THE DISCIPLINARY PROCESS – A PERILOUS JOURNEY!

Much has been made of the perceived power that employees wield in the workplace. We find this most evident in the disciplinary process where the danger of a punitive reaction from the CCMA, the relevant Bargaining Council or even the Labour Courts, remains a constant threat. A ‘flawed’ process to dismiss or even discipline an employee could result in a protracted legal battle in the established courts and governing bodies.

A common consequence of the above is the inevitable disruption in the workplace; increased costs for litigation; contractual law claims from either party; the primary remedy of re-instatement of the errant employee; or even a distasteful compensation order.

Does this sound familiar?

The above may be alleviated by the implementation of simple and effective guidelines and procedures, which include, inter alia:

1. Ensure you conclude a written employment contract that is tailor-made for YOUR business;
2. The employment contract should be settled by an attorney;
3. All existing contracts should be reviewed and analysed by an attorney on a regular basis;
4. Draw up proper disciplinary codes and procedures, and have them displayed or easily accessible;
5. Draw up proper grievance and suggestion procedures and policies, and have them displayed or easily accessible;
6. Ensure the human resources or disciplinary body is adequately, and regularly, trained.

These basic strategies could save you and your business a ‘fortune’.

Many common misconceptions exist in the realm of employment discipline. Just for an appetiser, consider the following:

- Must an employer hand out 3 (THREE) written warnings prior to dismissal?
- Do 3 (THREE) prior written warnings equate to an automatically fair dismissal?
- Can one dismiss an employee summarily (without notice)?
- What is ‘fair’ in the eyes of the law?
Any chairperson of a disciplinary hearing who is considering allegations against an employee needs to be impartial. This is often where a FLAWED process begins. A disciplinary process ultimately reverts to a subjective notion of fairness, in which impartiality is paramount.

An independent chairperson at this point eradicates potential emotional errors. If the chairperson is adequately skilled, he/she has the ability to narrow down what appears to be a complex issue into its factual components, consider the law, the notion of fairness required, be unhindered by emotional attachment to the employee, and provide a fair outcome. The cost associated with this is miniscule in comparison to the potential costs of years of litigation, re-instatement orders, punitive awards, and substantial costs orders.

There are more certainties in life other than ‘death’ and ‘taxes’.

Disciplinary issues will arise at your workplace. Employment relationships involve the constant interaction of human beings who are not without fault. This ultimately results in conflict. Be prepared or face the journey at your peril.

For assistance, contact us at info@stbb.co.za.