

Strata-g / KPMG AND SARS

KPMG RESIGNATIONS RAISE QUESTIONS ABOUT EMPLOYER/EMPLOYEE RIGHTS

The resignation of KPMG's CEO and other senior executive and board members, following suspected dubious dealings with the Gupta family and South African Revenue Services (SARS), raises questions around employee and employer rights.

One of these questions is: do employees have the right to resign following allegations of wrongdoing and thereby avoid disciplinary action?

Adv. Tertius Wessels, Legal Manager of Strata-G Labour Solutions, a consultancy specialising in labour law and human resource consulting services, says the answer is 'yes', employees can resign with immediate effect, but this does not mean that an employer has no recourse against the employee.

This raises the question: what recourse does the company have when an employee resigns under a cloud?

Wessels says while a resignation with immediate effect means the employer can no longer conduct

an internal disciplinary enquiry, it does not stop the employer from pursuing criminal, civil or commercial charges against the individual.

"An employee is party to an employment contract and unless otherwise agreed, the employee is required to serve notice when resigning. Should an employee fail to give proper notice the employer may institute action against the employee for breach of the employment contract."

Wessels says jumping ship before an internal investigation or disciplinary hearing is concluded does not mean the employee will be able to avoid serious repercussions. "Where an employee has committed an act of misconduct that relates to a criminal offence such as assault, theft or fraud, the employer may still proceed with criminal charges, irrespective of the employee's resignation," he says.

Where charges of alleged misconduct are levelled against an employee and the employee elects to resign with immediate effect prior to the disciplinary hearing commencing, an employer is likely to accept that the employee is guilty.

"It will also be construed as the employee waiving his/her right to challenge the charges of alleged

misconduct levelled against him/her. In such an instance, the employee cannot refer a dispute to the CCMA, alleging that he/she was unfairly dismissed or was not given the opportunity to present evidence or a defence to the charges against him/her." Says Wessels

