

Strata-g / IMPACT OF EMPLOYEE CONDUCT

OFF-DUTY CONDUCT AND THE RIGHT TO DISCIPLINE

The recent publicity around senior government officials and members of senior management, and their alleged behaviour or conduct outside of the 'workplace', raises a number of questions for employers: to what extent does a person's conduct outside the organisation or company impact on the employer and does the organisation or employer have recourse against the individual?

Jennifer Da Mata, Managing Director of Strata-g Labour Solutions, a consultancy specialising in labour law and human resource consulting services, says off-duty misconduct is often viewed in a dim light. Both employers and employees are often under the mistaken impression that no action can be taken against an employee in circumstances where the misconduct is committed outside the workplace.

"What an employee does after working hours is generally of no concern to his or her employer. If an employee has an affair or drinks outside of working hours, the employer has no recourse against him or her, that is unless it can be shown that the employer has some interest in the person's conduct or there is a nexus between his or her conduct and the employer's business." Da Mata continues

Of course, there are instances where an employer does have recourse, for example, if an employee assaults someone after work wearing a branded uniform and driving a company car. Even though that conduct is not linked to his job in any way, the fact that he is linked to the company via his clothing and vehicle, means his conduct can be associated with the company. The recent suspension of the Managing Director of Southern African Auto Supplies, Lance O'Leary, is a prime example of so-called off-duty misconduct. Southern African Auto Supplies confirmed it has suspended O'Leary after he was shown on video attacking motorist Christopher Price (71) in an apparent act of road rage on London Road, Johannesburg.

“In circumstances such as these, the employer would have recourse against the individual, even though he wasn’t executing his duties at the time and the incident didn’t occur during working hours or on the company’s premises. As long as the conduct itself can be linked back to the employer’s business and the company can show that the conduct had a real or severe impact on the business or workplace, action can be taken against an employee,” says Advocate Tertius Wessels, the Legal Manager at Strata-g Labour Solutions.

He says that while some view the negative off-duty conduct or behaviour of senior government officials or senior members of management as damaging to their organisations, it must be irrefutably shown that their conduct has impacted on the good name of the organisation. If not, it does not have recourse against the specific employee.

“The counter-argument might be that the conduct of someone in a senior position in government may possibly attract concomitant media attention, which may impact the organisation, but this does not mean that the organisation has recourse against the individual concerned for said conduct.”

“It is true that the higher you are in an organisation, the more likely it is that your behaviour outside the organisation can be linked back to it and potentially impact on the organisation. This is why senior executives are expected to conduct themselves with a greater degree of skill and care,” he adds.

Ultimately, each situation needs to be assessed on its own merits or demerits. “While the conduct or behaviour of senior government officials may attract publicity, this is because they are senior figures within their respective organisations. I have no doubt that what is happening to some senior government officials is fuelled by the elections and their popularity as a candidate for prominent positions. If an administrative clerk within any of the political parties had several extramarital affairs, nobody would blink an eye,” concludes Da Mata.

It is therefore important for organisations to obtain proper advice or guidance when dealing with off-duty misconduct before taking any action against an employee, given that the decision to take action or not will ultimately have consequences for the organisation.



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Strata-g Labour Solutions is a national consultancy specialising in assisting employers in all industries and of all sizes in dealing with Industrial Relations, Human Resources, BBEE, Skills Development, Employment Equity, Recruitment and Outsourced Payroll needs.

