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## VOORWOORD

‘n Moelike jaar kom nou vinnig tot ‘n einde.

Ons kliënte in die gasvryheidsbedryf het dit gedurende 2017 makliker gehad onder andersins moeilike ekonomiese omstandighede.

Ongeag ‘n wankelende ekonomie is vakbonde steeds besig om onredelike verhogings te eis. Onthou SEENA Labour is daar om ons kliënte behulpsaam te wees met hierdie sensitiewe onderhangelinge.

We are all aware that our country’s economy will not change for the better overnight but we are optimistic that we are entering better times.

We are working hard to roll out our New Product early 2018 – SEENA Payroll.

Enquiries may be forwarded to Nicholine at [payroll@seenalegal.com](mailto:payroll@seenalegal.com) or telephone 064-416116.

Regards

Koos Barkhuizen

A handwritten signature in black ink, appearing to read 'JJ Barkhuizen', written over a horizontal line.

JJ Barkhuizen  
**MANAGING DIRECTOR**

## WHAT CONSTITUTES A VALID MEDICAL CERTIFICATE?

In our line of work we are often asked by clients as to what would constitute a valid medical certificate. Before answering that question it is probably best to start with the question as to when an employee is required to produce a medical certificate.

Our point of departure is section 24(4) of the Labour Act. This section stipulates that an employer is not required to pay an employee for sick leave in the event of that employee being absent for more than 2 (two) consecutive days without a medical certificate (or other evidence of proof of illness as may be prescribed). In terms of this section a medical practitioner must issue a medical certificate. A medical practitioner is defined as an individual who is registered as a medical practitioner with the Medical and Dental Professions Act, and includes an individual who is registered as a nurse or midwife in terms of the Nursing Act.

What constitutes a valid medical certificate is not governed by the Labour Act, but is dealt with under the “Rules of Professional Conduct” issued under the Allied Health Professions Act. Although the rules do not call it minimum requirements, it stipulates that medical certificates must contain certain basic information, failing which the issuing of such certificate will render the medical practitioner guilty of unprofessional conduct. Minimum requisite information includes:

- (a) The name, physical address and qualifications of the registered person who issued the certificate;
- (b) the first name and surname, and the identity number or date of birth, of the patient;
- (c) the employment number of the patient (if applicable);
- (d) the date and time of the examination;
- (e) an indication of whether the certificate is being issued as a result of personal observations by the registered person during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds;
- (f) a description of the illness or disorder the patient is suffering from (*although not specifically stipulated in the rules it is our view that this information may justifiably be left out at the patient’s request on privacy/confidentiality considerations*);
- (g) an indication of whether the patient is completely indisposed for any kind of duty or whether the patient will be able to perform duties less strenuous than his or her normal duties in the work situation;
- (h) the exact period of recommended sick leave; and

- (i) the date of issue of the certificate of illness.

It is important to note that it is the Medical Practitioner who is at fault when failing to comply with the rules and not the patient. As such it is advisable that an employee, who submits a medical certificate which is not in compliance with the above, be afforded an opportunity to take the matter up with his/her medical practitioner, before rejecting the sick leave application.

Compiled by: Nicky Smit

National Manager

Seena Legal

### **MAY AN EMPLOYER RECOVER MONEY FROM EMPLOYEES FOR PAYMENTS MADE TO THEM TO WHICH THEY WERE NOT ENTITLED?**

The salary clerk of the company made an error when calculating employees' wages. By the time the employer discovered the mistake the employees have been paid in error over a period spanning several months. What now? Can the employer recover the money from the employees by deducting it from future payments?

Yes you can. Section 12 of the Labour Act regulates deductions from an employee's remuneration.

Generally the Act prohibits any deduction from an employee's salary without his/her prior consent, unless such deduction was permitted by law, collective agreement, court order or arbitration award.

Section 12(5) (c) of the Act specifically prohibits repayment of money duly paid to an employee. It reads:

*“An employer must not require or permit an employee to-*

*(i) repay any remuneration duly paid to an employee.”*

The legislature clearly limits the ban on repayment to remuneration duly paid. As a logical consequence employers are permitted to insist on repayment of remuneration that was not duly paid or paid in error.

Although we have no current case law on the matter, the South African Labour Court has dealt with the matter extensively. According to them the employer shall be entitled to deduct such overpayment from the employees' remuneration unilaterally.

In *Sibeko v CCMA* (2001) JOL 8001 (LC), also referred to in *Jonker v Wireless Payment Systems CC* (2010) 31 ILJ 381 (LC), the court indicated that “*Where an employee was, however, overpaid in error, the employer is entitled to adjust the income so as to reflect what was agreed upon between the parties in the contract of employment, without the employee’s consent*”.

All the employer needs to do in such circumstances, is to advise the employee of the error in payment and the deduction that has been made or is to be made.

