

NEWSLETTER

The Official Newsletter of SEENA Legal
Consult.



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PREFACE:

If 2024 was an 800m Olympic event, we would have heard the bell, well knowing that there is only one lap to go. Hopefully your business won a few medals in 2024 and all is looking good for the future.

This issue covers the actions an employer can take if they find out a job applicant has been dishonest on their resume or during a job interview. Additionally, we announce our annual premium increase and the rise in minimum wages for construction workers.

Die Employment Equity Commissioner het verskeie nuwe maatreëls, waarvan ons u deurlopend op hoogte sal hou. Maak asb seker dat u besigheid voldoen aan die nuutste EE regulasies. Skakel ons EE afdeling by 064 416 107 vir enige vrae.

To all our clients new and old, remember we are only a phone call away. Kindly do not take any hasty decisions with labour related matters.

Ons sien uit na die lente en die positiewe vooruitsigte wat daarmee gepaart gaan.

SEENA groete,

Koos Barkhuizen
Managing Director

JOB APPLICANT LIED – WHAT NOW?

An employer has the right to know certain things about a prospective employee or job applicant. Certain pieces of information are vital: ranging from identity numbers, residential and postal addresses, date of birth, telephone numbers next- of- kin as well as the applicants' previous employment history, qualifications and experience. Some employers wanting to appoint a driver may want information as to how many accidents the applicant has had; an employer wanting to appoint an accountant or auditor, may want to consider obtaining information relating to criminal convictions relating to fraud, dishonesty or corruption; an employer wanting to appoint a psychiatrist may want to consider obtaining information relating to the mental state of health of the applicant. Some private and personal things are, simply, none of the employer's business and it is difficult to sometimes determine where the line must be drawn, but the scope and detail of the information the employer may want to obtain, will differ from job to job.

Misrepresentation on a CV or even during a job interview is viewed as a serious offence and even more so if it is an inherent requirement for the job. If the passing of Grade 12 is an essential requirement of the job, and it turns out that the applicant misrepresented that fact, it is fraud and a dismissible offence.

Very few, if any, cases are reported where an applicant omitted to state whether he/she has a chronic illness, when specifically asked about it. The Employment Equity Act, 1998 states that it is *inter alia* unfair to discriminate against an employee on account of a disability or his/her HIV status, unless it's an inherent requirement of the job. This means that if a job applicant mentions that he/she has some kind of disability, the employer cannot discriminate against him/her, unless it is an inherent requirement for the position. Not mentioning that you have for instance, diabetics and stating that your health is excellent may constitute a misrepresentation resulting in disciplinary action.



In *Boss Logistics v Phopi & others*, an employee misrepresented himself on his CV stating that he was an expert in logistics. He was consequently offered a senior managerial position. It quite soon became apparent that the employee knew nothing about logistics and that he had clearly overstated his level of expertise. He was dismissed on charges of misrepresentation and he referred the case to the CCMA in South Africa. The commissioner found that the employee was unfairly dismissed for poor performance since he was not afforded training and counselling.

The South African Labour Court, however, held that if an employee misrepresents his level of competence, there is no need to provide him with guidance and counselling. An employee who misrepresents his competence is dishonest and should not have been appointed in the first place. Furthermore, employers need not council senior employees who should themselves be able to judge the performance standards required by the employer.

In *South African Post Office Ltd v CCMA*, the employee applied for a post of internal investigator, for which one of the requirements was possession of a valid driver's license. In her CV she claimed she possessed a driver's license but it was later discovered she only possessed a learner's license. She was charged with dishonesty and dismissed. The CCMA commissioner found her dismissal to be unfair, because she had allegedly been unaware of the error of omitting the word "learners" on her CV.

