



Dismissals...it's not as simple as "you're fired"

The majority of us have been in charge of "hiring and firing" at some point, whether for an organisation or personally at home. There comes a time when an employee does something or fails to do something, which places you in a position to make a decision of whether to proceed with disciplinary action against such an employee. While feeling compelled to shout out "you're fired", controlling your impulses is strongly advised. Despite the reason for dismissing an employee, there is a procedure which has to be followed as well. This is where most employers fall short. In a dismissal case, in order for a dismissal to be regarded as fair, two elements have to be present:

1. Was there a valid reason for the dismissal (substantive fairness)?
2. Was a proper/correct procedure followed (procedural fairness)?



In so many dismissal instances, the case is referred to the CCMA as being unfair. Not having a valid reason and/or not following the correct procedure may cost you dearly at the CCMA and even the Labour Court. An employee can claim up to 2 years' salary as compensation in the instance of an automatic unfair dismissal and up to 1 year's salary as compensation for an unfair dismissal. When you sit and do the calculation, it might be worth it to follow the correct procedure, instead

of pulling out the red card there and then.

Important to remember when heading in the direction of a dismissal:

- Ensure the charges are drafted correctly and accurately
- Ensure the disciplinary hearing is held with an independent chairperson
- Ensure all the rights and procedures are explained during the disciplinary
- Ensure there is a valid reason for the dismissal
- Ensure the correct procedure is followed, before the employees is dismissed
- Don't think because you had a good relationship with the employee, he/she will not refer the matter to the CCMA
- Keep record of all conversations, warnings, disciplinary sanctions and the dismissal itself

Contact us for any of the following labour-related services:

- **Advice and guidance for employers on the dismissal procedures**
- **Drafting company disciplinary policies and procedures**
- **Drafting and review employment contracts**
- **Drafting of charges for a disciplinary hearing**
- **Act as independent chairperson in disciplinary hearings**
- **Representation at the CCMA**