

Employers should plan carefully as strikes get complicated

The Constitutional Court recently ruled that one strike notice is good for all employees. As a result, employers can no longer assume that strike notices issued by one part of its workforce will mean that the other part won't be striking too.

In the run-up to strike season in South Africa, this ruling poses some real challenges for employers who will have to re-assess how they plan to deal with potential strike action of their employees.

This is according to Stuart Harrison, director at Edward Nathan Sonnenbergs (ENS), referring to the recent ruling in the case of the case of SATAWU & others v Moloto N.O. & another, CCT 128/11 [2012] ZACC 19, where the Constitutional Court grappled with the question of whether the requirements of section 64(1)(b) of the Labour Relations Act (LRA) requires every participating employee to a strike to issue a strike notice - either personally or through a representative.

Single strike notice is sufficient

"The court ruled that provided that the strike notice sets out the issue over which the employees will go on strike with reasonable clarity, a single strike notice is sufficient to enable all employees of the employer to participate in the strike - regardless of whether the employees are all members of the union where it is a union who issues the strike notice," he says.

According to Harrison, this could present some real challenges for employers when it comes to planning for strike action. "Imagine an employer of 10 000 workers across the country. Two of non-unionised employees posted in a small town are dissatisfied with their work conditions and refer a dispute to the CCMA. Following a failed attempt at conciliating the dispute, the employer receives from the two employees a strike notice in terms of section 64(1)(b) of the Labour Relations Act 66 of 1995, which requires that at least 48 hours written notice of the commencement of a strike must be given to an employer.

New ruling can pose a huge problem

"The employer would not usually be particularly concerned by the threat of this strike, given that it only involves two employees. However, given this new ruling, it's possible that on the day of the strike most of the 10 000 strong workforce across the country could down tools in support of the two employees - which poses a much bigger problem," he says.

Harrison says that employers should carefully consider how they plan to deal with strike notices and the demands of employees in light of this ruling. He also says employers should put into place contingency measures to prevent further disruption in the workplace.

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