

**Short notes on:**

## **FAILURE BY AN EMPLOYEE TO GIVE PROPER NOTICE UPON RESIGNATION**

### ***Introduction***

Employment Contracts should set out the notice period which an Employee must give if he/she wants to terminate employment. This is due to the fact that a failure to give proper notice of the termination of employment can have dire consequences for an Employer.

This undesirable practice usually happens when an Employee wants to commence employment at another Employer and wants to leave their current employment earlier than the notice period requires. What must an Employer then do in such a situation?

### ***The Basic Conditions of Employment Act 75 of 1997 (“BCEA”)***

Section 37 of the BCEA stipulates that an Employment Contract is terminable at the instance of a Party to the Contract only on notice of not less than-

- a) one week, if the Employee has been employed for four weeks or less;
- b) two weeks, if the Employee has been employed for more than four weeks but not more than one year;
- c) four weeks, if the Employee-
  - i. has been employed for one year or more; or
  - ii. is a farm worker or domestic worker who has been employed for more than four weeks.

Most Employment Contracts stipulate the notice period to be given by the Employee. Employees tend to ignore this requirement by not coming back to work or by just giving 24 hours' notice. By doing this, they therefore leave the Employer in a difficult position.

### ***Employer's position***

However, an Employer cannot compel an Employee to work when an Employee terminates employment by giving short notice. This causes problems to the Employer in that they now have to replace the Employee, as well as the money and time they had spent in training the said Employee.

In terms of South African Labour Legislation, there is no recourse given to the Employer against such an Employee. This practice however constitutes a Breach of Contract. The Employer may have a remedy in damages occasioned by the Breach of Contract by the Employee who fails to honour his/her Employment Contract.

If the Employee gives short notice, the Employer may elect to reject the resignation, or accept the resignation and waive the contractually required notice period or accept the resignation and require the Employee to work the notice period. If the Employer rejects the resignation, the Employee is bound to work in order to fulfil his/her contractual obligations.

For Employers to protect themselves, it is advisable that the Employment Contract stipulates that upon resignation the required notice period would be enforced by the Employer. The Employee will therefore be required to give proper notice and to work their full notice period.

### **Conclusion**

It is important for Employers to manage termination of Employment Contracts properly. Employers should therefore ensure that they have properly-drafted Employment Contracts in the workplace. Contact us at SchoemanLaw Inc. to assist you in drafting Employment Contracts.