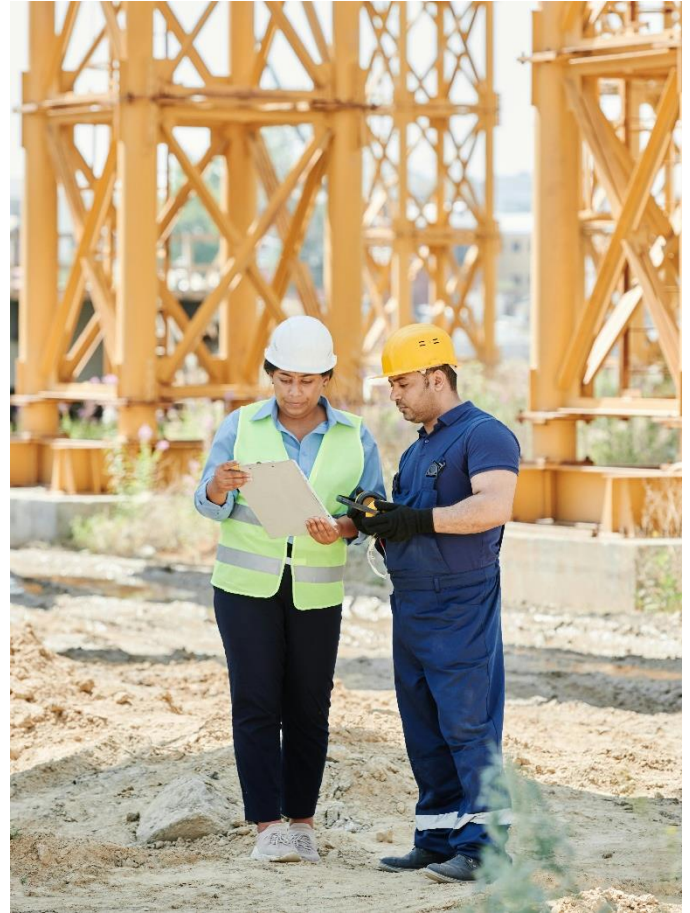
The case ended up in the South African Labour Appeal Court where it was found that the commissioner appeared to have accepted the employees' mere *ipse dixit* that she did not make the misrepresentation deliberately. The LAC found that the claim of the employee was untruthful because she knew a valid driver's license was a prerequisite for the position. She would not have been employed had the selection panel not been given the impression that the employee had a valid license. This meant that the employee had gained an unfair advantage over other applicants. The employee's conduct was found to be grossly dishonest and warranted dismissal.

Employers are strongly advised to take some steps to verify information provided by job applicants. It is our experience that many future problems could have been avoided if proper pre-employment screening and verification of provided information was done prior to an offer of employment being made.

1. *Boss Logistics v Phopi & others* (2009) 18 LC
2. *South African Post Office Ltd v CCMA* (2012) 21 LAC

ANNUAL INCREASE

All members are advised that an annual premium increase of 5.5% (five and a half percent) will take effect on the 1st of November 2024. Members who signed up with SEENA during August, September and October of 2024 will not be affected by this increase.



MINIMUM WAGE FOR CONSTRUCTION WORKERS ADJUSTED

A collective agreement to increase the minimum wages of construction workers, was reached between the Construction Industries Federation of Namibia (CIF) and the Metal and Allied Namibian Workers Union (MANWU). The agreement was gazetted on 6 June 2024, which is also the implementation date. The agreement, which applies to all employers in the construction industry, remains valid for a period of two years.

In summary, the minimum wage is set to be increased with 5% in the first year (2024-2025) and an additional increase of 4% on the adjusted minimum wage in the second year (2025-2026). Effectively, the minimum hourly rate payable for an unskilled labourer will be N\$18.72 in the first year and N\$19.46 in the second year.

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JUNIOR MANAGEMENT

Management Principles
Planning & Organisation
Leadership
Management Skills
Decision Making

6 HOURS

N\$1800

INITIATOR

Gathering Information
Substantiating Information
Applying facts on Disciplinary Code
Charging
Disciplinary Procedures

FULL DAY

N\$2500

CUSTOMER SERVICE

Introduction to Customer Service
Exceptional Customer Service
Communication
Problem Solving Skills

4 HOURS

N\$1250

PERSONAL ASSISTANT

PA Principles
understanding the business culture
Office equipment and filing
Communication Skills
Project Management & Planning
Finances and personal branding

6 HOURS

N\$2500

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