Policies in the South African Workplace

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Purpose of Policies

- To set out in a structured format the norms of behaviour acceptable of employees - establishes a standard
- Creates certainty and consistency in the application of rules and regulations in the workplace
- Policies may be written or implied - best to have it in writing
Implementation of Policies

- Employment contracts make reference to policies and that employee is responsible for familiarising him/herself with policies.
- Some policies are contained in employment contracts like conflict of interest policy.
- At the induction stage.
- Available on the intranet for easy access.
Implementation of Policies

- Issuing reminders to employees via e-mail or on notice boards to familiarize themselves with the policies

- Remember if an employee is charged with breaching a rule/standard contained in a policy, the employer is required to inter alia prove that the employee was aware of the policies
Effect of Policies

If a policy is negotiated and agreed with a union it becomes a collective agreement. That policy cannot be changed or amended in any way without the union’s consent.

Likewise a policy which forms part of an employment contract becomes a term and condition of employment and therefore cannot be unilaterally amended by the employer.
If the policy does not form a term and condition of employment contract then the employee can unilaterally change and/or implement the policy.
Six most relevant policies to implement in the South African workplace

- Disciplinary code and procedure
- Sexual harassment policy
- Substance abuse policy
- Leave Policy
- Data protection policy
- Recruitment and selection policy
Disciplinary Code and Procedure

Based on Schedule 8 Code of Good Practice: Dismissal contained in the Labour Relations Act

Is a guideline but must be consistently applied to ensure fair treatment of all employees

Process that must be followed when instituting disciplinary action for misconduct cases and incapacity cases – different processes
Disciplinary Code and Procedure

- Usually contains a guideline of a schedule of offences and suggested sanctions for the first offence, second offence and third offence.
- Informal hearing before suspension, issuing of warnings and formal hearing for gross misconduct.
- Corrective rather than punitive discipline.
- Dismissal reserved for gross or repetitive misconduct—breach of trust relationship.
Disciplinary Code and Procedure

- In the event of dismissal, provides for appeal process or referral to CCMA
- Should also contain a grievance procedure.
Sexual Harassment Policy

- Basis for policy is the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace
- Dignity of all in the workplace must be respected.
- Sets out constitutes sexual harassment. Usually defined as unwanted conduct of a sexual nature.
- Sets out forms/examples of sexual harassment - physical conduct, verbal conduct, non-verbal conduct.
Sexual Harassment Policy

- E.g. touching, sexual assault, unwelcome innuendo’s, sex related jokes, taunting sexual advances, wolf-whistling, unwelcome gestures, indecent exposure.

- Provides for a process that facilitates the serious, expeditious, sensitive and confidential handling of the allegation.
Sexual Harassment Policy

- Counselling must be provided to a victim of sexual harassment and protection from further victimisation
- Dismissal is warranted for a first offence of sexual harassment
- An employer who does not address a sexual harassment complaint can be sued civilly for damages
Substance Abuse Policy

In terms of the Occupational Health and Safety Act obligation on employer an employer to prevent people who are under the intoxicated by alcohol or drugs and/or have drugs or alcohol on their person from entering the workplace.

Companies therefore implement a zero tolerance approach towards substance abuse - dismissal for first offence.
Substance Abuse Policy

- Policy varies from company to company because of the needs of the company – e.g. the acceptable level of blood alcohol in a truck driver would be a much lower level than that which would be acceptable in an office worker.

- Be careful however as such a differentiation could be viewed as discriminatory.

- For this reason, same rules should apply irrespective of the position of the employee.
Substance Abuse Policy

- An employee’s consent must be obtained before testing for alcohol is carried.
- If the employee refuses, a negative inference may be drawn and other factors such as the smelling of alcohol on the employee, red eyes, slurred speech can be relied on to prove that the employee was under the influence.
- Cannot determine blood/alcohol content if no consent so beware when drafting charge.
Substance Abuse Policy

In some instances employees have a dependency problem and employers should therefore provide a rehabilitation program for such employees.

If the employee reverts to his/her old ways after he/she undergoes rehabilitation then disciplinary action will be instituted.

The Code of Good Practice merely states that the employer may consider offering assistance in the form of rehabilitation.
Leave Policy

- Establishes guidelines and rules regulating employees’ leave entitlement i.e. annual, sick, maternity, study and family responsibility leave.
- Specifies the number of days an employee is entitled to for every type of leave per leave cycle.
- Process for applying and granting of leave to ensure fair and consistent treatment.
Leave Policy

- Regulates and prevents accumulation of annual leave
- Procedure for reporting sickness or injury – when, who and how to notify
- Medical certificate - when required, issued by whom, when to be handed in and to who
- Aimed at preventing abuse of sick leave
- Regulation of maternity leave and benefits
Data Protection Policy

- Ensures that the employer’s information, domain name and/or reputation is properly regulated.

- Ensures that the employer’s communications and IT systems operate at optimal levels.

- Ensures an acceptable and inoffensive working environment and that employer’s communication and IT facilities are utilised in order to enhance productivity in the workplace.
Data Protection Policy

- Regulate the software that may be installed on company property, the creation of passwords, virus protection software, the employees’ access to the system/network and network security.

- Provide for the interception and monitoring of communication in terms of the Regulation of Interception of Communication and Provision of Communication- Related Information Act 70 of 2002.
Should place the accountability on the individuals and should specify that disciplinary action will be instituted for misuse of company assets, damage or losses caused thereto.
Recruitment and Selection Policy

- Must comply with the Employment Equity Act - risk is that job applicants are entitled to refer an alleged unfair discrimination dispute in terms of the Employment Equity Act.

- Recruitment and selection must be done in a fair, efficient, effective, transparent and equitable manner to achieve equity in the workplace to promote workplace diversity to attract scarce skills and to enhance service excellence.
Recruitment and Selection Policy

- The provisions of the Protection of Personal Information Act must be considered when drafting this policy.
- The job application forms must contain questions necessary for the initial stages of selection only.
- Should also regulate the appointment of the recruitment agencies and their obligations towards the company and in terms of POPI.
Provide guidelines for what the advertisements should state and refrain from, suggest possible questions to be asked during the interviews and what questions to avoid.

For this purpose a job analysis is important.
Recruitment and Selection Policy

- Preferably the consent of job applicants must be obtained before carrying out background checks, the purpose of the background checks and the period during which the information will be retained should be explained to the employees.

- If company wishes to store information on a database for a certain period, the job applicants must be informed of this and be given the option to “opt out” of this database.
Recruitment and Selection Policy

Psychometric testing must comply with the Employment Equity Act.

Consent must be obtained before conducting the test in terms of POPI as it will constitute special personal information.
Recruitment and Selection Policy

- Selection criteria for screening purposes, short listing purposes and final selection of candidates must be identified and applied consistently in relation to all candidates.

- Provide guidance on what the offer of employment should contain.

- Stipulate when the unsuccessful candidates are informed and how – verbally or in writing.
Recruitment and Selection Policy

- Should prevent the employment of foreigners who are not in possession of the necessary work permits and/or official documentation which entitles them to work legally in the country.

- Should prevent employment of relatives.

- Because there is a potential that a dispute could be referred by a job applicant, the application documents will be kept on file for 6 months.
Questions?