



## LABOUR LAW

**Legal Update**

**8 January 2021**

Our Cox Yeats **Labour Law Team** is committed to keeping you informed on developing legal issues.

### **THE IMPACT OF RESIGNATION WITH IMMEDIATE EFFECT ON PENDING DISCIPLINARY ACTION**

On 10 December 2020 the Labour Appeal Court in *Standard Bank of South Limited v Nombulelo Cynthia Chiloane* handed down Judgment in terms of which the LAC had to consider the right of an employer to continue with disciplinary action against an employee within the employee's notice period where the employee resigned with immediate effect.

Often employees use resignation "with immediate effect" as an escape mechanism when an employer furnishes them with disciplinary allegations which could result in their dismissal.

In this case, the employee was furnished with a notice to attend a disciplinary hearing. The employee faced serious allegations relating to misconduct. The employee then resigned with immediate effect and took the view that her letter of resignation immediately ended the employment relationship and as such her employer was not entitled to proceed with the disciplinary hearing.

Consequently, the employer took a different view as the employee did not provide the contractually agreed notice period for termination. The disciplinary hearing took place in the absence of the employee. The matter came before the Labour Court wherein it held that once an employee resigns with immediate effect, the employment relationship comes to an immediate end and the employer has no right to insist that the

employee serves his/her notice period. The Labour Court went on to declare the employee's dismissal pursuant to the disciplinary hearing "*null and void*".

The LAC took a different view and considered that employment relationships are governed by contracts or statutes or, in most cases, both. In the absence of an express agreement in respect of notice periods, the Basic Conditions of Employment Act (BCEA) provides the basic requisite notice periods.

In this matter, the employer and employee agreed in the employment contract that either party would give four (4) weeks' notice of termination of the employment contract.

The LAC agreed with the Appellant who argued that resignation that is not in compliance with contractual notice requirements does not validly terminate the contract of employment unilaterally, it is only the resignation that complies with notice requirements that serves unilaterally to terminate the contract of employment.

The LAC held that where a contract of employment prescribes a period of notice an employee resigning is obliged to give notice for the period prescribed in the contract of employment and that resignation with "immediate effect" was of no consequence as it did not comply with the employment contract which governed the relationship between employer and employee. On this basis the decision of the Labour Court was set aside.

In summary, the LAC concluded that if the employer and employee agree to a period of notice or the notice period is regulated by the BCEA an employee cannot escape complying with these notice periods by resigning with "immediate effect" unless the employer accepts and agrees that the employee may not serve the notice period or accepts the resignation with immediate effect.

Therefore, an employer may proceed with disciplinary action during an employee's notice period without having to approach the Labour Court for an Order of specific performance to enforce the notice periods.

**AUTHORED BY : SUNIL HANSJEE, PARTNER** is a partner with the firm and has specialised in Employment and Labour Law since 2013. He advises and represents clients in all facets of employment law, both individual and collective disputes, such as dismissals, unfair labour practices, employment equity litigation, retrenchments, implementing changed working conditions, mutual interest disputes, representing clients at the labour court, CCMA and bargaining councils, chairing disciplinary hearings and initiating on behalf of employers

Should you require any assistance in this regard, please contact our Labour Law Team on :



**SUNIL HANSJEE**

Partner

**Tel:** 031 – 536 8526

**Cell:** 072 221 3884

**Email:**

[shansjee@coxyeats.co.za](mailto:shansjee@coxyeats.co.za)



**THANUSHA MOODLEY**

Partner

**Tel:** 031 536 8554

**Cell:** 083 272 9504

**Email:**

[tmoodley@coxyeats.co.za](mailto:tmoodley@coxyeats.co.za)



**2020 DIAMOND ARROW AWARD WINNER**

**Highest Rated Law Firm in KwaZulu-Natal**

**No. 1 Medium-Sized Law Firm in South Africa**

Consistently rated a top law firm in South Africa and **PROGRESSIVELY GROWING**

Visit us at: [www.coxyeats.co.za](http://www.coxyeats.co.za)

**DURBAN OFFICE:**

**Tel:** 031 536 8500

**Address:** Ncondo Chambers, Vuna Close,  
Umhlanga Ridge, Durban, 4320

**JOHANNESBURG OFFICE:**

**Tel:** 010 0155 800

**Address:** 4 Sandown Valley Crescent,  
Sandton, 2196



If you have received this Legal Update in error, or wish to unsubscribe from the mailing list, please click [here](#).

**Disclaimer:** *The information contained herein is for general guidance only and is not intended as legal advice. Should readers require legal advice on any relevant issue, they are requested to consult a Cox Yeats professional.*