Should you find yourself in this unenviable position it is our recommendation that the employees are approached and informed of the error which occurred. It is preferable to attempt to reach an agreement with the employees with regard to the terms of repayment of the overpayments made in error. Should an agreement be reached, the employer can deduct in accordance with such agreement with the employees. Should the employees however, refuse to agree to any repayment, the employer may proceed to deduct such overpayments from the employees’ remuneration, keeping in mind that the amounts to be deducted from the employees’ weekly or monthly remuneration should be reasonable.

Compiled by:

Nicky Smit

National Manager

Seena Legal

## **VERHOGING IN MINIMUMLOON – PLAASARBEIDERS**

Die minimumloon vir plaaswerkers verhoog vanaf 1 November 2017 na N\$ 4,62 per uur. Dit is ‘n verhoging van 92 sent per uur op die vorige minimum uurlikse loon van N\$ 3,70. ‘n Plaasarbeider sal dus voortaan N\$ 900 per maand as intreeloon ontvang vir n 45 uur werksweek.

Die rantsoengeld is ook verhoog na N\$ 500 per maand vir werkgewers wat nie rantsoen verskaf nie. Dit is ‘n verhoging van N\$ 100 per maand op die voormalige N\$ 400. Werkgewers wat eerder rantsoen verskaf, het die opsie om rantsoen wat N\$ 500 in waarde beloop per maand te verskaf. ‘n Bedrag van N\$ 30 word toegelaat per kilogram vleis, N\$ 6 per liter melk en die werklike aankoopwaarde van alle ander rantsoenitems.

## **CONTACT E-MAIL ADDRESSES**

This is just a friendly reminder to all our clients to please ensure that e-mail addresses provided stay current. We often incur the situation where e-mails are personalized such as [michelle@seena.com](mailto:michelle@seena.com). Where the employee then ceases to be employed, the mail address falls out of use and creates gaps in our lines of communication. In case of any change in address please notify our offices. You will find our full contact particulars at the bottom of this letter.



### **INITIATOR & DISCIPLINARY PROCEDURES TRAINING COURSE OUTLINE:**

#### **INTRODUCTION:**

It is evident that the key to a successful disciplinary hearing and subsequent arbitration, is an experienced and knowledgeable initiator (the employer's representative presenting the case of their employer during the disciplinary hearing).

As such SEENA has developed a comprehensive training programme with its main purpose of informing and empowering company initiators with the required knowledge and skills on both strategic and practical level.

#### **COURSE CONTENT:**

The Initiator training course will assist initiators in preparing and presenting their case properly, leading to more successful outcomes and includes in depth training on the following topics of initiating and the disciplinary procedure.

##### **1. GENERAL INFORMATION:**

- What is meant by the term initiator?
- Who can be an initiator at a disciplinary hearing?
- What do the duties of the initiator include?
- Where does the initiator start when dealing with misconduct in the workplace?

## **2. OVERVIEW OF THE PROCESS:**

- **Step 1 – Gathering of information**

Information gathering is probably the most time consuming and yet the most important responsibility of the initiator as the success of the case will depend on the initiator's preparation in anticipation of the disciplinary hearing.

- **Step 2 – Substantiating the information (establishing the merits)**

At this stage the initiator is faced with the task of sifting through the information gathered in the previous phase in order to determine what is a fact and what is not and what he/she will or will not be able to prove. In a disciplinary hearing it is not what you know, but what you can prove.

In order for the initiator to establish the merits he/she would need to evaluate the information gathered in step 1 by establishing which information on a balance of probability seems true and which information does not.

- **Step 3 – Applying the facts on the disciplinary code of the employer (Identifying the actual misconduct)**

From the facts identified in step 2 the initiator now needs to determine whether the employee made himself/herself guilty of any misconduct by asking relevant questions and applying the facts of the misconduct on the disciplinary code to see what the next disciplinary measure should be.

- **Step 4 – Deciding the action to be taken**

In deciding what action should be taken the initiator needs to know which actions he/she could take in accordance with statutory requirements. The initiator should refer to the statutory requirements in the Labour Act, 11 of 2007, as well as other factors that must be taken into account when and if an employee is being dismissed.

- **Step 5 – Taking action**

After referencing the above mentioned sources, the initiator needs to take action. The action could be any of the following.

- Issuing a warning or;
- Conducting a Disciplinary Hearing
  - Serving notice of disciplinary hearing on employee
  - Selecting witnesses and compiling of documentation
  - Preparing of witnesses
  - Preparing for hearing: possible preliminary points/opening statements/leading of witnesses/cross-examination/closing argument/aggravating factors
  - Attending hearing
  - Finalising the hearing

Should you be interested in attending one of our Initiator's courses or to send a delegate on your behalf, please do not hesitate to contact us for a booking.

Our details are as follows:

Contact Person: Sonja van der Merwe  
Telephone: 061 309 260

Fax: 061 309 266  
E-mail: [training@seenalegal.com](mailto:training@seenalegal.com)

Cost: Non-Members - N\$ 1 980.00 (Incl. Vat.)  
Members - N\$ 1 650.00 (Incl. Vat.)

Duration: 09:00-16:30 (Light Lunch & Attendance Certificate included)

Remember that we have limited seating - first come first served. Your seat will only be confirmed once payment was received.

## **Contact Us**

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