

THE IMPORTANCE OF A ZERO TOLERANCE POLICY ON INTOXICATING SUBSTANCES

Employers should be aware of the importance of their wording when implementing policies concerning the use and abuse of intoxicating substances within the work place. The reason why the wording should be carefully considered is to allow the employer to discipline their employees more effectively, should such a policy not be worded correctly it could potentially result in a matter being referred to the CCMA as an unfair dismissal.

A common error that is made by employers in their contracts of employment and policy's concerning intoxicating substances is where employees are disciplined for being under the influence of an intoxicating substance such as alcohol or narcotics. The issue arises where employees are tested for these substances and found to test positive to such an intoxicating substance, this does not mean that the employee is then considered to be under the influence. Employers should be careful of using this blanket term as there is a crucial difference between being under the influence and having found traces of intoxicating substances in your system.

The meaning of being under the influence of an intoxicating substance was provided in the case of **Mokgathe v Xstrata South Africa (Pty) Ltd** which states that it is the impairment of ones faculties. Therefore in addition to finding an employee who has tested positive to an intoxicating substance it must then be proved that the employee was unable to perform their duties. The employer should also provide evidence by physical observation that the employees' speech was slurred, they were unsteady, eyes were blood shot or any behaviour associated with the use of such intoxicating substance.

Policies concerning the use of intoxicating substances should be made on a zero tolerance basis which should state that any use or consumption of an intoxicating substance including but not limited to alcohol and narcotics is prohibited within the workplace and during working hours, should an employee be found to have traces of an intoxicating substance in their system and/ or be under the influence of an intoxicating substance disciplinary action will be taken which could lead to possible dismissal.

Employers must exercise caution when it comes to the wording of a policy and should endeavour to cover all aspects within their policy to prohibit conduct which is unacceptable concerning the best interests of a Company.

This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Contact Strata-g Labour Solutions for specific and detailed advice.

CHRISTOPHER DE PONTE

LEGAL ADVISOR