



DIRECTORATE: HUMAN RESOURCES

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HUMAN RIGHTS IN THE WORKPLACE

The previous article produced by the Labour Desk focused on the 16 days of activism against gender-based violence (GBV) on women and girls in relation to the workplace. It emphasized the need for a concerted effort by all to eliminate GBV entirely, making workplaces, family settings, and society better places to live. It was concluded that men must take good care of women, as it is universally believed that a woman's existence can be traced back to a man. However, sight must not be lost of the fact that GBV also affects males as well, even though very seldomly spoken about. This Quarter (Q4) addition focuses on human rights in the workplace.

Human rights, therefore, refer to "a set of rights given to every human being regardless of their gender, caste, creed, religion, nation, location, or economic status. They are moral principles illustrating certain standards of human behaviour protected by law" (Sonal, n.d.). The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work was adopted in 1998 and amended in 2022. It is an expression of commitment by governments, employers', and workers' organizations to uphold basic human values that are vital to our social and economic lives (Safety and Health at Work, n.d.).

Typically, human rights are viewed from a political perspective, often overlooking their relevance in workplaces. Human rights in the workplace encompass both human and organizational perspectives. According to Brena Schwartz (2023), organizational resources include labour, management, expertise, equipment and machinery, finances, energy, land, and time. All these resources are essential for an organization to thrive.

Schwartz further indicates that organizational resources are concrete materials and tangible assets that support programs or projects, including practice improvements and service delivery. Of particular significance is the role played by human resources (labour and management) within an organization, which are crucial because they utilize all other resources to benefit the organization. Therefore, it is vital to ensure fair treatment of human resources to keep them motivated, enhancing their work commitment and productivity. Generally, it is believed that taking care of the human side of the organization ensures that the service delivery or productive side is also taken care of.

Legislative frameworks regulating workplaces must always be observed by all and implemented fairly by employers. Compliance with applicable prescripts is required from both parties in the employment relationship, namely employers and employees. The Constitution of the Republic of South Africa is the supreme law in the country. Chapter 2 contains the Bill of Rights, with section 23 providing for fair labour practices in workplaces.

Since the Bill of Rights applies even in workplaces or employment settings, disputes of this nature sometimes end up in the Constitutional Court of South Africa (CCT), as in the case of *Africa Online Operations (Mauritius) Limited v Michele Scanlon and Thirteen Others*. The dispute began when Echo International Management Services (Pty) Ltd (EIMS) was voluntarily placed into liquidation in March



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2020, immediately dismissing all its employees without adhering to the required processes stipulated in section 197A of the Labour Relations Act.

Section 197A applies to the transfer of a business if the old employer is insolvent or if a scheme of arrangement or compromise is being entered into to avoid winding up or sequestration for reasons of insolvency. Section 197A(2)(d) stipulates that the transfer does not interrupt the employees' continuity of employment, and their contract of employment continues with the new employer as if with the old employer. The immediate dismissal of all employees by EIMS was ultimately brought before the CCT for determination regarding the fairness requirements in the employment relationship.

The CCT handles a labour matter if there is a constitutional issue to be considered. Section 23 of the Constitution guarantees employees the right to fair labour practices. In the labour case referred to herein, the CCT made a landmark ruling affirming the rights of employees during a business transfer, particularly in insolvency scenarios. This decision demonstrates that the human rights of employees (both management and employees) are highly protected by the South African legal system.

Fairness in workplaces applies not only to the positions and interests of employees but also to those of employers, ensuring an equitable assessment of the employer-employee relationship. This was confirmed by Ngcobo J in *National Education Health and Allied Workers Union v University of Cape Town, Supercare Cleaning (Pty) Ltd, Metro Cleaning Services CC, Turfmech CC, and Eco Environment (Pty) Ltd*.

There is extensive jurisprudence protecting employees from unfair treatment by employers. Examples of such treatments include harassment, sexual harassment, bullying, discrimination, and victimization in the workplace. These treatments violate various labour legislations, including the SA Constitution Act, Labour Relations Act, Employment Equity Act, Basic Conditions of Employment Act, and the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace.

However, this does not prevent employers from instituting fair disciplinary proceedings against employees who violate applicable prescripts, provided there are valid grounds for disciplining. This requires a preliminary investigation into the unacceptable conduct of the employee, which could call for informal discipline, or a full-scale investigation which could call for formal discipline. In conclusion, it must be recognized in workplaces that every person has dignity and value and therefore deserve equality and fairness, and to live a free life without fear, harassment, and discrimination.

***(An opinion from the labour desk
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MH Ngcobo)***