



'Employees need to be reasonable, and they need to understand that their conduct not only affects themselves, but it can affect everyone else.'



COVID-19:

Misconduct may land you in hot water

Your conduct over the weekend, could possibly cost you your job during the week.

According to Justin Hattingh, Senior Legal Advisor at Strata-g Labour Solutions, employers can discipline employees who ignore Covid-19 regulations outside of work.

“While employers are obligated under the Occupational Health and Safety (OSH) Act to provide a safe and healthy working environment, staff members must also comply to those regulations and ensure that they assist the employer in keeping everyone at the workplace safe and healthy,” says Hattingh.

However, employers should know that this only stands if there are health and safety-related misconduct codes in their employment document. These codes may not need to be specific to Covid-19, but need to explicitly state that any breach of occupational health and safety is not tolerated. More so, employers cannot assume that employees will act in accordance to the law without being aware of what amounts to misconduct. Employers who dismiss employees on the grounds of ignoring Covid-19 protocols, without the necessary policies in place, could possibly be found to have done so unfairly.

According to Hattingh, if employers can prove that someone has been reckless after hours and exposed other employees at work, then there could be a basis to act against them as that kind of conduct materially impacts on the employment relationship and the duties and responsibilities of both parties.

Some staff members may consider using the invasion of privacy argument to conceal their positive Covid-19 status. Hattingh says employees have a right to not share their medical condition with their employers. However, should it come to light that an employee knowingly placed other staff members at risk of contracting the virus, that deception can amount to a criminal offence.

“Short of disciplining employees, employers must explain to their staff that if they don’t comply with regulations and they then become ill, they won’t be able to work and could potentially be placed on unpaid leave. That would affect them from an economic point of view. Employers therefore, need to appeal to their employees’ humanity by reminding them that reckless behaviour could lead to a super-spreader event in the workplace, affecting everyone’s livelihoods and even placing their families at risk,” Hattingh concludes.

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