

PROCEDURE PRIOR TO A DISMISSAL ON ACCOUNT OF ABSENTEEISM - (Karen Phiri)

An employee's absence from work, which is persistent and without permission, is a serious misconduct that entitles an Employer to dismiss the employee summarily under Section 26 of the Employment Act. As in the case for all dismissals on account of misconduct, a fair process must be followed prior to the imposition of the sanction of dismissal. A fair disciplinary process entails affording the employee an opportunity to advance reasons why he/she should not be dismissed, usually by holding a fair hearing, before the decision to dismiss is taken. The question, in cases of persistent absenteeism, therefore becomes what procedure must be undertaken by the employer in circumstances where an employee has absented him/ herself from work, with no reasonable indication that he or she will return to work?

The Industrial Court in the case of **Molatlegi V Grindrod Petrologistics (Pty) Ltd ICF 287/15** (Judgment delivered on 20th December 2016) held that while it is unreasonable to expect an employer to keep on waiting indefinitely for the return of an employee whose whereabouts are unknown, an employer must be wary of dismissing an employee in his or her absence. The Court, in this case, set out the steps that should be taken by an employer before dismissing an absent employee, as follows;

- (a) An employer must exhaust all reasonable options of contacting the employee through traditional methods of registered mail to the last known address, as well as make use of the employees last known contact numbers. The employer should also consider the use of modern methods such as email, text messages, social media (e.g Facebook, Instagram etc.) and other instant messaging devices;
- (b) The employer must, where reasonably possible, warn the employee that there is a possibility of holding a hearing in his or her absence, which hearing may lead to his or her dismissal;
- (c) The employer must invite the employee to make written submissions even if he would be absent at the hearing;
- (d) The employer must, where it is reasonable to do so, hold a hearing in the absence of the employee and impose an appropriate penalty;
- (e) If the hearing proceeds in the absence of the employee, the deliberations at the hearing must be carefully recorded including statements of the witnesses, questions posed to them and their answers; and
- (f) The disciplinary hearing record must also articulate all the reasonable efforts that the employer has made to secure the employee's attendance at the disciplinary hearing.

Why should a comprehensive record be kept? Because a full and comprehensive record will help the employer as a detailed and clear explanation of why the hearing was conducted in the absence of the employee should the employee institute proceedings challenging his/her dismissal.

As a general rule, therefore, an employer should hold a full and proper hearing prior to dismissing an employee on account of absenteeism; even if such hearing is held in the absence of the employee where reasonable attempts to procure the employee's attendance at the hearing have failed.