins the concept of decent

work for all women and men, which is founded on the notion of equal opportunities for all those who work or seek work and a living, whether as labourers, employers or self employed, in the formal or informal economy. The elimination of discrimination is an indispensable part of any viable strategy for poverty reduction and sustainable economic development". (ILO Declaration on Fundamental Principles and Rights at work, 2003).

However, whilst the constitution and relevant legislation are clear about the rights of employees, it should be cautioned that rights should not be taken to be self-existent or that they are a stand-alone phenomenon, *i.e.* every right arises out of an obligation. This topic has been a subject of discussion by legal and other experts and they all agree to the afore-going assertion.

The Constitution itself affords citizens both rights and obligations. Section 3 (2) states:

"All citizens are -

- (a) equally entitled to the rights, privileges and benefits of citizenship;
- and
- (b) equally subject to the duties and responsibilities of citizenship".

Further, the law bestows on citizens individual competencies, subjective rights and legal obligations. (Beckmann & Prinsloo, 1995:46).

Therefore the matter of rights needs to be balanced with corresponding obligations.

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