

Particulars of employment must be supplied in writing

EMPLOYERS sometimes express concern over the absence of letters of appointment in their businesses, often voicing uncertainty over the consequences.

Some employers also confuse the concept of a letter of appointment with that of a contract of employment.

Firstly, it is important to understand and appreciate that the existence of an employment relationship is not dependent upon the presence of either a letter of appointment or a contract of employment for that matter.

In short, an oral appointment to commence employment, even prior to an employee actually physically starting to perform work, is generally sufficient to constitute employment [see *Wyeth SA (Pty) Ltd v Mangle and Others* [2005] 6 BLLR 523 (LAC)].

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Chris Haralambous



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So it is fallacious for any employer to assume that the absence of any written record of employment prevents the existence of an employment relationship.

Secondly, from a strict compliance perspective, employers often overlook the requirements of Section 29 of the Basic Conditions Of Employment Act of 1997 (BCEA), which expressly says that all employers must supply employees with written particulars of employment, providing for 16 specified particulars, that by their very nature,

include terms and conditions of employment, such as – occupation and job description, date of commenced employment, ordinary hours of work, rate of pay, leave entitlement, notice period/s and so forth (the list goes on).

If one considers the express wording of Section 29 of the BCEA, what the legislation in reality imposes upon all employers is a legal requirement for the formalising of written terms and conditions of employment, effectively by way of a letter of appointment, regardless of employee-status.

It follows that employers who fail to issue appointed staff with written particulars of employment, irrespective of their rank, commit a contravention of the BCEA.

Clearly, a letter of appointment is neither an advertisement, nor a casual welcoming missive, de-

signed to appeal to the employee's aspirations for joining the employer (usually dealt with in an induction process).

What then is a contract of employment?

There are certain terms and conditions of employment which employers may wish to expressly bind staff into. A range of considerations would include express agreement or confirmation by employees to particular forms of confidentiality, waiver of privacy rights, intellectual property protection, consents to variations of working hours, overtime work etc. The scope is extremely broad.

But employers sometimes overlook the need for comprehensive contracts of employment, in instances of staff-promotion and/or the appointment of senior or high-level, often professional staff, where

risk-management levels associated with such appointments increase. In such situations, a mere letter of appointment would probably not suffice.

Finally, it is worth noting that Section 198B(6) of the Labour Relations Amendment Act 6 of 2014 now expressly requires any offer to employ an employee on a fixed-term contract or to renew or extend such a contract, must be in writing and state the reasons for fixed-term employment.

● Haralambous is a partner at Cox Yeats Attorneys and the head of the labour law team. Call 031 536 8557, or e-mail charalambous@coxyeats.co.za.

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